

118TH CONGRESS
1ST SESSION

H. R. 3710

To amend title 18, United States Code, to prohibit health professionals from providing false or misleading information with respect to assisted reproduction, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 25, 2023

Mrs. McCLAIN (for herself, Ms. PEREZ, and Mrs. DINGELL) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to prohibit health professionals from providing false or misleading information with respect to assisted reproduction, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fighting Fertility
5 Fraud Act of 2023”.

1 **SEC. 2. FIGHTING FERTILITY FRAUD.**

2 (a) IN GENERAL.—Chapter 47 of title 18, United
3 States Code, is amended by adding at the end the fol-
4 lowing:

5 **“SEC. 1041. FRAUD IN CONNECTION WITH THE USE OF**
6 **HUMAN REPRODUCTIVE MATERIAL.**

7 “(a) OFFENSE BY A PERSON, HEALTH PROFES-
8 SIONAL, OR HEALTH FACILITY.—A person, health profes-
9 sional, or health facility, in any of the circumstances de-
10 scribed in subsection (d), that knowingly provided materi-
11 ally false or misleading information relating to assisted re-
12 production, including—

13 “(1) the human reproductive material provided
14 or used for assisted reproduction;

15 “(2) the identifying information of the gamete
16 provider including their name, birth date, or address
17 at the time of gamete provision; or

18 “(3) a gamete provider’s medical history includ-
19 ing any known physical and mental health illness,
20 the social, genetic, family medical history of the ga-
21 mete provider, or the gamete provider’s educational
22 level, ethnicity, religious background,

23 shall be imprisoned not more than 10 years, fined in ac-
24 cordance this title, or both.

25 “(b) OFFENSE BY HEALTH PROFESSIONAL OR
26 HEALTH FACILITY.—

1 “(1) IN GENERAL.—A health care professional
2 or health facility, in any of the circumstances de-
3 scribed in subsection (d), that knowingly uses or
4 provides—

5 “(A) human reproductive material for as-
6 sisted reproduction other than the selected
7 human reproductive material for which patient
8 gave consent in writing to use; or

9 “(B) a patient with human reproductive
10 material in assisted reproduction without the
11 gamete provider’s consent or in a manner or to
12 an extent other than that to which the gamete
13 provider consented to,

14 shall be imprisoned not more than 10 years, fined in
15 accordance with this title, or both.

16 “(2) NOT A DEFENSE.—A health care profes-
17 sional or health facility found to have violated para-
18 graph (1) may not use as a defense that a patient
19 consented in writing to the use of human reproduc-
20 tive material from an anonymous gamete provider.

21 “(c) CIRCUMSTANCES DESCRIBED.—For the pur-
22 poses of subsections (a) and (b), the circumstances de-
23 scribed in this subsection are that—

1 “(1) the conduct described in such subsections
2 occurs during the course of, or as the result of, the
3 travel of the defendant or covered individual—

4 “(A) across a State line or national border;
5 or

6 “(B) using a channel, facility, or instru-
7 mentality of interstate or foreign commerce;

8 “(2) the defendant uses a channel, facility, or
9 instrumentality of interstate or foreign commerce in
10 connection with the conduct described in such sub-
11 sections;

12 “(3) the conduct described in such sub-
13 sections—

14 “(A) interferes with commercial or other
15 economic activity in which the defendant or cov-
16 ered individual is engaged at the time of the
17 conduct; or

18 “(B) otherwise affects interstate or foreign
19 commerce;

20 “(4) the conduct described in such subsections
21 occurred within the special maritime and territorial
22 jurisdiction of the United States or within any terri-
23 tory or possession of the United States; or

24 “(5) any payment of any kind was made, di-
25 rectly or indirectly, in furtherance of or in connec-

1 tion with the conduct described in subsection (a)
2 using any means, channel, facility, or instrumen-
3 tality of interstate or foreign commerce or in or af-
4 fecting interstate or foreign commerce.

5 “(d) CAUSE OF ACTION.—

6 “(1) IN GENERAL.—A cause of action may be
7 brought for a violation of subsection (a) or (b)
8 against a health professional, health facility, or ga-
9 mete provider by a donor conceived individual born
10 as a result of such violation.

11 “(2) CERTAIN OTHER INDIVIDUALS.—A cause
12 of action may be brought for a violation of sub-
13 section (a) or (b) against a health professional,
14 health facility, or gamete provider by a patient or
15 patient’s spouse for each donor conceived individual
16 born as a result of such violation.

17 “(3) GAMETE PROVIDER.—A cause of action
18 may be brought for a violation of subsection (a) or
19 (b) against a health professional or health facility by
20 a gamete provider.

21 “(e) RELIEF.—

22 “(1) IN GENERAL.—In an action under sub-
23 section (e), the court may award appropriate relief,
24 including temporary, preliminary, or permanent in-
25 junctive relief and compensatory and punitive dam-

1 ages, as well as the costs of suit and reasonable fees
 2 for attorneys and expert witnesses. With respect to
 3 compensatory damages, the plaintiff may elect, at
 4 any time prior to the rendering of final judgment, to
 5 recover, in lieu of actual damages, an award of stat-
 6 utory damages in the amount of \$20,000 per viola-
 7 tion.

8 “(2) COMPENSATORY DAMAGES.—Compen-
 9 satory damages awarded pursuant to paragraph (1)
 10 shall include the amount of all medical expenses in-
 11 curred by the patient and any donor conceived child
 12 as a result of a violation of subsection (a) or (b), in-
 13 cluding the cost of any procedure, treatment, and
 14 any other medical expense for the patient and any
 15 donor conceived child.

16 “(f) STATUTE OF LIMITATIONS.—An action brought
 17 under subsection (e) may not be brought more than five
 18 years after the date on which the violation of subsection
 19 (a) or (b) was discovered by a covered individual.

20 “(g) DEFINITIONS.—In this section:

21 “(1) ASSISTED REPRODUCTION.—The term ‘as-
 22 sisted reproduction’ means a method of causing
 23 pregnancy involving medical or scientific interven-
 24 tion, other than sexual intercourse.

1 “(2) ASSISTED REPRODUCTIVE TECHNOLOGY.—

2 The term ‘assisted reproductive technology’ means
3 any fertility treatment in which either eggs or em-
4 bryos are handled.

5 “(3) CONSENT.—The term ‘consent’ means
6 consent in writing that is freely given, knowledge-
7 able, and informed.

8 “(4) COVERED INDIVIDUAL.—The term ‘cov-
9 ered individual’ means the patient, patient’s spouse,
10 gamete provider, or a donor conceived individual
11 born as a result of a violation of subsection (a) or
12 (b).

13 “(5) DONOR CONCEIVED INDIVIDUAL.—The
14 term ‘donor conceived individual’ means an indi-
15 vidual conceived from one or more gametes from a
16 gamete provider.

17 “(6) FAMILY MEDICAL HISTORY.—The term
18 ‘family medical history’ means any known medical
19 history information about an individual’s first and
20 second degree relatives.

21 “(7) FERTILITY FRAUD.—The term ‘fertility
22 fraud’ means any misrepresentation or false infor-
23 mation provided in assisted reproduction.

24 “(8) GAMETE.—The term ‘gamete’ means an
25 unfertilized egg or sperm.

1 “(9) GAMETE PROVIDER.—The term ‘gamete
2 provider’ means an individual who provides gametes
3 intended for use in assisted reproduction, whether or
4 not for consideration.

5 “(10) HEALTH FACILITY.—The term ‘health fa-
6 cility’ means a hospital, clinic, bank, laboratory, fa-
7 cility, or other health care institution involved in any
8 aspect of assisted reproduction.

9 “(11) HEALTH PROFESSIONAL.—The term
10 ‘health professional’ means an individual licensed,
11 registered, certified, or otherwise authorized to en-
12 gage in a health profession.

13 “(12) HUMAN REPRODUCTIVE MATERIAL.—
14 The term ‘human reproductive material’ means a
15 human sperm, egg, or a human organism at any
16 stage of development from fertilized ovum to em-
17 bryo.

18 “(13) MEDICAL HISTORY.—The term ‘medical
19 history’ means information about any known phys-
20 ical, social, and mental health of an individual
21 known to be, or that could be, inheritable according
22 to medical standards.

23 “(14) PATIENT.—The term ‘patient’ means an
24 individual under the care of a health professional.

1 “(15) PATIENT’S SPOUSE.—The term ‘patient’s
2 spouse’ means the spouse or partner of the patient
3 at the time at which the assisted reproduction oc-
4 curred.”.

5 (b) CLERICAL AMENDMENT.—The table of sections
6 at the beginning of chapter 47 of title 18, United States
7 Code, is amended by adding at the end the following new
8 item:

“1041. Fraud in connection with the use of human reproductive material.”.

