



# ARIZONA HOUSE OF REPRESENTATIVES

Fifty-fifth Legislature  
First Regular Session

Senate: JUD DPA 8-0-0-0 | 3<sup>rd</sup> Read 29-0-1-0

House: JUD DP 10-0-0-0 | 3<sup>rd</sup> Read 59-0-1-0

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## **SB 1237: fertility fraud; civil; criminal action**

**Sponsor: Senator Barto, LD 15**

**Transmitted to the Governor**

### **Overview**

Permits individuals to file a civil action against a licensed health care provider for *fertility fraud*.

### **History**

A medical malpractice action means an action for injury or death against a licensed health care provider based upon the provider's alleged negligence, misconduct, errors or omissions or breach of contract in rendering healthcare services or for rendering such healthcare services without express or implied consent including an action based upon the alleged negligence, misconduct, errors or omissions or breach of contract in collecting, processing or distributing whole human blood, blood components, plasma, blood fractions or blood derivatives ([A.R.S. § 12-561](#)).

A medical malpractice action cannot be based upon a breach of contract for professional services unless the contract is in writing ([A.R.S. § 12-562](#)).

### **Provisions**

1. Permits the following individuals to bring a separate action against a licensed health care provider for each child born as a result of the health care provider intentionally treating a woman for infertility by using the health care provider's own spermatozoon or ovum without the patient's informed written consent:
  - a) The woman who gives birth to a child after being treated for infertility;
  - b) The spouse of the woman;
  - c) The surviving spouse of the woman; or
  - d) The child born as a result of the licensed health care provider's treating the woman for infertility with the health care provider's own spermatozoon or ovum. (Sec. 1)
2. Allows the donor of human reproductive material to bring a separate action against a licensed health care provider for each instance where the health care provider treats a patient for infertility with the donor's human reproductive material either in a manner that the donor did not consent to or without the donor's consent. (Sec. 1)
3. Entitles an individual who prevails in an action against the health provider to the following:
  - a) Reasonable attorney fees;
  - b) Costs of the fertility treatment; and
  - c) Either compensatory and punitive damages or liquidated damages of \$10,000. (Sec. 1)
4. Requires an action for civil fertility fraud to be brought no later than 10 years after the 18th birthday of the child or within 20 years of the procedure if the former does not apply. (Sec. 1)
5. Permits an action for civil fertility fraud that would be otherwise time barred to brought by an individual within five years after the earliest date that:
  - a) The individual first discovers enough evidence to bring an action against the defendant through DNA analysis;

- b) The individual first becomes aware of a recording that provides enough evidence to bring an action against the defendant; or
  - c) The defendant confesses to the offense. (Sec. 1)
6. Defines *human reproductive material* and *physician*. (Sec. 1)

Prop 105 (45 votes)     Prop 108 (40 votes)     Emergency (40 votes)     Fiscal Note