

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 748

Introduced by Blood, 3.

Read first time January 08, 2020

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to fertility treatment; to amend section
- 2 29-110, Revised Statutes Supplement, 2019; to adopt the Fertility
- 3 Fraud Act; to provide for statutes of limitations; to provide a duty
- 4 for the Revisor of Statutes; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 6 of this act shall be known and may be
2 cited as the Fertility Fraud Act.

3 Sec. 2. For purposes of the Fertility Fraud Act:

4 (1) Health care provider means a person who is licensed, certified,
5 or otherwise authorized by the law of this state to administer health
6 care in the ordinary course of business or practice of a profession; and

7 (2) Human reproductive material means:

8 (a) A human spermatozoon or ovum; or

9 (b) A human organism at any stage of development from fertilized
10 ovum to embryo.

11 Sec. 3. (1) A health care provider shall not knowingly or
12 intentionally treat a woman for infertility by using the health care
13 provider's own spermatozoon or ovum unless the woman has previously given
14 written, informed consent.

15 (2) A violation of this section is a Class IV felony. Each use of
16 spermatozoon or ovum in violation of this section constitutes a separate
17 criminal offense.

18 (3) A woman aggrieved by a violation of this section may bring a
19 civil action against the health care provider. The following persons may
20 also bring a civil action for a violation of this section:

21 (a) The woman's spouse; and

22 (b) A child born as a result of the treatment.

23 (4) A woman or a woman's spouse who brings an action under this
24 section has a separate cause of action for each use of spermatozoa or ova
25 in violation of this section.

26 Sec. 4. (1) A health care provider shall not use human reproductive
27 material donated by a person to treat a patient for infertility when the
28 health care provider knows or reasonably should know that such use:

29 (a) Has not been consented to by the donor; or

30 (b) Is done in a manner or to an extent to which the donor did not
31 consent.

1 (2) A violation of this section is a Class IV felony. Each use of
2 human reproductive material in violation of this section constitutes a
3 separate criminal offense.

4 (3) A donor aggrieved by a violation of this section may bring a
5 civil action against the health care provider. A donor who brings an
6 action under this section has a separate cause of action for each use of
7 human reproductive material in violation of this section.

8 Sec. 5. A plaintiff who prevails in an action under the Fertility
9 Fraud Act shall be entitled to:

10 (1) The greater of:

11 (a) Actual damages; or

12 (b) Liquidated damages of ten thousand dollars;

13 (2) Such preliminary and other equitable or declaratory relief as
14 may be appropriate; and

15 (3) Reasonable attorney's fees and other litigation costs reasonably
16 incurred.

17 Sec. 6. Nothing in the Fertility Fraud Act shall be construed to
18 prohibit a person from pursuing any other remedy provided by law.

19 Sec. 7. A civil action for a violation of the Fertility Fraud Act
20 can only be brought within twenty-five years after the cause of action
21 has accrued.

22 Sec. 8. Section 29-110, Revised Statutes Supplement, 2019, is
23 amended to read:

24 29-110 (1) Except as otherwise provided by law, no person shall be
25 prosecuted for any felony unless the indictment is found by a grand jury
26 within three years next after the offense has been done or committed or
27 unless a complaint for the same is filed before the magistrate within
28 three years next after the offense has been done or committed and a
29 warrant for the arrest of the defendant has been issued.

30 (2) Except as otherwise provided by law, no person shall be
31 prosecuted, tried, or punished for any misdemeanor or other indictable

1 offense below the grade of felony or for any fine or forfeiture under any
2 penal statute unless the suit, information, or indictment for such
3 offense is instituted or found within one year and six months from the
4 time of committing the offense or incurring the fine or forfeiture or
5 within one year for any offense the punishment of which is restricted by
6 a fine not exceeding one hundred dollars and to imprisonment not
7 exceeding three months.

8 (3) Except as otherwise provided by law, no person shall be
9 prosecuted for kidnapping under section 28-313, false imprisonment under
10 section 28-314 or 28-315, child abuse under section 28-707, pandering
11 under section 28-802, debauching a minor under section 28-805, or an
12 offense under section 28-813 when the victim is under sixteen years of
13 age at the time of the offense (a) unless the indictment for such offense
14 is found by a grand jury within seven years next after the offense has
15 been committed or within seven years next after the victim's sixteenth
16 birthday, whichever is later, or (b) unless a complaint for such offense
17 is filed before the magistrate within seven years next after the offense
18 has been committed or within seven years next after the victim's
19 sixteenth birthday, whichever is later, and a warrant for the arrest of
20 the defendant has been issued.

21 (4) Except as otherwise provided by law, no person shall be
22 prosecuted for a violation of subsection (2) or (3) of section 28-831 (a)
23 unless the indictment for such offense is found by a grand jury within
24 seven years next after the offense has been committed or within seven
25 years next after the victim's eighteenth birthday, whichever is later, or
26 (b) unless a complaint for such offense is filed before the magistrate
27 within seven years next after the offense has been committed or within
28 seven years next after the victim's eighteenth birthday, whichever is
29 later, and a warrant for the arrest of the defendant has been issued.

30 (5) Except as otherwise provided by law, no person shall be
31 prosecuted for an offense under section 28-813.01 or 28-1463.05 (a)

1 unless the indictment for such offense is found by a grand jury within
2 seven years next after the offense has been committed or within seven
3 years next after the victim's eighteenth birthday, whichever is later, or
4 (b) unless a complaint for such offense is filed before the magistrate
5 within seven years next after the offense has been committed or within
6 seven years next after the victim's eighteenth birthday, whichever is
7 later, and a warrant for the arrest of the defendant has been issued.

8 (6) No person shall be prosecuted for a violation of the Securities
9 Act of Nebraska under section 8-1117 unless the indictment for such
10 offense is found by a grand jury within five years next after the offense
11 has been done or committed or unless a complaint for such offense is
12 filed before the magistrate within five years next after the offense has
13 been done or committed and a warrant for the arrest of the defendant has
14 been issued.

15 (7) No person shall be prosecuted for criminal impersonation under
16 section 28-638, identity theft under section 28-639, or identity fraud
17 under section 28-640 unless the indictment for such offense is found by a
18 grand jury within five years next after the offense has been done or
19 committed or unless a complaint for such offense is filed before the
20 magistrate within five years next after the offense has been done or
21 committed and a warrant for the arrest of the defendant has been issued.

22 (8) No person shall be prosecuted for a violation of section 68-1017
23 if the aggregate value of all funds and other benefits obtained or
24 attempted to be obtained is five hundred dollars or more unless the
25 indictment for such offense is found by a grand jury within five years
26 next after the offense has been done or committed or unless a complaint
27 for such offense is filed before the magistrate within five years next
28 after the offense has been done or committed and a warrant for the arrest
29 of the defendant has been issued.

30 (9) No person shall be prosecuted for knowing and intentional abuse,
31 neglect, or exploitation of a vulnerable adult or senior adult under

1 section 28-386 unless the indictment for such offense is found by a grand
2 jury within six years next after the offense has been done or committed
3 or unless a complaint for such offense is filed before the magistrate
4 within six years next after the offense has been done or committed and a
5 warrant for the arrest of the defendant has been issued.

6 (10) No person shall be prosecuted for fertility fraud under section
7 3 or 4 of this act unless the indictment for such offense is found by a
8 grand jury within twenty-five years next after the offense has been done
9 or committed or unless a complaint for such offense is filed before the
10 magistrate within twenty-five years next after the offense has been done
11 or committed and a warrant for the arrest of the defendant has been
12 issued.

13 (11) ~~(10)~~ There shall not be any time limitations for prosecution or
14 punishment for treason, murder, arson, forgery, sexual assault in the
15 first or second degree under section 28-319 or 28-320, sexual assault of
16 a child in the second or third degree under section 28-320.01, incest
17 under section 28-703, sexual assault of a child in the first degree under
18 section 28-319.01, labor trafficking of a minor or sex trafficking of a
19 minor under subsection (1) of section 28-831, or an offense under section
20 28-1463.03; nor shall there be any time limitations for prosecution or
21 punishment for sexual assault in the third degree under section 28-320
22 when the victim is under sixteen years of age at the time of the offense.

23 (12) ~~(11)~~ The time limitations prescribed in this section shall
24 include all inchoate offenses pursuant to the Nebraska Criminal Code and
25 compounding a felony pursuant to section 28-301.

26 (13) ~~(12)~~ The time limitations prescribed in this section shall not
27 extend to any person fleeing from justice.

28 (14) ~~(13)~~ When any suit, information, or indictment for any crime or
29 misdemeanor is limited by any statute to be brought or exhibited within
30 any other time than is limited by this section, then the suit,
31 information, or indictment shall be brought or exhibited within the time

1 limited by such statute.

2 (15) ~~(14)~~ If any suit, information, or indictment is quashed or the
3 proceedings set aside or reversed on writ of error, the time during the
4 pendency of such suit, information, or indictment so quashed, set aside,
5 or reversed shall not be reckoned within this statute so as to bar any
6 new suit, information, or indictment for the same offense.

7 (16) ~~(15)~~ The changes made to this section by Laws 2004, LB 943,
8 shall apply to offenses committed prior to April 16, 2004, for which the
9 statute of limitations has not expired as of such date and to offenses
10 committed on or after such date.

11 (17) ~~(16)~~ The changes made to this section by Laws 2005, LB 713,
12 shall apply to offenses committed prior to September 4, 2005, for which
13 the statute of limitations has not expired as of such date and to
14 offenses committed on or after such date.

15 (18) ~~(17)~~ The changes made to this section by Laws 2009, LB 97, and
16 Laws 2006, LB 1199, shall apply to offenses committed prior to May 21,
17 2009, for which the statute of limitations has not expired as of such
18 date and to offenses committed on or after such date.

19 (19) ~~(18)~~ The changes made to this section by Laws 2010, LB809,
20 shall apply to offenses committed prior to July 15, 2010, for which the
21 statute of limitations has not expired as of such date and to offenses
22 committed on or after such date.

23 (20) ~~(19)~~ The changes made to this section by Laws 2016, LB934,
24 shall apply to offenses committed prior to April 19, 2016, for which the
25 statute of limitations has not expired as of such date and to offenses
26 committed on or after such date.

27 (21) ~~(20)~~ The changes made to this section by Laws 2019, LB519,
28 shall apply to offenses committed prior to September 1, 2019, for which
29 the statute of limitations has not expired as of such date and to
30 offenses committed on or after such date.

31 Sec. 9. The Revisor of Statutes shall assign section 7 of this act

1 to Chapter 25, article 2.

2 Sec. 10. Original section 29-110, Revised Statutes Supplement,

3 2019, is repealed.