

CRS Report for Congress

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State Laws on Human Cloning

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Summary

Although numerous human cloning bills have been introduced in the 108th Congress and one — H.R. 534 — has passed in the House of Representatives, cloning legislation has yet to be enacted at the federal level. In the absence of federal legislation, state laws provide the only existing framework for regulating human cloning activity. Currently, nine states have enacted laws that expressly regulate cloning. This report provides a summary and comparison of existing state laws on human cloning, as well as a brief discussion of similar legislation currently under consideration in Congress. For related reports, see CRS Report RL31358, *Human Cloning*; CRS Report RL31211, *Cloning: A Select Chronology, 1997-2003*; and CRS Report RL31422, *Substantive Due Process and a Right to Clone*.

Background

In 1997, scientists announced that they had successfully cloned a sheep, whom they named Dolly. Fearing that scientists would next seek to clone a human being, President Clinton quickly issued an executive memorandum banning the use of federal funds for purposes of cloning.¹ This ban continues to remain in force today. Meanwhile, legislators at the state and federal level have sought to enact legislation that would regulate human cloning specifically, regardless of funding source.² In 2002, Clonaid, an organization affiliated with the Raelian sect, added urgency to this pursuit when it announced, in an unsubstantiated claim, that the world's first cloned baby had been born.

¹ Memorandum on the Prohibition on Federal Funding for Cloning of Human Beings, 33 Weekly Comp. Pres. Doc. 281 (March 4, 1997).

² Although many states have laws that regulate research or experimentation on embryos and fetuses and although these laws may be broad enough to include embryos in the early stages of development, it is unlikely that courts would construe these laws to apply to cloned embryos. Lori B. Andrews, *The Current and Future Legal Status of Cloning*, in *Cloning Human Beings*, Vol. II at F-5 (National Bioethics Advisory Commission, June 1997). As a result, this report focuses exclusively on state laws that regulate cloning specifically.

Since these events, numerous human cloning bills have been introduced in Congress. Although one bill — H.R. 534 — has passed in the House of Representatives, cloning legislation has yet to be enacted at the federal level. In the absence of federal legislation, state laws provide the only existing framework for regulating human cloning activity. Currently, nine states have enacted laws that expressly regulate cloning. This report provides a summary and comparison of existing state laws on human cloning, as well as a brief discussion of similar legislation currently under consideration in Congress.

What Is Cloning?

Cloning has several meanings. As used in this report, it refers to a process in which cellular material from a DNA donor is transferred to an egg whose own DNA has been removed. When stimulated, the egg begins to divide. The resulting embryo is genetically identical to the DNA of the original cell donor.³

Human cloning may be divided into two categories: reproductive cloning and therapeutic cloning. In reproductive cloning, the cloned embryo is implanted in a woman's uterus, where it potentially results in pregnancy and the birth of a cloned human being. Therapeutic cloning, on the other hand, allows scientists to create an abundant source of stem-cells for research purposes.⁴

In general, there is a consensus among legislators and scientists that reproductive cloning, which poses a large number of safety and ethical concerns, should be banned. Far less agreement, however, exists where therapeutic cloning is concerned. Proponents of therapeutic cloning contend that the process of extracting stem cells from cloned human embryos is essential for researching new therapies and developing cures for debilitating or life-threatening diseases like Alzheimer's and Parkinson's disease. Opponents, however, argue that creating cloned human embryos for research purposes unethically treats human life as a commodity and contend that destroying embryos in order to extract stem cells is tantamount to murder.⁵

Partly as a result of this debate, the manner in which states have chosen to regulate human cloning varies widely, but state laws generally fall into one or more of several categories, including laws that ban reproductive cloning, therapeutic cloning, and/or the use of state funds for cloning activities. In addition, state laws may also be categorized according to the type of penalties — civil, criminal, or administrative — that they impose for human cloning violations. In addition to the nine states that have enacted human cloning legislation, another twenty-two states have cloning bills pending before

³ Alissa Johnson, National Conference of State Legislatures, *Human Cloning* (June 2002), [<http://www.ncsl.org/programs/health/genetics/Humancloning.pdf>].

⁴ *Id.*

⁵ Mary Agnes Carey, *Cloning Debate Undiminished Despite House-Passed Ban*, CQ Weekly, March 1, 2003, at 508.

their state legislatures.⁶ Each of the state cloning laws currently in force is detailed below.

State Human Cloning Laws

Many of the states that have enacted legislation prohibiting human cloning have distinguished between reproductive and therapeutic cloning. Although some state laws prohibit both types of cloning, other states have opted to ban reproductive cloning but to allow therapeutic cloning. Of the nine states that currently have human cloning legislation in place, four states — Arkansas, Iowa, Michigan, and North Dakota — prohibit both reproductive and therapeutic cloning, while three states — California, Louisiana, and Rhode Island — ban reproductive cloning but permit therapeutic cloning. Of the remaining two states, Missouri forbids the use of state funds to conduct reproductive cloning but allows therapeutic cloning, while Virginia law clearly bans reproductive cloning but is unclear with regard to therapeutic cloning. Beginning with the states that prohibit both types of human cloning, each of the state laws is discussed in detail below.

In Arkansas, both reproductive and therapeutic cloning are banned, as is the shipment or transfer of any cloned human embryo. Violations of the ban on cloning are a felony, while violations of the shipment provision are a misdemeanor. In addition to imposing criminal liability for violations of the statute, the Arkansas statute levies a fine of the greater of \$250,000 or twice the amount of any profit gained through illegal cloning activity.⁷ Similarly, both reproductive and therapeutic cloning are banned in Iowa, where the transfer or receipt of a cloned human embryo is also banned. Violations of the prohibition against cloning are punishable as a felony, while violations of the transfer prohibition are considered to be an aggravated misdemeanor. As in Arkansas, any person who gains financially from cloning activity is subject to a civil penalty in an amount that is twice the financial gain. Finally, violations of Iowa's human cloning statute are also punishable with the denial or revocation of any license, permit, or certification required to practice a trade, occupation, or profession regulated by the state.⁸

Like Arkansas and Iowa, Michigan forbids reproductive and therapeutic cloning. Violations of this prohibition give rise to administrative sanctions imposed by the health department, civil penalties of \$10 million, or felony criminal charges punishable by up to 10 years of imprisonment. In addition, Michigan bars the use of state funds for purposes of human cloning and prohibits health facilities or agencies from permitting individuals to engage in cloning activity.⁹ Finally, North Dakota state law also prohibits both types of human cloning, as well as the transfer or receipt of any product of human cloning. Under state law, criminal sanctions are imposed for violations of the statute,

⁶ For detailed information about proposed cloning legislation in the states, see National Conference of State Legislatures, *2003 Legislative Activity Human Cloning* (April 24, 2003), [<http://www.ncsl.org/programs/health/Genetics/03clone.htm>].

⁷ 2003 Ark. SB 185.

⁸ Iowa Code § 707B.1-4.

⁹ MCLS §§ 333.16274-16275, 333.20197, 333.26401-26406, 750.430a.

with violations of the cloning provisions punishable as a felony and violations of the transfer provision punishable as a misdemeanor.¹⁰

In contrast to the four states described above, California, Louisiana, and Rhode Island prohibit reproductive cloning but permit therapeutic cloning. In California, violations of the ban on reproductive cloning give rise to civil but not criminal charges. A violator who is a corporation, firm, clinic, hospital, laboratory, or research facility is liable for a fine of up to \$1 million, while a violator who is an individual is liable for a fine of up to \$250,000. However, any violator who profits from his illegal activity is liable for twice the amount of his financial gain.¹¹ In addition to these civil penalties, a violation of the cloning statute constitutes unprofessional conduct and is grounds for the revocation of a business license.¹²

Like California, Louisiana prohibits reproductive cloning but allows therapeutic cloning. Violations of the ban on reproductive cloning give rise to criminal penalties leading to up to ten years in prison or civil penalties of up to \$5 million for individuals and up to \$10 million for corporations, firms, clinics, hospitals, laboratories, or research facilities. However, violators who profit from their illegal activities are liable for twice the amount of their financial gain. In addition, violations of Louisiana's cloning law constitute unprofessional conduct and are grounds for denying or revoking any state-issued license, certification, or permit required to practice a trade, occupation, or profession.¹³ Finally, Rhode Island also prohibits reproductive cloning but permits therapeutic cloning. Like California, Rhode Island imposes civil but not criminal penalties for violations of the statute; these penalties are identical in amount and structure to the fines imposed in California. Currently, Rhode Island's ban on reproductive cloning is set to expire in 2010.¹⁴

Of the remaining two states with laws that regulate human cloning, Missouri's law is the most straightforward. Under Missouri law, no state funds may be used for research with respect to the cloning of a human being. The statute is silent with respect to cloning activities conducted using private funds.¹⁵ Virginia law is somewhat more complicated, for although it is clear that state law prohibits reproductive cloning, it is unclear whether or not the ban extends to therapeutic cloning. Despite this confusion, Virginia law clearly imposes a civil penalty of up to \$50,000 for each violation of the cloning statute.¹⁶

As noted above, another 22 states are currently considering various bills that would regulate human cloning. In addition, federal legislators are considering certain cloning

¹⁰ 2003 N.D. HB 1424.

¹¹ Cal. Health & Saf. Code §§ 24185-87, 24189.

¹² Cal. Bus. & Prof. Code §§ 2260.5, 16004, 16105.

¹³ La. R.S. 40:1299.36-36.6.

¹⁴ R.I. Gen. Laws §§ 23-16.4-1-4.

¹⁵ § 1.217 R.S.Mo.

¹⁶ Va. Code Ann. §§ 32.1-162.21-22.

bills pending before the United States Congress. These congressional bills are described in the following section.

Human Cloning Bills in Congress

In February, the House of Representatives passed H.R. 534, the Human Cloning Prohibition Act of 2003. The bill, which is awaiting consideration by the Senate, would forbid both reproductive and therapeutic cloning, as well as prohibit the shipment, receipt, or importation of any embryo produced by human cloning or and product of such embryo. The bill would impose both civil and criminal penalties for violations of the cloning prohibition. Under the legislation, criminal penalties could result in up to ten years in prison, while any violator who profits from illegal cloning activity would be fined the greater of \$1 million or twice the amount of financial gain. In enacting H.R. 534, the House of Representatives rejected an alternative bill — H.R. 801 — that would have prohibited reproductive cloning but permitted therapeutic cloning.

Despite winning substantial support in the House, H.R. 534 faces an uncertain future in the Senate. In the 107th Congress, a similar measure passed the House but failed to reach a floor vote in the Senate. Currently, the Senate version of the bill — S. 245, sponsored by Senator Brownback — does not appear to have enough backers to withstand a filibuster.¹⁷ Furthermore, Brownback's bill faces competition from another human cloning bill — S. 303, sponsored by Senator Hatch — that would prohibit reproductive cloning but allow therapeutic cloning for the purpose of conducting stem cell research. Although President Bush has expressed his support for a comprehensive ban on human cloning that would bar both reproductive and therapeutic cloning, prospects for such legislation currently remain unclear due to the dispute in the Senate. As a result, the states are likely to continue their role as groundbreakers in enacting legislation to regulate human cloning.

¹⁷ Mary Agnes Carey, *Cloning Debate Undiminished Despite House-Passed Ban*, CQ Weekly, March 1, 2003, at 508.