

SENATE BILL NO. 156

BY SENATOR PRESSLY AND REPRESENTATIVES BOYD, BROWN, BRYANT,  
CARRIER, DAVIS, FISHER, FREIBERG, GADBERRY, HUGHES,  
JACKSON, LACOMBE, LAFLEUR, TERRY LANDRY,  
LARVADAIN, LYONS, MELERINE, MILLER, NEWELL, STAGNI,  
TAYLOR AND WILLARD

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1 AN ACT

2 To amend and reenact R.S. 9:121 through 124 and 126 through 133 and to repeal R.S. 9:125,  
3 relative to in vitro fertilized human embryos; to provide for definitions; to provide  
4 for uses of an in vitro fertilized human embryo; to provide for legal rights of an in  
5 vitro fertilized human embryo; to provide for ownership of an in vitro fertilized  
6 human embryo; to provide for qualification to perform in vitro fertilization  
7 procedures; to provide for destruction of an in vitro fertilized human embryo; to  
8 provide for judicial standards; to provide for liability; to provide for inheritance  
9 rights; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 9:121 through 124 and 126 through 133 are hereby amended and  
12 reenacted to read as follows:

13 CHAPTER 3. **IN VITRO FERTILIZED** HUMAN EMBRYOS

14 §121. Human embryo; **in vitro fertilization**; definition

15 ~~A "human embryo" for the purposes of this Chapter is an in vitro fertilized~~  
16 ~~human ovum, with certain rights granted by law, composed of one or more living~~  
17 ~~human cells and human genetic material so unified and organized that it will develop~~  
18 ~~in utero into an unborn child.~~

1                    Notwithstanding any other law to the contrary and for the purposes of  
2                    this Chapter the following definitions shall apply:

3                    (1) "Human embryo" means a fertilized human ovum that is biologically  
4                    human, with certain rights granted by law, composed of one or more living  
5                    human cells and human genetic material.

6                    (2) "In vitro fertilized human embryo" means a human embryo created  
7                    through the in vitro fertilization process that has certain rights granted by law  
8                    and is composed of one or more living human cells and human genetic material  
9                    so unified and organized that it may develop in utero into an unborn child.

10                   (3) "Nonviable in vitro fertilized human embryo" means an in vitro  
11                   fertilized human embryo that fails to meet necessary developmental milestones,  
12                   except when the embryo is in a state of cryopreservation. An embryo shall not  
13                   be deemed nonviable before seventy-two hours from fertilization. Viability of  
14                   an in vitro fertilized human embryo is presumed unless it is deemed nonviable.

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

16                   The use of a human ~~ovum~~ embryo fertilized in vitro is solely for the support  
17                   and contribution of the complete development of human in utero implantation. No  
18                   in vitro fertilized human ~~ovum~~ embryo will be farmed or cultured solely for research  
19                   purposes or any other purposes. The sale of a human ovum, fertilized human ~~ovum~~  
20                   embryo, or human embryo is expressly prohibited.

21                   §123. Capacity

22                   A. An in vitro fertilized human ~~ovum~~ embryo exists as a juridical person  
23                   until ~~it is either:~~ such time as the in vitro fertilized ovum is implanted in the womb;  
24                   or at any other time when rights attach to an unborn child in accordance with law.

25                   (1) Deemed nonviable as provided in R.S. 9:121; or

26                   (2) Implanted in the womb, at which time rights attach as otherwise  
27                   allowed by law.

28                   B. As a juridical person, the in vitro fertilized human embryo shall:

29                   (1) Have the capacity to sue or be sued.

30                   (2) Be recognized as a separate entity apart from the medical facility or

1        clinic where it is housed or stored.

2        §124. Legal status Identification and confidentiality

3                As a juridical person, the in vitro fertilized human ovum **embryo** shall be  
4        given an identification by the medical facility ~~for use within the medical facility~~  
5        ~~which entitles such ovum to sue or be sued.~~ The confidentiality of the in vitro  
6        fertilization **fertilized human embryo and the patient from which it came** shall be  
7        maintained.

8                                \*           \*           \*

9        §126. Ownership; control and decision making authority

10                ~~An in vitro fertilized human ovum is a biological human being which~~

11                **A. An in vitro fertilized human embryo is not susceptible of ownership,**  
12        **and** is not the property of the physician ~~which~~ **who** acts as an agent of fertilization,  
13        or the facility which employs ~~him~~ **the physician**, or the donors of the sperm and  
14        ovum. ~~If the in vitro fertilization patients express their identity, then their rights as~~  
15        ~~parents as provided under the Louisiana Civil Code will be preserved. If the in vitro~~  
16        ~~fertilization patients fail to express their identity, then the physician shall be deemed~~  
17        ~~to be temporary guardian of the in vitro fertilized human ovum until adoptive~~  
18        ~~implantation can occur. A court in the parish where the in vitro fertilized ovum is~~  
19        ~~located may appoint a curator, upon motion of the in vitro fertilization patients, their~~  
20        ~~heirs, or physicians who caused in vitro fertilization to be performed, to protect the~~  
21        ~~in vitro fertilized human ovum's rights.~~

22                **B. Neither the facility nor the physician acting as an agent of fertilization**  
23        **shall have decision-making authority over a viable in vitro fertilized human**  
24        **embryo.**

25                **C. The intended parent or parents shall have control and decision-**  
26        **making authority over a viable in vitro fertilized human embryo.**

27        §127. Responsibility

28                Any physician or medical facility who causes in vitro fertilization of a human  
29        ovum **embryo** ~~in vitro~~ will be directly responsible for the in vitro safekeeping of the  
30        fertilized ovum **human embryo**.

## 1           §128. Qualifications

2           ~~Only medical facilities meeting the standards of the American Fertility~~  
3           ~~Society and the American College of Obstetricians and Gynecologists and directed~~  
4           ~~by a medical doctor licensed to practice medicine in this state and possessing~~  
5           ~~specialized training and skill in in vitro fertilization also in conformity with the~~  
6           ~~standards established by the American Fertility Society or the American College of~~  
7           ~~Obstetricians and Gynecologists shall cause the in vitro fertilization of a human~~  
8           ~~ovum to occur. No person shall engage in in vitro fertilization procedures unless~~  
9           ~~qualified as provided in this Section.~~

10           **No person shall engage in in vitro fertilization procedures unless the**  
11           **following criteria are met:**

12           **(1) The procedure is performed at a medical facility that meets the**  
13           **standards of the American Society for Reproductive Medicine and the**  
14           **American College of Obstetricians and Gynecologists.**

15           **(2) The medical facility is directed by a medical doctor who:**

16           **(a) Is licensed to practice medicine in this state;**

17           **(b) Possesses specialized training and skill in in vitro fertilization that is**  
18           **in conformity with the standards established by the American Society for**  
19           **Reproductive Medicine and the American College of Obstetricians and**  
20           **Gynecologists; and**

21           **(c) Is double board certified or eligible to practice by the American**  
22           **Board of Obstetrics and Gynecology in both obstetrics and gynecology as well**  
23           **as reproductive endocrinology and infertility.**

## 24           §129. Destruction

25           A viable in vitro fertilized human ~~ovum~~ **embryo** is a juridical person which  
26           shall not be intentionally destroyed by any natural or other juridical person or  
27           through the actions of any other such person. ~~An in vitro fertilized human ovum that~~  
28           ~~fails to develop further over a thirty-six hour period except when the embryo is in a~~  
29           ~~state of cryopreservation, is considered non-viable and is not considered a juridical~~  
30           ~~person.~~

1           §130. ~~Duties of donors~~ **Legal transfer of rights and responsibilities**

2           ~~An~~ **The** in vitro fertilized human ovum **embryo** is a juridical person which  
3 cannot be owned by the in vitro fertilization patients who owe it ~~owed~~ a high duty  
4 of care and prudent administration. If the in vitro fertilization patients **current**  
5 **intended parent or parents of an in vitro fertilized human embryo choose to**  
6 renounce **their rights and responsibilities for the embryo**, by notarial act, ~~their~~  
7 ~~parental rights for in utero implantation, then the in vitro fertilized human ovum shall~~  
8 ~~be available for adoptive implantation in accordance with written procedures of the~~  
9 ~~facility where it is housed or stored~~ **the rights and responsibilities shall be legally**  
10 **transferred to a new intended parent or parents who shall assume the rights and**  
11 **responsibilities for the in vitro fertilized human embryo.** ~~The in vitro fertilization~~  
12 ~~patients may renounce their parental rights in favor of another married couple, but~~  
13 ~~only if the other couple is willing and able to receive the in vitro fertilized ovum.~~  
14 **The legal transfer of rights and responsibilities shall only be permitted for uses**  
15 **consistent with R.S. 9:122.** No compensation shall be paid or received by either  
16 couple ~~any person~~ to renounce parental **for the renouncing of their rights and**  
17 **responsibilities for an in vitro fertilized human embryo.** ~~Constructive fulfillment~~  
18 ~~of the statutory provisions for adoption in this state shall occur when a married~~  
19 ~~couple executes a notarial act of adoption of the in vitro fertilized ovum and birth~~  
20 ~~occurs.~~

## 21           §131. Judicial standard

22           In disputes arising between any parties regarding the in vitro fertilized ~~ovum~~  
23 **human embryo**, the judicial standard for resolving such disputes is to be **dispute**  
24 **shall be resolved in accordance with the terms and provisions of the in vitro**  
25 **fertilization agreement by the parties. If no such agreement exists, then disputes**  
26 **shall be determined by a court of competent jurisdiction and** in the best interest  
27 of the in vitro fertilized ~~ovum~~ **human embryo.** **Any provision in an in vitro**  
28 **fertilization agreement that directs or provides for the intentional destruction**  
29 **of an embryo shall be deemed null and void.**

## 30           §132. Liability

1           ~~Strict liability or liability of any kind including actions relating to succession~~  
2           ~~rights and inheritance shall not be applicable to any physician, hospital, in vitro~~  
3           ~~fertilization clinic, or their agent who acts in good faith in the screening, collection,~~  
4           ~~conservation, preparation, transfer, or cryopreservation of the human ovum fertilized~~  
5           ~~in vitro for transfer to the human uterus. Any immunity granted by this Section is~~  
6           ~~applicable only to an action brought on behalf of the in vitro fertilized human ovum~~  
7           ~~as a juridical person.~~

8           **A. No physician, healthcare provider, hospital, in vitro fertilization**  
9           **clinic, laboratory personnel, provider of goods and services, or their agent who**  
10          **participates in the screening, collection, preparation, transfer, analysis, storage,**  
11          **transportation, fertilization, culture, cryopreservation, or any other act**  
12          **typically performed during the in vitro fertilization process of the human**  
13          **embryo fertilized in vitro for transfer to the human uterus shall be subject to**  
14          **criminal prosecution except in cases where acts were made with criminal**  
15          **negligence as defined in R.S. 14:12, or specific or general criminal intent as**  
16          **defined in R.S. 14:10.**

17          **B. All civil matters brought against any qualified healthcare provider**  
18          **shall be brought in accordance with the procedures provided by the Louisiana**  
19          **Medical Malpractice Act, R.S. 40:1231.1 et seq. Any civil matter brought**  
20          **against a nonqualified healthcare provider shall be subjected to civil liability**  
21          **based upon the applicable standard of care.**

22          §133. Inheritance rights

23               Inheritance rights will not flow to the in vitro fertilized ~~ovum~~ **human**  
24               **embryo** as a juridical person, unless the in vitro fertilized ~~ovum~~ **human embryo**  
25               develops into an unborn child that is born in a live birth, or at any other time when  
26               rights attach to an unborn child in accordance with law. As a juridical person, the  
27               embryo or child born as a result of in vitro fertilization and in vitro fertilized ~~ovum~~  
28               **human embryo** donation to another ~~couple~~ **person** does not retain its inheritance  
29               rights from the in vitro fertilization patients or a donor of gametes used in the in vitro  
30               fertilization process, unless the donor is a person from whom the child could

1 otherwise inherit under laws of succession notwithstanding the in vitro fertilization  
2 process.  
3 Section 2. R.S. 9:125 is hereby repealed.

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_