

# House Bill 3362

Sponsored by Representative LIVELY (at the request of Right to Know)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Creates crime of false representation in assisted reproduction. Punishes by 364 days' imprisonment, \$6,250 fine, or both. Creates private right of action for specified individuals for false representation in assisted reproduction.

Creates crime of unlawful use of human reproductive material. Punishes by 364 days' imprisonment, \$6,250 fine, or both.

Authorizes Oregon Medical Board to impose discipline for false representation in assisted reproduction and unlawful use of human reproductive material.

## A BILL FOR AN ACT

1  
2 Relating to human reproductive material; creating new provisions; and amending ORS 677.190.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. As used in sections 1 to 4 of this 2021 Act:**

5 (1) **"Assisted reproduction" has the meaning given that term in ORS 109.239.**

6 (2) **"Donor" means an individual who provides human reproductive material intended for**  
7 **use in assisted reproduction, whether or not the donation is made for consideration.**

8 (3) **"Health care facility" has the meaning given that term in ORS 442.015.**

9 (4) **"Human reproductive material" means:**

10 (a) **A human spermatozoon or ovum; or**

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

12 (5) **"Patient" means an individual who is under the care of a physician for the purpose**  
13 **of assisted reproduction.**

14 (6) **"Physician" means an individual licensed under ORS chapter 677.**

15 **SECTION 2. (1) A person commits the crime of false representation in assisted reproduc-**  
16 **tion if the person provides to a patient information related to any of the following, know-**  
17 **ing or having reason to know that the information is false:**

18 (a) **An assisted reproduction procedure or treatment;**

19 (b) **The human reproductive material used or provided for the patient's assisted reproduc-**  
20 **tion procedure or treatment;**

21 (c) **Identifying information of the donor whose human reproductive material is used or**  
22 **provided for the patient's assisted reproduction, including but not limited to the donor's**  
23 **name, date of birth or physical address at the time of donation; or**

24 (d) **The medical history of the donor whose human reproductive material is used or pro-**  
25 **vided for the patient's assisted reproduction, including but not limited to any illness with**  
26 **which the donor was afflicted at the time of donation, the donor's past illnesses or the social,**  
27 **genetic or family history of the donor.**

28 (2) **A physician commits the crime of false representation in assisted reproduction if the**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 physician uses or provides human reproductive material for assisted reproduction, knowing  
 2 or having reason to know that the human reproductive material is other than the human  
 3 reproductive material for which the patient provided consent.

4 (3) A health care facility commits the crime of false representation in assisted reproduc-  
 5 tion if the health care facility:

6 (a) Provides a patient with human reproductive material other than the human repro-  
 7 ductive material for which the patient provided consent to use in the patient’s assisted re-  
 8 production procedure or treatment; or

9 (b) Disregards any agreement or other form of consent related to the patient’s assisted  
 10 reproduction procedure or treatment between the patient and the health care facility.

11 (4) False representation in assisted reproduction is a Class A misdemeanor.

12 **SECTION 3.** (1) Any of the following individuals may bring a cause of action for  
 13 compensatory and punitive damages against a person, physician or health care facility that  
 14 commits false representation in assisted reproduction:

15 (a) A patient who gives birth to a child conceived through assisted reproduction that  
 16 results from false representation in assisted reproduction;

17 (b) The spouse of a patient described in paragraph (a) of this subsection if the individual  
 18 was the spouse at the time of the assisted reproduction procedure or treatment;

19 (c) A child conceived through false representation in assisted reproduction; or

20 (d) A donor whose human reproductive material resulted in the birth of a child through  
 21 false representation in assisted reproduction.

22 (2) An individual who brings a cause of action under subsection (1) of this section may  
 23 bring a separate cause of action for each child born as a result of false representation in  
 24 assisted reproduction.

25 (3) In an action brought under subsection (1) of this section, the court may award the  
 26 prevailing party costs and reasonable attorney fees.

27 (4) An action under this section must be commenced within six years after the commis-  
 28 sion or discovery of the false representation in assisted reproduction, whichever is later.

29 **SECTION 4.** (1) A person commits the crime of unlawful use of human reproductive  
 30 material if the person knowingly implants the person’s own human reproductive material  
 31 into a patient through assisted reproduction without the patient’s prior knowledge and  
 32 written informed consent to use that human reproductive material.

33 (2) Unlawful use of human reproductive material is a Class A misdemeanor.

34 **SECTION 5.** ORS 677.190 is amended to read:

35 677.190. The Oregon Medical Board may refuse to grant, or may suspend or revoke a license to  
 36 practice for any of the following reasons:

37 (1)(a) Unprofessional or dishonorable conduct.

38 (b) For purposes of this subsection, the use of an alternative medical treatment shall not by it-  
 39 self constitute unprofessional conduct. For purposes of this paragraph:

40 (A) “Alternative medical treatment” means:

41 (i) A treatment that the treating physician, based on the physician’s professional experience, has  
 42 an objective basis to believe has a reasonable probability for effectiveness in its intended use even  
 43 if the treatment is outside recognized scientific guidelines, is unproven, is no longer used as a gen-  
 44 erally recognized or standard treatment or lacks the approval of the United States Food and Drug  
 45 Administration;

1 (ii) A treatment that is supported for specific usages or outcomes by at least one other physician  
 2 licensed by the Oregon Medical Board; and

3 (iii) A treatment that poses no greater risk to a patient than the generally recognized or  
 4 standard treatment.

5 (B) "Alternative medical treatment" does not include use by a physician of controlled substances  
 6 in the treatment of a person for chemical dependency resulting from the use of controlled sub-  
 7 stances.

8 (2) Employing any person to solicit patients for the licensee. However, a managed care organ-  
 9 ization, independent practice association, preferred provider organization or other medical service  
 10 provider organization may contract for patients on behalf of physicians.

11 (3) Representing to a patient that a manifestly incurable condition of sickness, disease or injury  
 12 can be cured.

13 (4) Obtaining any fee by fraud or misrepresentation.

14 (5) Willfully or negligently divulging a professional secret without the written consent of the  
 15 patient.

16 (6) Conviction of any offense punishable by incarceration in a Department of Corrections insti-  
 17 tution or in a federal prison, subject to ORS 670.280. A copy of the record of conviction, certified  
 18 to by the clerk of the court entering the conviction, shall be conclusive evidence of the conviction.

19 (7) Impairment as defined in ORS 676.303.

20 (8) Fraud or misrepresentation in applying for or procuring a license to practice in this state,  
 21 or in connection with applying for or procuring registration.

22 (9) Making statements that the licensee knows, or with the exercise of reasonable care should  
 23 know, are false or misleading, regarding skill or the efficacy or value of the medicine, treatment or  
 24 remedy prescribed or administered by the licensee or at the direction of the licensee in the treat-  
 25 ment of any disease or other condition of the human body or mind.

26 (10) Impersonating another licensee licensed under this chapter or permitting or allowing any  
 27 person to use the license.

28 (11) Aiding or abetting the practice of medicine or podiatry by a person not licensed by the  
 29 board, when the licensee knows, or with the exercise of reasonable care should know, that the per-  
 30 son is not licensed.

31 (12) Using the name of the licensee under the designation "doctor," "Dr.," "D.O." or "M.D.,"  
 32 "D.P.M.," "Acupuncturist," "P.A." or any similar designation in any form of advertising that is  
 33 untruthful or is intended to deceive or mislead the public.

34 (13) Gross negligence or repeated negligence in the practice of medicine or podiatry.

35 (14) Incapacity to practice medicine or podiatry. If the board has evidence indicating incapacity,  
 36 the board may order a licensee to submit to a standardized competency examination. The licensee  
 37 shall have access to the result of the examination and to the criteria used for grading and evaluat-  
 38 ing the examination. If the examination is given orally, the licensee shall have the right to have the  
 39 examination recorded.

40 (15) Disciplinary action by another state of a license to practice, based upon acts by the licensee  
 41 similar to acts described in this section. A certified copy of the record of the disciplinary action of  
 42 the state is conclusive evidence thereof.

43 (16) Failing to designate the degree appearing on the license under circumstances described in  
 44 ORS 677.184 (3).

45 (17) Willfully violating any provision of this chapter or any rule adopted by the board, board

1 order, or failing to comply with a board request pursuant to ORS 677.320.

2 (18) Failing to report the change of the location of practice of the licensee as required by ORS  
3 677.172.

4 (19) Imprisonment as provided in ORS 677.225.

5 (20) Making a fraudulent claim.

6 (21)(a) Performing psychosurgery.

7 (b) For purposes of this subsection and ORS 426.385, “psychosurgery” means any operation de-  
8 signed to produce an irreversible lesion or destroy brain tissue for the primary purpose of altering  
9 the thoughts, emotions or behavior of a human being. “Psychosurgery” does not include procedures  
10 which may produce an irreversible lesion or destroy brain tissues when undertaken to cure well-  
11 defined disease states such as brain tumor, epileptic foci and certain chronic pain syndromes.

12 (22) Refusing an invitation for an informal interview with the board requested under ORS  
13 677.415.

14 (23) Violation of the federal Controlled Substances Act.

15 (24) Prescribing controlled substances without a legitimate medical purpose, or prescribing  
16 controlled substances without following accepted procedures for examination of patients, or pre-  
17 scribing controlled substances without following accepted procedures for record keeping.

18 (25) Providing written documentation for purposes of ORS 475B.797 without having legitimately  
19 diagnosed a debilitating medical condition, as defined in ORS 475B.791, or without having followed  
20 accepted procedures for the examination of patients or for keeping records.

21 (26) Failure by the licensee to report to the board any adverse action taken against the licensee  
22 by another licensing jurisdiction or any peer review body, health care institution, professional or  
23 medical society or association, governmental agency, law enforcement agency or court for acts or  
24 conduct similar to acts or conduct that would constitute grounds for disciplinary action as described  
25 in this section.

26 (27) Failure by the licensee to notify the board of the licensee’s voluntary resignation from the  
27 staff of a health care institution or voluntary limitation of a licensee’s staff privileges at the insti-  
28 tution if that action occurs while the licensee is under investigation by the institution or a com-  
29 mittee thereof for any reason related to medical incompetence, unprofessional conduct, physical  
30 incapacity or impairment.

31 **(28) A conviction or finding of guilt for false representation in assisted reproduction un-**  
32 **der section 2 of this 2021 Act or unlawful use of human reproductive material under section**  
33 **4 of this 2021 Act.**

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