

GREEN SHEET REDIGEST

HB 833

2024 Regular Session

Davis

CIVIL/LAW: Provides relative to in vitro fertilization.

DIGEST

Present law (R.S. 9:121) provides that a "human embryo" is an in vitro fertilized human ovum with certain rights granted by law and composed of one or more living human cells and human genetic material so unified and organized that it will develop in utero into an unborn child.

Proposed law retains present law but restructures the definition to include specifications on viability of an in vitro fertilized human embryo. Proposed law provides that an in vitro fertilized human embryo is presumed viable unless it fails to develop after the first 36 hours from fertilization except in instances when the embryo is in a state of cryopreservation.

Proposed law also changes the reference from an "in vitro fertilized human ovum" to an "in vitro fertilized human embryo".

Present law (R.S. 9:122) provides that the use of a human ovum fertilized in vitro is solely for the support and contribution of the complete development of human in utero implantation. No in vitro fertilized human ovum will be farmed or cultured solely for research purposes or any other purposes. The sale of a human ovum, fertilized human ovum, or human embryo is expressly prohibited.

Proposed law changes the reference from an "in vitro fertilized human ovum" to an "in vitro fertilized human embryo".

Present law (R.S. 9:123) provides that an in vitro fertilized human ovum exists as a juridical person until such time as the in vitro fertilized ovum is implanted in the womb, or at any other time when rights attach to an unborn child in accordance with law.

Proposed law retains present law but makes some semantic changes. Proposed law also emphasizes the classification of an in vitro fertilized human embryo as a juridical person, separate from the medical facility or clinic where it is housed or stored, that gives it the capacity to sue or be sued.

Proposed law also changes the reference from an "in vitro fertilized human ovum" to an "in vitro fertilized human embryo".

Present law (R.S. 9:124) classifies a human embryo as a juridical person that can sue or be sued. Present law also provides that the in vitro fertilized human ovum shall be given an identification by the medical facility for use within the medical facility and provides confidentiality of the in vitro fertilization patient.

Proposed law retains present law and removes redundant language. Proposed law also changes the reference from an "in vitro fertilized human ovum" to an "in vitro fertilized human embryo".

Present law (R.S. 9:125) provides that an in vitro fertilized human ovum as a juridical person is recognized as a separate entity apart from the medical facility or clinic where it is housed or stored.

Proposed law retains present law but changes the reference from an "in vitro fertilized human ovum" to "in vitro fertilized human embryo".

Present law (R.S. 9:126) provides that an in vitro fertilized human ovum is a biological human being which is not the property of the physician which acts as an agent of fertilization, or the facility which employs him or the donors of the sperm and ovum.

Present law also provides rights to in vitro fertilization patients in circumstances when they either express or do not express their identity. In cases where the in vitro fertilization patients express their identity, then their rights as parents as provided under the Civil Code will be preserved. If the in vitro fertilization patients fail to express their identity, then the physician shall be deemed to be temporary guardian of the in vitro fertilized human ovum until adoptive implantation can occur.

Present law authorizes a court in the parish where the in vitro fertilized ovum is located to appoint a curator, upon motion of the in vitro fertilization patients, their heirs, or physicians who caused in vitro fertilization to be performed, to protect the in vitro fertilized human ovum's rights.

Proposed law changes present law by stating that an in vitro fertilized human embryo is under the direction and custody of the patient. Proposed law further establishes that an in vitro fertilized human embryo cannot be owned by the in vitro fertilization patients and that the patients owe the in vitro fertilized human embryo a high duty of care and prudent administration.

Proposed law also removes provisions that establishes guardianship over an in vitro fertilized human embryo in certain circumstances and references to appointment of a curator on behalf of an in vitro fertilized human embryo.

Proposed law also changes the reference from an "in vitro fertilized human ovum" to an "in vitro fertilized human embryo".

Present law (R.S. 9:127) provides that any physician or medical facility who causes in vitro fertilization of a human ovum in vitro will be directly responsible for the in vitro safekeeping of the fertilized ovum.

Proposed law retains present law but changes the reference from an "in vitro fertilized human ovum" to an "in vitro fertilized human embryo".

Present law (R.S. 9:128) provides qualifications for medical professionals and facilities engaged in in vitro fertilization procedures and prohibits those who do not meet the qualifications from providing in vitro fertilization services.

Proposed law retains present law but updates the authoritative bodies and increases the qualifications of physicians to be double board certified or eligible in order for the physicians to render in vitro fertilization services.

Present law (R.S. 9:129) provides that a viable in vitro fertilized human ovum is a juridical person which shall not be intentionally destroyed by any natural or other juridical person or through the actions of any such person. Present law also provides that an in vitro fertilized human ovum is non-viable and is not a juridical person when it fails to develop further over a 36-hour period except when the embryo is in a state of cryopreservation.

Proposed law removes redundant language. Proposed law also changes the reference from an "in vitro fertilized human ovum" to an "in vitro fertilized human embryo".

Present law (R.S. 9:130) provides that an in vitro fertilized human ovum is a juridical person which cannot be owned by the in vitro fertilization patients who owe it a high duty of care and prudent administration.

Present law also provides that if the in vitro fertilization patients renounce by notarial act their parental rights for in utero implantation, then the in vitro fertilized human ovum shall be available for adoptive implantation in accordance with written procedures of the facility where it is housed or stored. Present law provides that the in vitro fertilization patients may

renounce their parental rights in favor of another married couple only if the other couple is willing and able to receive the in vitro fertilized ovum.

Present law also provides that no compensation shall be paid or received by either couple to renounce parental rights and that constructive fulfillment of the statutory provisions for adoption in this state shall occur when a married couple executes a notarial act of adoption of the in vitro fertilized ovum and birth occurs.

Proposed law provides that if in vitro fertilization patients relinquish their legal rights to their embryos through a legal agreement with a recipient or a fertility clinic, then the in vitro fertilized human embryo shall be available for donation in accordance with written procedures of the facility where it is housed or stored.

Proposed law also removes redundant language and changes present law to allow individuals the right to adopt a donated embryo. Proposed law changes the reference from an "in vitro fertilized human ovum" to "in vitro fertilized human embryo".

Present law (R.S. 9:131) provides that disputes arising between any parties regarding the in vitro fertilized ovum, the judicial standard for resolving such disputes is to be in the best interest of the in vitro fertilized ovum.

Proposed law changes the reference to an in vitro fertilized human ovum to in vitro fertilized human embryo. Proposed law also changes present law by providing that if an in vitro fertilization agreement exists, parties in dispute shall resolve in accordance with the terms and provisions of the agreement first before utilizing the courts.

Present law (R.S. 9:132) provides that any physician, hospital, in vitro fertilization clinic, or their agent who acts in good faith shall not be held strictly liable or liable in any action relating to succession rights and inheritance for the screening, collection, conservation, preparation, transfer, or cryopreservation of the human ovum fertilized in vitro for transfer to the human uterus.

Present law also provides that any immunity granted by present law is applicable only to an action brought on behalf of the in vitro fertilized human ovum as a juridical person.

Proposed law provides that all civil actions against any qualified healthcare provider shall be brought pursuant to the Medical Malpractice Act provided by present law and the Malpractice for Liability for State Services Act provided by present law. Provides that all civil actions brought against a nonqualified healthcare provider shall be subject to civil liability based upon the applicable standard of care.

Proposed law provides that no physician, healthcare provider, hospital, in vitro fertilization clinic, laboratory personnel, provider of products and services, or their agent who participates in the screening, collection, conservation, preparation, fertilization, culture, transfer, biopsy, thawing, warming, analysis, storage, transportation, cryopreservation, or any acts typically performed during the in vitro fertilization process of the human embryo fertilized in vitro for transfer to the human uterus shall be subject to criminal prosecution except in cases where acts were made with criminal intent as defined by present law.

Present law (R.S. 9:133) provides inheritance rights to an in vitro fertilized human ovum in certain circumstances.

Proposed law retains present law but changes the reference from an "in vitro fertilized human ovum" to "in vitro fertilized human embryo".

(Amends R.S. 9:121 through 133)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Add technical changes.
2. Change "in vitro fertilized human ovum" to "in vitro fertilized human embryo" throughout proposed law.
3. Add a definition of viability in reference to an in vitro fertilized human embryo.
4. Provide that an in vitro fertilized human embryo cannot be owned by the in vitro fertilization patient who owes the in vitro fertilized human embryo a high duty of care and prudent administration.
5. Remove language stating that a fertilized human ovum represents the potential for development into a biological human being.
6. Provide that an in vitro fertilized human embryo is under the direction and custody of the in vitro fertilization patients.
7. Enable individuals the right to adopt a donated embryo.
8. Provide that disputes arising between any parties regarding an in vitro fertilized human embryo be resolved by the terms and provisions of the in vitro fertilization agreement before utilizing the courts.
9. Include a definition of "good faith" regarding the liability of a physician, hospital, in vitro fertilization clinic, or their agent to an in vitro fertilized human embryo.
10. Establish that immunity from liability shall not apply in cases of gross negligence or willful misconduct.
11. Extend civil and criminal immunity from liability to manufacturers and providers of services related to in vitro fertilization.
12. Emphasize that an in vitro fertilized human embryo is a juridical person.

The House Floor Amendments to the engrossed bill:

1. Add technical changes.
2. Provide that if in vitro fertilization patients renounce their parental rights by notarial act for in utero implantation, the in vitro fertilized human embryo shall be available for donation in accordance with written procedures of the facility where it is housed or stored.
3. Add "storage" to the list of acts by certain individuals provided by proposed law that is afforded immunity from criminal prosecution.
4. Include an exception to immunity from criminal prosecution in instances of criminal negligence.

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the reengrossed bill

1. Provides that if in vitro fertilization patients relinquish their legal rights through a legal agreement, then the in vitro fertilized human embryo shall be available for donation in accordance with written procedures of the facility where it is housed or stored.

2. Requires all civil actions against any qualified healthcare provider to be brought pursuant to the Medical Malpractice Act and the Malpractice for Liability for State Services Act.
3. Provides immunity from criminal prosecution for certain medical service providers except in cases of acts made with criminal intent as defined by present law.
4. Makes technical changes.