Fiscal Note & Local Impact Statement

126 th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL:	**H.B. 102**	DATE:	**June 13, 2005**
STATUS:	**As Passed by the House**	SPONSOR:	**Rep. Wolpert**
LOCAL IMPACT STATEMENT REQUIRED:	**No —**	**No local cost**	
CONTENTS:	**Clarifies the parentage of children born as a result of embryo donation**		

State Fiscal Highlights

- No direct fiscal effect on the state.

Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.

Detailed Fiscal Analysis

Background

Embryo adoption has become an option for couples with fertility challenges that desire the pregnancy and birth experience and an option for a single woman wanting a child but who is unable to use her own eggs. When a family has been successful in having a child through in vitro fertilization, embryos are often cryo-preserved. The couples to whom such embryos belong have several options. They can order that the remaining embryos be destroyed, donate the embryos for implantation into another woman, or pay to have the embryos stored until a decision can be made as to what will be done with the remaining embryos.

Couples who choose to donate their embryos can relinquish them to an organization or clinic that then chooses a couple or woman for implantation or the donating couple may be involved in selecting the receiving couple or woman. The term embryo adoption is often used to describe this process, however, the term "adoption" is used only in the social sense and not a legal one.

Current Law

Ohio law provides guidelines for nonspousal artificial insemination and clarifies the paternity of children resulting from artificial insemination: the woman giving birth to the child is the mother and, if her husband consented to the artificial insemination, the husband is the father. However, the Revised Code does not address other forms of assisted reproduction, including embryo donation.

Under current law, the parentage of children born as a result of embryo donation is ambiguous. Under the Revised Code, a woman can demonstrate that she is a child's natural mother by proving that she gave birth to the child. The same statute permits a woman to establish that she is a child's mother by proving through DNA testing that she is the genetic mother of the child. Therefore, in the case of embryo donation, the child has two potential mothers. With respect to paternity, a man is presumed to be a child's natural father if he is married to the child's mother at the time of the child's birth, the child is born within 300 days after the marriage is terminated, or the man attempted to marry the child's mother but the marriage is or could be declared invalid. But a presumption of paternity can be rebutted through genetic testing, so the legal rights and obligations of the intended father in the case of embryo donation also are unclear.

The Bill

The bill clarifies the parentage of certain children born as a result of embryo donation. Under the bill, a woman who gives birth to a child born as a result of embryo donation is the natural mother of the resulting child, and the child is the natural child of that woman. The woman's status as the child's mother cannot be changed by filing a parentage action; therefore, the genetic mother of the child is excluded as a potential legal mother.

Further, if a woman who gives birth to a child through embryo donation is married, and her husband consents to the embryo donation, the husband is the natural father of the child. A presumption of a father and child relation that arises from the man being married to the woman is conclusive with respect to this father and child relationship, and no action or proceeding under the parentage law can affect the relationship.

The bill defines a donor as an individual who produced genetic material (semen or an egg) used to create an embryo, consents to the implantation of the embryo in a woman who is not the individual or the individual's wife, and, at the time of the embryo donation, does not intend to raise the resulting child as the individual's own. The bill provides that a donor is not to be considered as a parent of a child born of the donation and has no parental rights or responsibilities with respect to such a child. Moreover, if a person who produced genetic material used to create the embryo dies, the other person whose genetic material was used to create the embryo may consent to donate the embryo.

Fiscal Impact

There is no case law in Ohio that concerns the issue of who would be considered the child's legal mother in a contested custody dispute in which a donated embryo was gestated and birthed by a woman who intends to raise the child as her own. Nor are there any cases addressing how the intended father is to be treated legally. Clarification of parentage of children born as a result of embryo donation will have no fiscal impact on state or local government other than perhaps minimal cost avoidance for local courts not having to hear cases that may have otherwise come before the court in these rare instances.

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