



Britton Hicks

Final Analysis
Legislative Service Commission

Am. H.B. 102
126th General Assembly
(As Passed by the General Assembly)

Reps. Wolpert, Faber, Core, Seaver, Willamowski, Raussen, Combs, G. Smith, Martin, Hoops, Reidelbach, Harwood, Allen, Buehrer, Cassell, Coley, Collier, Domenick, C. Evans, Flowers, Gibbs, Gilb, Hagan, Hood, Hughes, McGregor, Schaffer, Setzer, White, Williams

Sens. Amstutz, Fedor, Grendell, Niehaus, Padgett

Effective date: *

ACT SUMMARY

- Provides that a woman who gives birth to a child as a result of embryo donation is the child's natural mother.
- Provides that a husband who consents to the implantation of a donated embryo in his wife is the child's natural father but allows the presumption of a father and child relationship to be rebutted if the husband does not consent.
- Provides that a donor of genetic material used to create a donated embryo has no parental rights or responsibilities with respect to a child resulting from the donation.
- If one of the two individuals, who donated genetic material used to create an embryo dies, authorizes the surviving individual to consent to donate the embryo.

**The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

CONTENT AND OPERATION

Background on assisted reproduction law in Ohio

Ohio law provides guidelines for non-spousal artificial insemination, including provisions that specify who may perform the procedure, the persons from whom consent must be obtained and the contents of the consent form, medical history and examination requirements of the donor, and confidentiality and retention of information requirements concerning the insemination. The Revised Code also 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.¹

Under law prior to the enactment of this act, the parentage of children born as a result of embryo donation was ambiguous. Continuing law allows a woman to demonstrate that she is a child's natural mother by either (1) proving that she gave birth to the child, or (2) proving through DNA testing that she is the genetic mother of the child. Therefore, in the case of embryo donation, the child could have had 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,² 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 were also unclear. (R.C. 3111.03 and R.C. 3111.02 and 3111.09, not in the act.)

The act

Parentage

The act clarifies the parentage of certain children born as a result of embryo donation.³ Under the act, a woman who gives birth to a child born as a result of embryo donation is treated as 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, and the genetic mother of the child is therefore eliminated as a potential legal mother. The act does not apply to

¹ *The semen donor is never considered the father (R.C. 3111.95(B), not in the act).*

² *The marriage could be terminated by death, annulment, divorce, dissolution, or legal separation.*

³ *The act does not define "embryo donation."*

surrogacy contracts, because it applies only to embryo donation for the purpose of impregnating a woman so that she can bear a child that she intends to raise as her own. (R.C. 3111.97(A) and (E).)

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 treated as the natural father of the child. A presumption of a father and child relation that arises from the man being married to the woman⁴ is conclusive with respect to this father and child relationship, and no action or proceeding under the parentage law can affect the relationship. (R.C. 3111.03(B) and 3111.97(B).) However, *if the husband has not consented to the embryo donation*, the presumption can be rebutted by clear and convincing evidence that includes the lack of consent to the embryo donation (R.C. 3111.97(C)).

Donors

The act 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 act 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.⁵ (R.C. 3111.97(D).)

HISTORY

ACTION	DATE
Introduced	03-01-05
Reported, H. Health	04-28-05
Passed House (97-0)	05-11-05
Reported, S. Health, Human Services, & Aging	01-19-06
Passed Senate (33-0)	02-01-06
House concurred in Senate amendments (95-0)	02-07-06

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⁴ *Including situations in which (1) the child was born within 300 days of the termination of the marriage by reason of death, annulment, divorce, dissolution, or separation, or (2) the man and woman attempted to marry and the marriage is, or could be, declared invalid.*

⁵ *In these circumstances, the deceased individual is deemed to be a donor.*

