

1 SENATE BILL 77

2 **49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

3 INTRODUCED BY

4 John C. Ryan

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10 AN ACT

11 RELATING TO HEALTH; PERMITTING BIOMEDICAL RESEARCH ON LIMITED
12 CATEGORIES OF HUMAN EMBRYONIC STEM CELLS; PROHIBITING HUMAN
13 CLONING; IMPOSING PENALTIES; AMENDING THE MATERNAL, FETAL AND
14 INFANT EXPERIMENTATION ACT.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
18 through 7 of this act may be cited as the "Biomedical Research
19 Act".

20 Section 2. [NEW MATERIAL] FINDINGS AND PURPOSE.--

21 A. The legislature finds that an estimated one
22 hundred twenty-eight million Americans suffer from the
23 crippling physical, economic and psychological burdens of
24 chronic, degenerative and acute diseases, including Alzheimer's
25 disease, heart disease, diabetes, Parkinson's disease, spinal

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1 cord injuries, macular degeneration, multiple sclerosis, Lou
2 Gehrig's disease and cancer. The legislature further finds
3 that human embryonic stem cell research and other biomedical
4 research in the life sciences and regenerative medicine present
5 a significant chance of yielding fundamental biological
6 knowledge from which may emanate therapies to relieve, on a
7 large scale, human suffering from disease and injury.

8 B. The purpose of the Biomedical Research Act is to
9 foster research and therapies in the life sciences and
10 regenerative medicine by permitting research and clinical
11 applications involving the derivation and use of certain human
12 embryonic stem cells or stem cell lines while at the same time
13 prohibiting human reproductive cloning.

14 Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the
15 Biomedical Research Act:

16 A. "cell lines" means a permanently established
17 cell culture that will proliferate indefinitely given the
18 appropriate fresh medium and space;

19 B. "embryo" means an organism of the species Homo
20 sapiens formed by fertilization that is up to eight weeks of
21 age post-fertilization;

22 C. "fertilization" means the process whereby the
23 male sperm and female ovum unite to form an embryo;

24 D. "human adult stem cell" means an
25 undifferentiated cell found in differentiated tissue that can

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1 renew itself and differentiate to yield specialized cell types;

2 E. "human reproductive cloning" means the asexual
3 creation of an embryo;

4 F. "in vitro" means in an artificial environment,
5 including a test tube or culture medium, and also refers to a
6 process or reaction occurring in an artificial environment;

7 G. "in vitro fertilization" means an assisted
8 reproduction technique in which fertilization is accomplished
9 outside the human body;

10 H. "placental cells" means cells obtained from the
11 placenta;

12 I. "pre-implantation embryo" means an embryo formed
13 and maintained outside the human body, by in vitro
14 fertilization, that has not experienced more than fourteen days
15 of development; provided that such length of time does not
16 include any interval in which the development has been
17 suspended, such as through freezing;

18 J. "primitive streak" means a structure that forms
19 during the early stages of embryonic development and is
20 characterized as a furrow in the midline of the embryonic disc
21 and generally develops around the fourteenth day of existence;
22 and

23 K. "umbilical cord stem cells" means cells derived
24 from an umbilical cord.

25 Section 4. [NEW MATERIAL] BIOMEDICAL RESEARCH PERMITTED--

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1 LIMITATIONS--RESEARCH PROHIBITIONS.--

2 A. Research and clinical applications conducted in
3 accordance with the Biomedical Research Act that involve the
4 derivation and use of pre-implantation human embryonic stem
5 cells derived from embryos that are produced by in vitro
6 fertilization clinics and targeted for disposal or deemed
7 excess tissue; stem cell lines; human adult stem cells from any
8 source; umbilical cord stem cells; and placental cells is
9 permitted.

10 B. Research involving the derivation of human
11 embryonic stem cells, as permitted by Subsection A of this
12 section, shall only be conducted with the informed consent of
13 the original owner of the embryo and in accordance with
14 guidelines and policies promulgated by the United States
15 department of health and human services' office for human
16 research protection, the national research council and the
17 institute of medicine of the national academies.

18 C. Research shall not be conducted that involves in
19 vitro culture of an intact human embryo, regardless of
20 derivation method, for longer than fourteen days or until
21 formation of the primitive streak begins, whichever occurs
22 first.

23 Section 5. [NEW MATERIAL] HUMAN REPRODUCTIVE CLONING
24 PROHIBITED.--

25 A. It is unlawful to knowingly engage or assist in

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1 human reproductive cloning or attempted human reproductive
2 cloning of a human being.

3 B. A person shall not knowingly purchase, sell,
4 transfer or otherwise obtain human embryonic, gametic or
5 cadaveric tissue for the purpose of reproductive cloning.

6 C. A person shall not knowingly create an embryo
7 with the sole intent of donating the embryo for research.

8 Section 6. [NEW MATERIAL] SCIENTIFIC RESEARCH--EXEMPT
9 EMPLOYEES.--An employee shall not be required to conduct
10 scientific research, experimentation or study that involves the
11 creation or use of pre-implantation embryos in relation to
12 human embryonic stem cell research to the extent that such
13 research conflicts with the sincerely held religious practices
14 or beliefs of the employee.

15 Section 7. [NEW MATERIAL] PENALTIES.--Violation of the
16 provisions of the Biomedical Research Act is a misdemeanor and
17 shall be punishable by a fine of not more than twenty-five
18 thousand dollars (\$25,000) or imprisonment for not more than
19 one year or by both fine and imprisonment.

20 Section 8. Section 24-9A-1 NMSA 1978 (being Laws 1979,
21 Chapter 132, Section 1, as amended) is amended to read:

22 "24-9A-1. DEFINITIONS.--As used in the Maternal, Fetal
23 and Infant Experimentation Act:

24 A. "viability" means that stage of fetal
25 development when the unborn child is potentially able to live

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1 outside the mother's womb, albeit with artificial aid;

2 B. "conception" means the fertilization of the ovum
3 of a human female by the sperm of a human male;

4 C. "health" means physical or mental health;

5 D. "clinical research" means any biomedical or
6 behavioral research involving human subjects, including the
7 unborn, conducted according to a formal procedure. The term is
8 to be construed liberally to embrace research concerning all
9 physiological processes in human beings and includes research
10 involving human in vitro fertilization, but shall not include
11 diagnostic testing, treatment, therapy or related procedures
12 conducted by formal protocols deemed necessary for the care of
13 the particular patient upon whom such activity is performed and
14 shall not include human in vitro fertilization performed to
15 treat infertility; provided that this procedure shall include
16 provisions to ensure that each living fertilized ovum, zygote
17 or embryo, other than products of conception produced by in
18 vitro fertilization clinics and targeted for disposal or deemed
19 excess tissue, is implanted in a human female recipient, and no
20 physician may stipulate that a woman must abort in the event
21 the pregnancy should produce a child with a disability;
22 provided that emergency medical procedures necessary to
23 preserve the life or health of the mother or the fetus shall
24 not be considered to be clinical research;

25 E. "subject at risk", "subject" or "at risk" means

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1 any person who may be exposed to the likelihood of injury,
2 including physical or psychological injury, as a consequence of
3 participation as a subject in:

4 (1) any research, development or related
5 activity that departs from the application of those established
6 and accepted methods deemed necessary to meet the person's
7 needs;

8 (2) controlled research studies necessary to
9 establish accepted methods designed to meet the person's needs;
10 or

11 (3) research activity that poses a significant
12 risk to the subject;

13 F. "significant risk" means an activity that is
14 likely to cause disfigurement or loss or impairment of the
15 function of any member or organ;

16 G. "fetus" means the product of conception from the
17 time of conception until the expulsion or extraction of the
18 fetus or the opening of the uterine cavity, but shall not
19 include the placenta, extraembryonic membranes, umbilical cord,
20 extraembryonic fluids and their resident cell types, [~~and~~]
21 cultured cells or products of conception produced by in vitro
22 fertilization clinics and targeted for disposal or deemed
23 excess tissue;

24 H. "live-born infant" means an offspring of a
25 person that exhibits heartbeat, spontaneous respiratory

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1 activity, spontaneous movement of voluntary muscles or
2 pulsation of the umbilical cord if still attached to the infant
3 ex utero; provided the Maternal, Fetal and Infant
4 Experimentation Act does not apply to a fetus or infant absent
5 the characteristics set forth in this subsection;

6 I. "infant" means an offspring of a human being
7 from the time it is born until the end of its first
8 chronological year;

9 J. "born" means the time the head or any other part
10 of the body of the fetus emerges from the vagina or the time
11 the uterine cavity is opened during a caesarean section or
12 hysterotomy; and

13 K. "in vitro fertilization" means any fertilization
14 of human ova that occurs outside the body of a female, either
15 through admixture of donor human sperm and ova or by any other
16 means."

17 Section 9. Section 24-9A-7 NMSA 1978 (being Laws 1979,
18 Chapter 132, Section 7) is amended to read:

19 "24-9A-7. SHORT TITLE.--~~[Sections 1 through 7 of this~~
20 ~~act]~~ Chapter 24, Article 9A NMSA 1978 may be cited as the
21 "Maternal, Fetal and Infant Experimentation Act"."