

HOUSE BILL 2159

By Hensley

AN ACT to amend Tennessee Code Annotated, Title 36; Title 37 and Title 68, to enact the "Embryo Donation and Adoption Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 36, Chapter 1, is amended by adding the following as a new part thereto:

§ 36-1-401.

This part shall be known and may be cited as the "Embryo Donation and Adoption Act of 2009".

§ 36-1-402.

The purpose of this part is to:

- (1) Clarify the rights of genetic and adoptive parents in embryo donation and adoption;
- (2) Clarify the legal status of children born as the result of embryo donation and adoption;
- (3) Require that adequate records be kept regarding donated and adopted embryos and their genetic origins;
- (4) Assure the rights of a child born from embryo donation and adoption to obtain non-identifying information about the child's genetic origins; and
- (5) Promote the best interests of the child.

§ 36-1-403.

As used in this part, unless the context otherwise requires:

(1) "Embryo" or "human embryo" means a fertilized ovum of the human species at the single-cell or any subsequent stage of development up to and including the blastocyst stage;

(2) "Embryo adoption" means the acceptance of ownership of a donated embryo for the purpose of achieving a pregnancy;

(3) "Embryo donation" means the relinquishment of rights to an embryo by its genetic parents for the purpose of creating pregnancy in a woman;

(4) "Embryo transfer" means the placement of an embryo into the uterus or fallopian tubes of a recipient woman as a medical procedure; and

(5) "Identifying information" means the home and work addresses and telephone numbers, social security number, and any other information that could reasonably be used to locate an individual.

§ 36-1-404.

(a) If an embryo is donated by its genetic parents or by its owners or by a clinic with the legal authority to relinquish its ownership to a woman and her husband, then a child born as the result of the implantation of that embryo is presumed to be the adopted child of such woman and husband.

(b)

(1) For any embryo donation or embryo adoption, a clinic or agency shall require that a written contract be executed transferring ownership or parental rights of the embryo prior to the thawing and transfer

of the embryo. The written contract shall irrevocably terminate all ownership or parental rights of the embryo donor. The relinquishment of such rights by the genetic parents and the acceptance of those rights by the mother and her husband shall take effect and become irrevocable at the time of the thawing of the embryo.

(2)

(A) Except as provided in subdivision (b)(2)(B), any provision in a written agreement or contract that transfers ownership or parental rights of the embryo that requires visitation or otherwise places any conditions on the embryo adoption shall be void and of no effect whatsoever.

(B) Nothing under this part shall be construed to prohibit an "open embryo adoption" where the adopting woman and her husband permit, in their sole discretion, the embryo donor, or other persons related to the child born as the result of the implantation of that embryo, to visit or otherwise continue or maintain a relationship with such child. The permission or agreement to permit visitation or contact shall not, in any manner whatsoever, establish any enforceable rights in the embryo donor, or other persons related to the child.

(c) A child born as the result of the transfer of a donated embryo pursuant to subsection (b) shall be the adopted person, as defined by § 36-1-102, and, without any court action required, shall be afforded all legal rights and protections of any person adopted pursuant to this chapter, and such legal effect

shall be given to the parent-child relationships as described in §§ 36-1-121 and 36-1-122.

(d) Notwithstanding subsection (a), the adopting parents may file an adoption petition seeking a final order of adoption pursuant to this chapter; however, a final order of adoption is not required for any provisions of this part to take effect.

§ 36-1-405.

Any clinic or agency where the transfer of ownership or parental rights of an embryo occurs as provided in § 36-1-404(b) shall retain the written contract referred to in § 36-1-404 and any other records containing information concerning the embryo adoption including, but not limited to, information concerning the physical descriptions, medical histories, and ethnic origins of the genetic parents, and the results of any medical or laboratory tests conducted during the course of the embryo transfer that may be relevant to the child's medical history. Such records shall be retained for a period of not less than twenty-one (21) years following the birth of the child; provided, that the clinic or agency is not required to retain any identifying information of the genetic parents.

§ 36-1-406.

Upon attaining eighteen (18) years of age, a child born as the result of embryo donation and adoption shall have the right to request, and be granted access to, the information described in § 36-1-405. In addition, the adopting parents, and any licensed primary care physician rendering services to the child, shall have access to the information described in § 36-1-405 at any time, to the extent necessary to render services or make health care decisions on behalf of the child.

§ 36-1-407.

The department of children's services in consultation with the department of health is authorized to promulgate necessary rules and regulations to facilitate the implementation of this part in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 2.

SECTION 2. This act shall take effect July 1, 2009, the public welfare requiring it.