

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Judiciary Committee

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BILL: SPB 7062

INTRODUCER: For consideration by the Judiciary Committee

SUBJECT: Assisted Reproductive Technology

DATE: February 17, 2010

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Maclure		<b>Pre-meeting</b>
2.				
3.				
4.				
5.				
6.				

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**I. Summary:**

This proposed committee bill stems from an interim report of the Florida Senate Committee on Judiciary relating to regulation of assisted reproductive technologies. The bill creates the Florida Assisted Reproductive Technology Act and provides requirements that an assisted reproductive technology agency (agency) must follow. Specifically, the bill:

- Requires participants involved in third-party reproductive services to undergo a mental health evaluation or a medical evaluation prior to working with an agency;
- Requires an agency to establish an escrow account for certain funds;
- Requires an agency to obtain express and informed consent from participants;
- Prescribes requirements for contracts for third-party reproductive services; and
- Prescribes advertising requirements to which an agency must adhere.

The bill also prescribes acts that an agency is prohibited from taking, as well as penalties and remedies for a violation of the statutory requirements.

This bill amends sections 742.13 and 742.14, Florida Statutes. This bill creates sections 742.125 and 742.175, Florida Statutes.

## II. Present Situation:

### Infertility in the United States<sup>1</sup>

An estimated 7.3 million couples in the United States – about 12 percent of the reproductive-age population – experience infertility.<sup>2</sup> The advancement of scientific technology over the years has provided infertile couples with a variety of options for having a child. Artificial insemination appears to be the oldest and most widely used method of assisted reproductive technology (ART).<sup>3</sup> However, in vitro fertilization, embryo transfer, and surrogacy have also gained popularity.

There are two types of surrogacy: traditional surrogacy and gestational surrogacy. Traditional surrogacy has been defined as “an ‘[a]greement wherein a woman agrees to be artificially inseminated with the semen of another woman’s husband; she is to conceive a child, carry the child to term and after the birth, assign her parental rights to the birth father and his wife.’”<sup>4</sup> In traditional surrogacy, the surrogate mother is genetically related to the child.<sup>5</sup> The second type of surrogacy is gestational surrogacy, which uses in vitro fertilization<sup>6</sup> to create an embryo that is then transferred into the uterus of the surrogate. In gestational surrogacy, the embryo is created by using “the intended mother’s egg and intended father’s sperm, or some other combination using donor egg and sperm.”<sup>7</sup> The first case of gestational surrogacy in the United States was reported in 1985, and the technique has become increasingly popular, now accounting for approximately 95 percent of all surrogate pregnancies in the United States.<sup>8</sup>

### Assisted Reproductive Technologies

Persons experiencing infertility have a variety of options available to them, such as artificial insemination, in vitro fertilization, and third-party reproduction, which involves sperm and egg donation and surrogacy. Collectively these technologies are referred to as assisted reproductive technologies (ART).

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<sup>1</sup> The information contained in the Present Situation of this bill analysis is from an interim report by the Committee on Judiciary of the Florida Senate. See Comm. on Judiciary, The Florida Senate, *Regulation of Assisted Reproductive Technologies* (Interim Report 2010-122) (Nov. 2009), available at [http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim\\_reports/pdf/2010-122ju.pdf](http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-122ju.pdf) (last visited Feb. 9, 2010).

<sup>2</sup> American Society for Reproductive Medicine, *Frequently Asked Questions About Infertility*, <http://www.asrm.org/Patients/faqs.html> (last visited Oct. 21, 2009).

<sup>3</sup> Brent Parker Smith, *Anna J. v. Mark C: Proof of the Imminent Need for Surrogate Motherhood Regulation*, 30 J. FAM. L. 493 (1991/1992).

<sup>4</sup> Lisa L. Behm, *Legal, Moral & International Perspectives on Surrogate Motherhood: The Call for a Uniform Regulatory Scheme in the United States*, 2 DEPAUL J. HEALTH CARE L. 557, 557 (1999) (quoting BLACK’S LAW DICTIONARY 1445 (6th ed. 1990)).

<sup>5</sup> Usha Rengachary Smerdon, *Crossing Bodies, Crossing Borders: International Surrogacy Between the United States and India*, 39 CUMB. L. REV. 15, 16 (2008-2009).

<sup>6</sup> In vitro fertilization is a process in which doctors remove eggs from a woman, which are then placed in a petri dish where fertilization occurs with the sperm of the male donor. Smith, *supra* note 3.

<sup>7</sup> Sanford M. Benardo and Katherine Benardo, *Assisted Reproductive Technology: Egg Donation and Surrogacy Arrangements in Law and Practice*, BLOOMBERG CORPORATE L.J. 406, 409 (2007), reprinted by Northeast Assisted Fertility Group, available at <http://www.assistedfertility.com/BCLJarticle.pdf> (last visited Oct. 27, 2009).

<sup>8</sup> See Smerdon, *supra* note 5, at 17; Eric A. Gordon, *The Aftermath of Johnson v. Calvert: Surrogacy Law Reflects a More Liberal View of Reproductive Technology*, 6 ST. THOMAS L. REV. 191, 194 (1993).

Because many couples choose to have a child using third-party reproduction, a market has developed for the recruitment of egg and sperm donors or surrogates and the matching of them with intended parents. These services may be offered on a fee basis by private businesses that develop, maintain, and provide access to databases of people who wish to be a donor or surrogate. These ART agencies can also put clients in touch with doctors or clinics that can perform the necessary medical procedures, as well as make referrals to attorneys who can draft the contracts that govern the relationship between the intended parents and the donor or surrogate. Comparable third-party database and matching services may also be offered by an attorney as a component of a law practice (i.e., an attorney-run ART agency) or as a service by a clinic or facility that principally performs ART medical procedures.

There are multiple costs involved in third-party reproduction. For example, a couple seeking a surrogate carrier can expect to pay a fee to an ART agency for its matching and facilitation services, which is usually nonrefundable; medical expenses (e.g., endocrinologist and hospital fees); attorney's fees; and costs or reimbursements to the surrogate. Industry standards set by the American Society for Reproductive Medicine place a \$10,000 cap on egg donor compensation; however, there is not currently a similar cap on surrogate compensation or reimbursement. Surrogates can be paid, on average, \$25,000 for their services.<sup>9</sup> Agency fees differ depending on the type of services provided, as well as the practice model of the agency. Agency fees can typically range between \$4,000 and \$20,000.<sup>10</sup> Not including the agency fee, hiring a surrogate in the United States can cost between \$40,000 and \$100,000.<sup>11</sup>

The use of assisted reproductive technologies is growing, and because of the amount of money that an intended parent may pay as part of the process, it is an area that some maintain is "ripe for fraud" and warrants regulation.<sup>12</sup> The issue of whether surrogacy should be regulated gained momentum in early 2009 after a class-action lawsuit was filed against SurroGenesis, a California-based surrogacy agency, alleging that the agency and its escrow company were intertwined and that they embezzled between \$2.5 million and \$5 million from prospective parents.<sup>13</sup>

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<sup>9</sup> Emily Galpern, *Assisted Reproductive Technologies: Overview and Perspective Using a Reproductive Justice Framework*, Gender and Justice Program, Ctr. for Genetics and Society, 11 (2007), available at <http://geneticsandsociety.org/downloads/ART.pdf> (last visited Oct. 22, 2009).

<sup>10</sup> Interview with Robert Terenzio, attorney, Reproductive Alternatives (Aug. 5, 2009); see also examples of websites for ART agencies: <http://www.openarmsconsultants.com/index.php?action=fees>; <http://www.lovingdonation.com/recipients/recipients-estimated-expenditures.htm>; [http://www.lovingdonation.com/surrogacy/expenditures\\_parent.htm](http://www.lovingdonation.com/surrogacy/expenditures_parent.htm); and <http://www.eggexceptionaldonors.com/fees.php>.

<sup>11</sup> Galpern, *supra* note 9, at 11.

<sup>12</sup> Melody McDonald, *Surrogacy agencies allowed to operate with little oversight*, FORT WORTH STAR-TELEGRAM, May 3, 2009, at B1.

<sup>13</sup> Martha Bellisle, *Would-be parents sue Sparks man's firm*, RENO GAZETTE-JOURNAL, May 3, 2009, at A1; Press Release, Am. Fertility Ass'n, *Surrogates, Egg Donors, and Families Allegedly Scammed Out of Millions of Dollars* (Mar. 19, 2009), available at <http://www.theafa.org/press/releases> (last visited Oct. 27, 2009).

## Assisted Reproductive Technology Regulation

Although there are some federal laws that indirectly affect different areas of ART, the Fertility Clinic Success Rate and Certification Act of 1992 (Wyden Law)<sup>14</sup> is the only federal statute that is directly aimed at regulating it. The United States Supreme Court has not yet regulated or addressed the issue. Primarily, ART is regulated among the states through legislative action or state court decisions. For example, as of 1999, almost half of the states had enacted legislation addressing surrogacy in varying degrees.<sup>15</sup>

### *State Regulation*

In an attempt to regulate the “commercialization” of surrogacy arrangements, some states have laws regulating the use of ART agencies.<sup>16</sup> For example, Virginia and New Hampshire prohibit the use of third party brokers and payment of a fee that exceeds the surrogate mother’s actual costs in carrying and delivering the child.<sup>17</sup>

In 2005, Illinois passed the Gestational Surrogacy Act, which establishes guidelines for how surrogacy arrangements are to be regulated in the state. The act sets forth requirements for both the surrogate and intended parents. For example, both the surrogate and intended parent must complete a medical and mental health evaluation and consult with independent legal counsel.<sup>18</sup> Additionally, all parties must provide informed consent and any payment to the surrogate must be placed in an independent escrow account.<sup>19</sup>

In 2008, the Committee on Reproductive and Genetic Technology (committee) of the American Bar Association ratified a model act governing assisted reproductive technology. The purpose of the model act is to give all parties associated with ART clear legal rights, obligations, and protections.<sup>20</sup> The act covers a range of topics, such as informed consent, mental health consultations, privacy, gestational agreements, and payment to donors and carriers. The model act has not yet been adopted by any state, although Illinois is considering its adoption.

In its current form, the model act does not propose requirements that a person or business wishing to start an agency involved in ART must follow. However, the committee is in the early stages of drafting amendments to the act that would address agency regulation.<sup>21</sup>

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<sup>14</sup> The Fertility Clinic Success Rate and Certification Act focuses on the medical aspects of ART and serves two main purposes: to provide consumers with reliable and useful information about the efficacy of ART services offered by fertility clinics and to provide states with a model certification process for embryo laboratories. *See* 42 U.S.C. s. 263a-1 et seq.

<sup>15</sup> Behm, *supra* note 4, at 582.

<sup>16</sup> *Id.* at 601.

<sup>17</sup> *See* N.H. REV. STAT. s. 168-B:16 and VA. CODE ANN. s. 20-165.

<sup>18</sup> 750 ILL. COMP. STAT. 47/20.

<sup>19</sup> *Id.*

<sup>20</sup> American Bar Ass’n, *American Bar Association Model Act Governing Assisted Reproductive Technology* prefatory note (2008), available at <http://www.abanet.org/family/committees/artmodelact.pdf> (last visited Sept. 3, 2009).

<sup>21</sup> Interview with Steven Snyder, Chair of the American Bar Ass’n Family Law’s Assisted Reprod. Technologies Comm. (formerly the Reprod. and Genetic Tech. Comm.) (Aug. 10, 2009).

### ***Professional Society Regulation***

The American Society for Reproductive Medicine (ASRM) and the Society for Assisted Reproductive Technology (SART), an affiliate of ASRM, are two of the most notable professional organizations for reproductive medicine. These organizations have propounded standards and guidelines for the practice of ART. For example, guidance from the ASRM comes in the form of published statements, opinions, and guidelines issued by its practice and ethics committees.<sup>22</sup> However, both the ASRM's system of professional self-regulation and SART membership are completely voluntary.<sup>23</sup>

### ***Foreign Jurisdiction Regulation***

The public policy considerations related to ART are not unique to the United States, as other countries have also explored options for regulating activities stemming from these technologies. Although it has no direct legal effect on surrogacy regulation in the United States, Canada and England have also attempted to regulate surrogacy.

The Canadian legislature approved the Assisted Human Reproduction Act in 2004, which prohibits certain ART practices, including commercial surrogacy and the sale of gametes and embryos. Parties involved in a commercial surrogacy arrangement may be subject to criminal penalties of up to \$500,000 in fines or 10 years in prison.<sup>24</sup>

In 1985, England adopted the Surrogacy Arrangements Act, which criminalizes the act of third parties making, negotiating, or facilitating surrogacy agreements for a fee. The act also makes it a criminal offense to advertise the availability of a surrogate.<sup>25</sup> England's act has been criticized for being so broadly written that it discourages legal and medical professionals from rendering help when it is requested, and has caused the disappearance of organized surrogacy professionals to assist infertile couples.<sup>26</sup>

### **Assisted Reproductive Technology Regulation in Florida**

In Florida, egg, sperm, and preembryo donation and gestational surrogacy are regulated by ch. 742, F.S., relating to determination of parentage. Section 742.14, F.S., provides that the donor of any egg, sperm, or preembryo, with certain exceptions, shall relinquish all maternal or paternal rights and obligations relating to the donation or any resulting children. The statute permits only reasonable compensation directly related to the donation of eggs, sperm, and preembryos.

Section 742.15, F.S., governs gestational surrogacy contracts and provides that the gestational surrogate must be 18 years of age or older, and the commissioning couple must be legally

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<sup>22</sup> President's Council on Bioethics, *Reproduction and Responsibility: The Regulation of New Biotechnologies*, 72-73 (2004) (on file with the Senate Committee on Judiciary).

<sup>23</sup> *Id.*

<sup>24</sup> Assisted Human Reprod. Act, 2004 c. 2, ss. 6 and 60.

<sup>25</sup> Surrogacy Arrangements Act, ch. 49, ss. 2-3 (1985).

<sup>26</sup> Arthur Serratelli, *Surrogate Motherhood Contracts: Should the British or Canadian Model Fill the U.S. Legislative Vacuum?*, 26 GEO. WASH. J. INT'L L. & ECON. 633, 646-49 (1993).

married and both be at least 18 years old. A couple may only enter into a gestational surrogacy contract if the commissioning mother cannot physically gestate a pregnancy to term, the gestation will cause a risk to the physical health of the commissioning mother, or the gestation will cause a risk of health to the fetus. A gestational surrogacy contract must include the following provisions:

- The commissioning couple agrees that the gestational surrogate shall be the sole source of consent with respect to clinical intervention and management of the pregnancy;
- The gestational surrogate agrees to submit to reasonable medical evaluation and treatment and to adhere to reasonable medical instructions about her prenatal health;
- The gestational surrogate agrees to relinquish any parental rights upon the child's birth and to proceed with statutory judicial proceedings;
- The commissioning couple agrees to accept custody of and to assume full parental rights and responsibilities for the child immediately upon the child's birth, regardless of any impairment of the child; and
- The gestational surrogate agrees to assume parental rights and responsibilities for the child born to her if it is determined that neither member of the commissioning couple is the genetic parent of the child.

The commissioning couple may pay reasonable living, legal, medical, psychological, and psychiatric expenses of the gestational surrogate that are directly related to prenatal, intrapartal, and postpartal periods.

After the birth of the child, the commissioning couple must petition the court for a hearing in order to receive an expedited affirmation of parental status. The court shall issue an order stating that the commissioning couple are the legal parents of the child if the court determines that a binding and enforceable gestational surrogacy contract has been executed and that at least one member of the commissioning couple is the genetic parent of the child.<sup>27</sup>

The only persons who may rely on the current law to receive an expedited affirmation of parental status are a commissioning couple. The statute, as promulgated in 1993, does not appear to contemplate single parents taking advantage of gestational surrogacy. If a single person uses the services of a surrogate to carry his or her embryo, that person must go through an adoption process in order to have his or her name placed on the birth certificate as the natural parent, even if the person is genetically related to the child.

During the 2009 Regular Session, SB 2640 attempted to address the brokering of various forms of ART by providing that, except for an attorney, a person may not charge or accept compensation of any kind for making a referral relating to an egg, sperm, or preembryo donor or to a gestational surrogate. Additionally, SB 2640 provided that only an attorney may advertise that an egg, sperm, or preembryo donor or gestational surrogate is available or sought, and that any such advertisement must include the attorney's Florida Bar number. The bill died in the Senate Committee on Rules.

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<sup>27</sup> Section 742.16(6), F.S.

### **Committee on Judiciary’s Review of Assisted Reproductive Technology**

During the 2010 interim, the Florida Senate Committee on Judiciary studied the regulation of assisted reproductive technologies and identified potential regulatory options to address the commercial component of ART.<sup>28</sup> The regulatory options identified by the interim report include:

- Adopting a regulatory licensing scheme for entities engaged in third-party reproductive services on a commercial basis;
- Providing statutory requirements that a person or business that provides third-party reproductive services on a commercial basis must follow;
- Creating advertising requirements for all ART agencies providing third-party reproductive services on a commercial basis;
- Taking no substantive action at this time; or
- Clarifying existing law, specifically the use of the term “commissioning couple.”

### **III. Effect of Proposed Changes:**

This proposed committee bill stems from an interim report of the Florida Senate Committee on Judiciary relating to regulation of assisted reproductive technologies. The bill creates the Florida Assisted Reproductive Technology Act, comprised of the existing statutory sections of law governing the donation of gametes and gestational surrogacy and a new section created by the bill.

This bill creates s. 742.175, F.S., relating to assisted reproductive technology agencies, and provides requirements that agencies must follow, acts an agency is prohibited from taking, and penalties and remedies for a violation of the section.

#### **Screening of Participants**

This bill requires that an assisted reproductive technology agency (agency) have all participants involved in third-party reproductive services undergo a mental health evaluation and all donors and surrogates undergo a medical evaluation. An agency must obtain an updated mental health evaluation and medical evaluation every two years thereafter for as long as the participant remains in the agency’s database of potential donors or gestational surrogates or is still contracting for services with the agency. The agency shall request, and retain a copy of, a written statement from a mental health professional or physician certifying that the mental health professional or physician has met with the participant. The agency shall also require all participants to sign a release authorizing the agency to obtain the results of the mental health or medical evaluation.

Additionally, an agency must obtain a criminal background check from the Department of Law Enforcement for each participant. An agency shall obtain the criminal background check prior to listing a donor or gestational surrogate in the agency’s database and prior to entering into a contract with a commissioning couple to provide database, matching, or other third-party

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<sup>28</sup> Comm. on Judiciary, *supra* note 1.

reproductive services. The agency must also obtain an updated criminal background check every two years as long as the agency continues to work with the donor, gestational surrogate, or commissioning couple.

It appears that the bill anticipates an agency obtaining a Florida-only criminal background check from the Florida Department of Law Enforcement (FDLE), rather than a state-and-national background check. According to FDLE, a state-and-national background check is available only to government agencies, so in order for an ART agency to receive a state-and-national background check the agency would need to be governed by some state agency.<sup>29</sup>

Based on the definition of “participant,”<sup>30</sup> a gestational surrogate’s husband may also be required to undergo a mental health evaluation and criminal background check.

### **Contract Requirements**

The bill also requires that the contract for services between an agency and participant be in writing, as well as all gestational surrogacy contracts between the commissioning couple and gestational surrogate. A contract for third-party reproductive services between an agency and a participant must:

- Set forth the participant’s total payment obligation;
- Specifically provide the agreed-upon payment plan, if applicable;
- Set forth in specific terms all services being contracted for;
- Prescribe in bold-faced type and under conspicuous caption the contract’s cancellation provisions; and
- Specify the length of time that the contract is valid.

The bill also requires a commissioning couple and gestational surrogate to consult with independent legal counsel regarding the terms of the gestational surrogacy contract.

### **Security Requirements**

The bill requires all funds that are to be used for the compensation of a gestational surrogate or donor to be maintained in an escrow account separate from the agency’s business accounts. This independent escrow account must be established in a Florida bank, Florida savings and loan association, or Florida trust company, or with an attorney who is a member in good standing with The Florida Bar. The agency must place the funds in an escrow account within 10 days after receipt of the funds or else it is prima facie evidence of a violation of the law. The bill also provides requirements for disbursement of the funds. For example, before an escrow agent can disburse any funds, the escrow agent must receive an affidavit from the agency specifying the purpose of the disbursement. The escrow agent may rely on the affidavit without having to independently verify it, as long as the escrow agent has no actual knowledge that the affidavit is false. The escrow agent shall retain all affidavits for five years. If the escrow agent receives

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<sup>29</sup> Conversation with Rachel Truxell, Florida Dep’t of Law Enforcement (Feb. 11, 2010).

<sup>30</sup> The bill defines a “participant,” in part, as “an individual who provides a biological or genetic component of assisted reproduction, a commissioning couple, and, if appropriate, the spouse of a gestational surrogate.”

conflicting demands for the funds, the escrow agent may not disburse any funds and must contact the agency and the affected participant of the dispute.

### **Informed Consent Requirements**

The bill also requires that an agency receive informed consent from each participant. The agency shall provide a written document to each participant which includes:

- A description of the known and potential risks, consequences, and benefits of assisted reproductive technology;
- An explanation that there may be foreseen or unforeseen legal consequences and that the participant should seek independent legal counsel;
- A statement that all confidentiality protections apply, and information about what the confidentiality protections are;
- A statement that a participant has the right to access all of his or her medical information;
- Disclosure that a commissioning couple has the right to access a summary of medical and psychological information about donors and gestational surrogates;
- The policy of the agency, if applicable, regarding the number of embryos transferred, as well as the existence of national guidelines;
- Information generally explaining and clarifying parental rights of all participants; and
- A statement that all disclosures have been made.

By signing the written document, a participant gives his or her express and informed consent. In order to be valid, the document must:

- Be dated and signed by the agency and participant;
- Specify the length of time that the consent remains valid; and
- Advise the participant signing the document of the right to receive a copy of it.

### **Advertising Requirements**

The bill also provides advertising requirements that an agency must follow. For example, an agency must include the following statement on all advertising and promotional materials: “(NAME OF AGENCY) is in full compliance with all statutory requirements pursuant to section 742.175, Florida Statutes.” Additionally, an agency must include in the advertisement or promotional material how many years the agency has been in business, as well as identify any professional organizations of which the agency is a member. The bill defines “advertising and promotional materials” to include marquee, poster, flier, newspaper, magazine, television, radio, billboard, or Internet media. An agency is prohibited from using advertisements or promotional materials that deceive prospective participants.

### **Penalties and Remedies**

An agency violates s. 742.175, F.S., if it fails to comply with any of the statutory requirements, engages in third-party reproductive services if the owner or operator of the agency has had any

arrests, charges, or convictions within the last five years of specified crimes, or uses the services of donors or gestational surrogates who are not United States citizens or permanent residents.

The bill provides that a violation of s. 742.175, F.S., is a deceptive and unfair trade practice and that the Attorney General may pursue penalties and remedies under the Florida Deceptive and Unfair Trade Practices Act.<sup>31</sup> The bill also provides an injured person with a civil cause of action against an agency that violates s. 742.175, F.S. Upon prevailing in court, the plaintiff may recover reasonable attorney's fees and court costs. A defendant is entitled to attorney's fees and court costs upon a finding that the plaintiff raised a claim that was without substantial fact or legal support. Additionally, if the owner or operator of the agency is regulated by a licensing authority (such as an attorney who is regulated by The Florida Bar), an aggrieved party may report any violation of s. 742.175, F.S., to the appropriate licensing authority, who may then take into consideration whether the violation constitutes unprofessional conduct.

### **Definitions and Conforming Changes**

Finally, the bill provides the following definitions:

- “Assisted reproductive technology agency” or “agency” means any organization or individual who provides database, matching, and other third-party reproductive services on a commercial or fee basis.
- “Donor” means an individual who produces eggs or sperm used for assisted reproduction, whether or not for consideration. The term does not include an intended mother or intended father who provides gametes to be used for assisted reproduction.
- “Participant” means an individual who provides a biological or genetic component of assisted reproduction, a commissioning couple, and, if appropriate, the spouse of a gestational surrogate. Gestation is a biological component within the meaning of this definition.
- “Third-party reproductive services” means services related to the use of eggs, sperm, or embryos that have been donated by a third person to enable an infertile couple to become parents. The term also means services related to gestational surrogacy arrangements.

The bill also makes technical and conforming changes to ss. 742.13 and 742.14, F.S., which are existing sections of law dealing with the donation of gametes and providing definitions.

### **Effective Date**

This bill shall take effect July 1, 2010.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>31</sup> Chapter 501, pt. II, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill requires an assisted reproductive technology agency to obtain a criminal background check from the Department of Law Enforcement for each participant involved in third-party reproductive services. The cost for a Florida criminal history record check is \$24.<sup>32</sup> Because assisted reproductive technology agencies often have hundreds of donors or surrogates in their databases and the agency would have to obtain a criminal background check on each person, the cost may be significant. It is unknown whether the agency would absorb the cost or pass the cost on to participants.

Additionally, the bill requires all participants to have a mental health evaluation and donors and gestational surrogates to have a medical evaluation. There are costs associated with these evaluations; however, it appears that many agencies already require participants to have a mental health or medical evaluation, so any additional cost to the public should be minimal.

The bill's requirement to have an independent escrow account hold a participant's money separate and apart from the agency's business accounts may also provide financial security to the participant.

C. Government Sector Impact:

Under the bill, the Florida Department of Law Enforcement (FDLE or department) will collect \$24 per participant from assisted reproductive technology agencies for conducting a Florida-only background check; however, it appears that the \$24 is to cover FDLE's costs and expenses in running the background check and will not be generating revenue for the department.

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<sup>32</sup> Florida Dep't of Law Enforcement, *Obtaining Criminal History Information*, <http://www.fdle.state.fl.us/content/getdoc/2952da22-ba08-4dfc-9e45-2d7932a803ea/Obtaining-Criminal-History-Information.aspx> (last visited Feb. 10, 2010).

**VI. Technical Deficiencies:**

The bill provides that the requisite mental health evaluation may be conducted by a mental health professional licensed under chs. 490 or 491, F.S. These chapters regulate the licensing of psychologists and psychotherapy services. However, the Senate interim report on which the bill is based does not suggest a specific intent to exclude psychiatrists from the opportunity to evaluate participants. The lack of reference to the chapters of the Florida Statutes governing psychiatrists appears to be a drafting error. Therefore, the Legislature may wish to amend the bill to include psychiatrists licensed under chs. 458 and 459, F.S., within the parameters of a mental health professional authorized to evaluate a participant under the bill.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.