

2024 Regular Session

HOUSE BILL NO. 833

BY REPRESENTATIVES DAVIS, BOYD, BROWN, FREEMAN, FREIBERG, GREEN,
HUGHES, LACOMBE, MANDIE LANDRY, LARVADAIN, NEWELL, TAYLOR,
WILLARD, AND ZERINGUE AND SENATORS MIZELL AND PRESSLY

CIVIL/LAW: Provides relative to in vitro fertilization

1 AN ACT

2 To amend and reenact R.S. 9:121 through 133, relative to in vitro fertilization; to provide
3 a definition; to provide classification; to establish viability of an in vitro fertilized
4 human ovum; to provide qualifications; to provide immunity from civil liability and
5 criminal prosecution; to provide for definitions; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 9:121 through 133 are hereby amended and reenacted to read as
8 follows:

9 §121. ~~Human embryo; definition~~ Definitions

10 ~~A "human embryo" for the purposes of this Chapter is an in vitro fertilized~~
11 ~~human ovum, with certain rights granted by law, composed of one or more living~~
12 ~~human cells and human genetic material so unified and organized that it will develop~~
13 ~~in utero into an unborn child. Notwithstanding any other law to the contrary and for~~
14 ~~the purposes of this Chapter:~~

15 (1) "Human embryo" means a fertilized human ovum that is a biological
16 human being, with certain rights granted by law, composed of one or more living
17 human cells and human genetic material.

18 (2) "In vitro fertilized human embryo" means a human embryo created
19 through the in vitro fertilization process.

1 (3) Viability of an "in vitro fertilized human embryo."

2 (a) An in vitro fertilized human embryo is presumed to be viable unless and
3 until it is deemed non-viable as defined in this Section.

4 (b) An in vitro fertilized human embryo is deemed "non-viable" when it
5 fails to continue to develop after the first thirty-six hours from fertilization, except
6 when the embryo is in a state of cryopreservation.

7 §122. Uses of ~~human embryo in vitro~~ an in vitro fertilized human embryo

8 The use of a human ~~ovum~~ embryo fertilized in vitro is solely for the support
9 and contribution of the complete development of human in utero implantation. No
10 in vitro fertilized human ~~ovum~~ embryo will be farmed or cultured solely for research
11 purposes or any other purposes. The sale of a human ovum, fertilized human ovum,
12 or human embryo is expressly prohibited.

13 §123. Capacity

14 ~~An~~ A viable in vitro fertilized human ~~ovum~~ embryo exists as a juridical
15 person until such time as the in vitro fertilized ~~ovum~~ embryo is implanted in the
16 womb; ~~or at any other time when rights attach to an unborn child in accordance with~~
17 ~~law;~~ at which time rights attach as otherwise allowed by law. As a juridical person,
18 the viable in vitro fertilized human embryo shall have the capacity to sue or be sued
19 and is recognized as a separate entity apart from the medical facility or clinic where
20 it is housed or stored.

21 §124. ~~Legal status~~ Identification and confidentiality

22 As a juridical person, the in vitro fertilized human ~~ovum~~ embryo shall be
23 given an identification by the medical facility for use within the medical facility
24 ~~which entitles such ovum to sue or be sued.~~ The confidentiality of the in vitro
25 ~~fertilization patient~~ fertilized embryo and the patients from which it came shall be
26 maintained.

1 §125. Separate entity

2 An in vitro fertilized human ~~ovum~~ embryo as a juridical person is recognized
3 as a separate entity apart from the medical facility or clinic where it is housed or
4 stored.

5 §126. ~~Ownership~~ Direction and custody

6 An in vitro fertilized human embryo cannot be owned by the in vitro
7 fertilization patients who owe the in vitro fertilized human embryo a high duty of
8 care and prudent administration. An in vitro fertilized human ~~ovum~~ embryo is a
9 ~~biological human being which~~ is under the direction and custody of the patient and
10 is not the property of the physician which acts as an agent of fertilization, or the
11 facility which employs ~~him~~ them or the donors of the sperm and ovum. ~~If the in vitro~~
12 ~~fertilization patients express their identity, then their rights as parents as provided~~
13 ~~under the Louisiana Civil Code will be preserved.~~ ~~If the in vitro fertilization patients~~
14 ~~fail to express their identity, then the physician shall be deemed to be temporary~~
15 ~~guardian of the in vitro fertilized human ovum until adoptive implantation can occur.~~
16 ~~A court in the parish where the in vitro fertilized ovum is located may appoint a~~
17 ~~curator, upon motion of the in vitro fertilization patients, their heirs, or physicians~~
18 ~~who caused in vitro fertilization to be performed, to protect the in vitro fertilized~~
19 ~~human ovum's rights.~~

20 §127. Responsibility

21 Any physician or medical facility who causes in vitro fertilization of a human
22 ~~ovum~~ embryo in vitro will be directly responsible for the in vitro safekeeping of the
23 fertilized ~~ovum~~ embryo.

24 §128. Qualifications

25 Only medical facilities meeting the standards of the ~~American Fertility~~
26 ~~Society~~ American Society for Reproductive Medicine and the American College of
27 Obstetricians and Gynecologists and directed by a medical doctor licensed to
28 practice medicine in this state and possessing specialized training and skill in in vitro
29 fertilization also in conformity with the standards established by the ~~American~~

1 ~~Fertility Society or the American College of Obstetricians and Gynecologists shall~~
2 ~~cause the in vitro fertilization of a human ovum to occur. No person shall engage in~~
3 ~~in vitro fertilization procedures unless qualified as provided in this Section~~ American
4 Society for Reproductive Medicine and the American College of Obstetricians and
5 Gynecologists as evidenced by double board certification or eligibility by the
6 American Board of Obstetrics and Gynecology in both Obstetrics and Gynecology
7 as well as Reproductive Endocrinology and Infertility shall cause the in vitro
8 fertilization of a human ovum to occur. No person shall engage in in vitro
9 fertilization procedures unless qualified as provided in this Section.

10 §129. Destruction

11 A viable in vitro fertilized human ~~ovum~~ embryo is a juridical person which
12 shall not be intentionally destroyed by any natural or other juridical person or
13 through the actions of any other such person. ~~An in vitro fertilized human ovum that~~
14 ~~fails to develop further over a thirty-six hour period except when the embryo is in a~~
15 ~~state of cryopreservation, is considered non-viable and is not considered a juridical~~
16 ~~person.~~

17 §130. Duties of ~~donors~~ donees

18 ~~An in vitro fertilized human ovum is a juridical person which cannot be~~
19 ~~owned by the in vitro fertilization patients who owe it a high duty of care and~~
20 ~~prudent administration.~~ If the in vitro fertilization patients renounce, by notarial act,
21 their parental rights for in utero implantation, then the in vitro fertilized human ~~ovum~~
22 embryo shall be available for adoptive implantation in accordance with written
23 procedures of the facility where it is housed or stored. The in vitro fertilization
24 patients may renounce their ~~parental~~ rights in favor of another ~~married couple~~
25 person, but only if the other ~~couple~~ person is willing and able to ~~receive~~ assume the
26 direction and control of the in vitro fertilized ovum embryo. No compensation shall
27 be paid or received by either ~~couple~~ person to renounce ~~parental~~ rights. ~~Constructive~~
28 ~~fulfillment of the statutory provisions for adoption in this state shall occur when a~~

1 ~~married couple executes a notarial act of adoption of the in vitro fertilized ovum and~~
2 ~~birth occurs.~~

3 §131. Judicial standard

4 In disputes arising between any parties regarding the in vitro fertilized ~~ovum~~
5 embryo, the ~~judicial standard for resolving such disputes is to be in the best interest~~
6 ~~of the in vitro fertilized ovum~~ dispute shall be resolved in accordance with the terms
7 and provisions of the in vitro fertilization agreement by the parties. If no such
8 agreement exists, then disputes shall be determined by a court of competent
9 jurisdiction and in the best interest of the in vitro fertilized embryo.

10 §132. Liability

11 A. Strict liability or liability of any kind including actions relating to
12 succession rights and inheritance shall not be applicable to any No physician,
13 hospital, in vitro fertilization clinic, manufacturer, provider of services, or their agent
14 who acts in good faith in the screening, collection, conservation, preparation,
15 transfer, or cryopreservation of the human ~~ovum~~ embryo fertilized in vitro for
16 transfer to the human uterus, including the provisions of goods or services relating
17 thereto, shall be subject to criminal prosecution or civil liability. Any immunity
18 granted by this Section is applicable only to an action brought on behalf of the in
19 vitro fertilized human ovum as a juridical person. Immunity granted by this Section
20 is applicable to all actions including actions relating to succession rights and
21 inheritance.

22 B.(1) For the purposes of this Chapter, "good faith" shall mean the use of
23 reasonable care and diligence in the application of skill when in vitro fertilization
24 services are rendered to a patient from any physician, hospital, in vitro fertilization
25 clinic, or an agent of any of the persons or entities provided in this Paragraph.

26 (2) "Good faith" shall also include the standard of care required of every
27 physician, hospital, in vitro fertilization clinic, manufacturer, provider of services,
28 or an agent thereof in rendering in vitro fertilization services to a patient. This
29 standard of care shall be exercised to that degree of skill ordinarily employed, under

1 similar circumstances, by the members of this profession in good standing in the
 2 same community or locality.

3 C. Limitation of liability as provided by this Section shall not apply when
 4 an in vitro fertilized human embryo is rendered non-viable as a result of gross
 5 negligence or willful misconduct.

6 §133. Inheritance rights

7 Inheritance rights will not flow to the in vitro fertilized ~~ovum~~ embryo as a
 8 juridical person, unless the in vitro fertilized ~~ovum~~ embryo develops into an unborn
 9 child that is born in a live birth, or at any other time when rights attach to an unborn
 10 child in accordance with law. As a juridical person, the embryo or child born as a
 11 result of in vitro fertilization and in vitro fertilized ~~ovum~~ embryo donation to another
 12 couple does not retain its inheritance rights from the in vitro fertilization patients or
 13 a donor of gametes used in the in vitro fertilization process, unless the donor is a
 14 person from whom the child could otherwise inherit under laws of succession
 15 notwithstanding the in vitro fertilization process.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 833 Engrossed

2024 Regular Session

Davis

Abstract: Provides relative to in vitro fertilization.

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 a 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 them 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 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 removes redundant language and changes present law to allow individuals the right to adopt a donated embryo. Proposed law also 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 retains present law and changes the reference to an in vitro fertilized human ovum to in vitro fertilized human embryo. Proposed law also provides civil and criminal immunity from liability and extends the protection to manufacturers and providers of services related to in vitro fertilization.

Proposed law also defines "good faith" as use of reasonable care and diligence, along with the best judgment, in the application of skill when in vitro fertilization services are rendered to a patient from any physician, hospital, in vitro fertilization clinic, or an agent of any of the persons or entities provided by proposed law.

Proposed law further defines "good faith" as the standard of care required of every physician, hospital, in vitro fertilization clinic, manufacturer, provider of services, or an agent thereof in rendering in vitro fertilization services to a patient. The standard of care shall be exercised to that degree of skill ordinarily employed, under similar circumstances, by the members of this profession in good standing in the same community or locality.

Proposed law also provides that any limitation of liability provided by proposed law shall not apply in instances when an in vitro fertilized human embryo is rendered non-viable as a result of gross negligence or willful misconduct.

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.