

HOUSE BILL 236

D4
HB 1099/13 – JUD

4r1108
CF SB 208

By: **Delegate Dumais**

Introduced and read first time: January 17, 2014

Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Maryland Collaborative Reproduction Act

FOR the purpose of establishing the Maryland Collaborative Reproduction Act; establishing the purposes of this Act; establishing certain rights and obligations of certain intended parents who use gamete or embryo donors to conceive a child through collaborative reproduction; establishing certain rights of a child conceived through collaborative reproduction; establishing that a gamete or embryo donor is not a parent of a child conceived through collaborative reproduction under certain circumstances; establishing that a gestational carrier agreement is enforceable in the State under certain circumstances; specifying certain requirements for parties who enter into a gestational carrier agreement; specifying certain requirements for the contents of a gestational carrier agreement; specifying the effect of the dissolution of the marriage or partnership of a gestational carrier or an intended parent on a gestational carrier agreement; prohibiting an embryo transfer from occurring under certain circumstances; specifying the effect of an unauthorized embryo transfer; specifying the effect of the death of an intended parent on a gestational carrier agreement; authorizing an intended parent to revoke consent to a gestational carrier agreement under certain circumstances; providing for the resolution of disputes under a gestational carrier agreement; authorizing a party to a gestational carrier agreement to file a petition for parentage; establishing the jurisdiction of a circuit court of the State over a petition for parentage under certain circumstances; specifying the required contents of a petition for parentage; requiring a court to issue an order of parentage under certain circumstances; establishing the legal effect of an order of parentage; requiring an order of parentage to be sealed under certain circumstances; requiring that, in the absence of an order of parentage, the parentage of a child born as the result of a gestational carrier agreement be determined in a certain manner; providing for the issuance of a birth certificate under certain circumstances; prohibiting certain persons who have been convicted of certain crimes from being involved in the business of collaborative reproduction; establishing certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



criminal penalties; defining certain terms; providing for the application of this Act; making the provisions of this Act severable; and generally relating to the Maryland Collaborative Reproduction Act.

BY adding to

Article – Family Law

Section 5–901 through 5–914 to be under the new subtitle “Subtitle 9. Maryland Collaborative Reproduction Act”

Annotated Code of Maryland

(2012 Replacement Volume and 2013 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Family Law

SUBTITLE 9. MARYLAND COLLABORATIVE REPRODUCTION ACT.

5–901.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “ASSISTED REPRODUCTION” MEANS THE LABORATORY AND MEDICAL PROCEDURES PERFORMED BY A MEDICAL PROFESSIONAL IN WHICH HUMAN GAMETES ARE USED OUTSIDE THE BODY FOR REPRODUCTIVE PURPOSES.

(C) “CHILD” MEANS A CHILD WHOSE BIRTH RESULTS FROM ASSISTED REPRODUCTION.

(D) “COLLABORATIVE REPRODUCTION” MEANS ASSISTED REPRODUCTION THAT INVOLVES A GESTATIONAL CARRIER, A GAMETE DONOR OR AN EMBRYO DONOR, OR BOTH.

(E) (1) “EMBRYO” MEANS A FERTILIZED EGG UNTIL THE EIGHTH WEEK OF A PREGNANCY.

(2) “EMBRYO” INCLUDES A SINGLE EMBRYO OR TWO OR MORE EMBRYOS.

(F) “EMBRYO DONOR” MEANS AN INDIVIDUAL OTHER THAN AN INTENDED PARENT WHO CONTRIBUTES EMBRYOS FOR USE IN COLLABORATIVE REPRODUCTION.

(G) “EMBRYO TRANSFER” MEANS THE MEDICAL PROCEDURE OF TRANSFERRING AN EMBRYO TO A UTERUS.

(H) “GAMETE” MEANS A HUMAN REPRODUCTIVE CELL, EITHER A SPERM OR AN EGG.

(I) “GAMETE DONOR” MEANS AN INDIVIDUAL OTHER THAN AN INTENDED PARENT WHO CONTRIBUTES GAMETES FOR USE IN COLLABORATIVE REPRODUCTION.

(J) “GESTATIONAL CARRIER” MEANS A WOMAN OTHER THAN AN INTENDED PARENT OR A GAMETE DONOR WHO AGREES TO BECOME PREGNANT FOR AN INTENDED PARENT WITH THE INTENTION OF GESTATING AND DELIVERING THE INTENDED PARENT’S CHILD.

(K) “GESTATIONAL CARRIER AGREEMENT” MEANS A WRITTEN CONTRACT BETWEEN A GESTATIONAL CARRIER, HER SPOUSE OR PARTNER, IF ANY, AND EACH INTENDED PARENT UNDER WHICH EACH INTENDED PARENT AGREES TO BECOME THE LEGAL PARENT OF THE CHILD RESULTING FROM COLLABORATIVE REPRODUCTION.

(L) “INTENDED PARENT” MEANS AN INDIVIDUAL, WHETHER MARRIED OR UNMARRIED, WHO MANIFESTS THE INTENT TO BE THE LEGAL PARENT OF A CHILD RESULTING FROM COLLABORATIVE REPRODUCTION.

(M) “MENTAL HEALTH PROFESSIONAL” MEANS AN INDIVIDUAL WHO:

(1) HOLDS A GRADUATE DEGREE IN PSYCHIATRY, PSYCHOLOGY, COUNSELING, SOCIAL WORK, PSYCHIATRIC NURSING, OR FAMILY THERAPY;

(2) IS LICENSED TO PRACTICE UNDER TITLE 10, TITLE 14, TITLE 18, OR TITLE 19 OF THE HEALTH OCCUPATIONS ARTICLE OR IS LICENSED BY ANY OTHER STATE; AND

(3) SPECIALIZES, AT LEAST IN SIGNIFICANT PART, IN ASSISTED REPRODUCTION, INFERTILITY, OR COLLABORATIVE REPRODUCTION ISSUES.

(N) “PARTNER” MEANS AN INDIVIDUAL JOINED TOGETHER WITH ANOTHER INDIVIDUAL IN A CIVIL UNION OR ANY OTHER LEGAL DOMESTIC PARTNERSHIP.

(O) “REASONABLE MEDICAL AND ANCILLARY EXPENSES” MEANS EXPENSES INCURRED BY A GESTATIONAL CARRIER THAT WOULD NOT HAVE BEEN INCURRED BUT FOR A GESTATIONAL CARRIER AGREEMENT.

(P) “REPRODUCTIVE ENDOCRINOLOGIST” MEANS A LICENSED PHYSICIAN, TRAINED IN THE FIELD OF OBSTETRICS AND GYNECOLOGY, WHO SPECIALIZES, AT LEAST IN SIGNIFICANT PART, IN ASSISTED REPRODUCTION, INFERTILITY, REPRODUCTIVE PHYSIOLOGY, OR COLLABORATIVE REPRODUCTION ISSUES.

5-902.

THE PURPOSES OF THIS SUBTITLE ARE:

(1) TO ESTABLISH CONSISTENT STANDARDS AND SAFEGUARDS FOR:

(I) CHILDREN WHO ARE BORN AS A RESULT OF COLLABORATIVE REPRODUCTION; AND

(II) INTENDED PARENTS, GESTATIONAL CARRIERS, GAMETE DONORS, AND EMBRYO DONORS INVOLVED IN COLLABORATIVE REPRODUCTION;

(2) TO ESTABLISH CONSISTENT PROCEDURES FOR ENSURING THAT THE LEGAL STATUS OF CHILDREN BORN AS A RESULT OF COLLABORATIVE REPRODUCTION IS PROTECTED; AND

(3) TO FACILITATE THE USE OF COLLABORATIVE REPRODUCTION IN ACCORDANCE WITH THE PUBLIC POLICY OF THE STATE.

5-903.

THIS SUBTITLE DOES NOT APPLY TO THE BIRTH OF A CHILD CONCEIVED BY MEANS OF:

(1) SEXUAL INTERCOURSE; OR

(2) ASSISTED REPRODUCTION IF:

(I) A COUPLE USES THEIR OWN GAMETES, GESTATES ANY RESULTING PREGNANCY, AND INTENDS TO PARENT THE RESULTING CHILD; OR

(II) A WOMAN OTHER THAN AN INTENDED PARENT AGREES TO USE HER OWN EGG TO BECOME PREGNANT AND TO GESTATE AND DELIVER A CHILD FOR AN INTENDED PARENT.

5-904.

(A) THIS SECTION DOES NOT APPLY TO COLLABORATIVE REPRODUCTION IN WHICH A GESTATIONAL CARRIER IS USED.

(B) (1) AN INTENDED PARENT WHO USES A GAMETE DONOR OR AN EMBRYO DONOR TO CONCEIVE A CHILD THROUGH COLLABORATIVE REPRODUCTION SHALL BE THE PARENT OF THE CHILD AND SHALL HAVE ALL COROLLARY RIGHTS AND OBLIGATIONS WITH RESPECT TO THE CHILD.

(2) THE CHILD SHALL HAVE ALL THE RIGHTS OF A PARENT-CHILD RELATIONSHIP WITH THE INTENDED PARENT, INCLUDING RIGHTS OF INHERITANCE, FROM THE MOMENT OF BIRTH OF THE CHILD.

(3) A GAMETE DONOR OR AN EMBRYO DONOR IS NOT A PARENT OF A CHILD CONCEIVED THROUGH COLLABORATIVE REPRODUCTION AND DOES NOT HAVE ANY RIGHTS OR OBLIGATIONS WITH RESPECT TO THE CHILD.

5-905.

A GESTATIONAL CARRIER AGREEMENT IS ENFORCEABLE IN THE STATE IF:

(1) THE PARTIES SATISFY THE REQUIREMENTS OF § 5-906 OF THIS SUBTITLE; AND

(2) THE AGREEMENT SATISFIES THE REQUIREMENTS OF § 5-907 OF THIS SUBTITLE.

5-906.

(A) (1) AT THE TIME THAT A GESTATIONAL CARRIER AGREEMENT IS EXECUTED, THE GESTATIONAL CARRIER SHALL:

(I) BE AT LEAST 21 YEARS OLD;

(II) HAVE GIVEN BIRTH TO AT LEAST ONE LIVE CHILD;

(III) HAVE UNDERGONE A MEDICAL EVALUATION BY A REPRODUCTIVE ENDOCRINOLOGIST AND BEEN APPROVED TO SERVE AS A GESTATIONAL CARRIER;

(IV) HAVE UNDERGONE A PSYCHOLOGICAL EVALUATION BY A MENTAL HEALTH PROFESSIONAL AND BEEN APPROVED TO SERVE AS A GESTATIONAL CARRIER; AND

(V) BE REPRESENTED IN THE GESTATIONAL CARRIER AGREEMENT BY A LICENSED ATTORNEY WHO IS IN GOOD STANDING WITH THE MARYLAND BAR AND WHO IS INDEPENDENT OF EACH INTENDED PARENT AND INDEPENDENT OF EACH INTENDED PARENT'S ATTORNEY.

(2) PARAGRAPH (1)(V) OF THIS SUBSECTION DOES NOT PROHIBIT AN INTENDED PARENT FROM PAYING A GESTATIONAL CARRIER'S ATTORNEY'S FEES.

(B) AT THE TIME THAT A GESTATIONAL CARRIER AGREEMENT IS EXECUTED, EACH INTENDED PARENT SHALL:

(1) BE AT LEAST 21 YEARS OLD;

(2) HAVE UNDERGONE AN APPROPRIATE MEDICAL EVALUATION AND BEEN APPROVED TO PROCEED WITH A GESTATIONAL CARRIER AGREEMENT;

(3) HAVE UNDERGONE A PSYCHOLOGICAL EVALUATION BY A MENTAL HEALTH PROFESSIONAL AND BEEN APPROVED TO PROCEED WITH A GESTATIONAL CARRIER AGREEMENT;

(4) BE REPRESENTED IN THE GESTATIONAL CARRIER AGREEMENT BY A LICENSED ATTORNEY IN GOOD STANDING WITH THE MARYLAND BAR; AND

(5) HAVE GUARANTEED PAYMENT OF ALL REASONABLE MEDICAL AND ANCILLARY EXPENSES THAT ARE AGREED TO IN THE GESTATIONAL CARRIER AGREEMENT, EITHER IN THE FORM OF INSURANCE, CASH, ESCROW, BONDS, OR OTHER ARRANGEMENTS SATISFACTORY TO THE PARTIES, INCLUDING AN ALLOCATION OF RESPONSIBILITY FOR THE EXPENSES IN THE EVENT OF TERMINATION OF THE PREGNANCY, TERMINATION OF THE CONTRACT, OR BREACH OF THE CONTRACT BY ANY PARTY.

(A) (1) A GESTATIONAL CARRIER AGREEMENT SHALL:

(I) BE IN WRITING AND BE EXECUTED BY THE GESTATIONAL CARRIER AND HER SPOUSE OR PARTNER, IF ANY, AND EACH INTENDED PARENT;

(II) BE EXECUTED PRIOR TO THE EMBRYO TRANSFER; AND

(III) CONTAIN SIGNATURES OF THE PARTIES THAT ARE NOTARIZED, AUTHENTICATED, OR OTHERWISE VERIFIED BY A MINIMUM OF TWO WITNESSES, WHO SHALL DOCUMENT THEIR NAMES, ADDRESSES, AND PHONE NUMBERS.

(2) AN ATTORNEY MAY NOT REPRESENT BOTH THE INTENDED PARENT OR PARENTS AND THE GESTATIONAL CARRIER AND HER SPOUSE OR PARTNER, IF ANY, IN THE PREPARATION, COUNSELING, AND NEGOTIATION OF THE GESTATIONAL CARRIER AGREEMENT.

(3) EACH PARTY TO THE GESTATIONAL CARRIER AGREEMENT SHALL AFFIRM, BY SIGNATURE TO THE AGREEMENT, THAT THE PARTY HAS COMPLIED WITH THE REQUIREMENTS OF THIS SUBTITLE.

(B) A GESTATIONAL CARRIER AGREEMENT SHALL INCLUDE THE FOLLOWING TERMS:

(1) THAT THE GESTATIONAL CARRIER AND HER SPOUSE OR PARTNER, IF ANY:

(I) AGREE TO FOLLOW THE GESTATIONAL CARRIER'S PHYSICIAN'S INSTRUCTIONS WITH RESPECT TO ANY EMBRYO TRANSFER AND PREGNANCY;

(II) ACKNOWLEDGE AND AGREE THAT THE GESTATIONAL CARRIER AND HER SPOUSE OR PARTNER, IF ANY, IS NOT A PARENT OF THE CHILD AND MAY NOT HAVE LEGAL CUSTODY OF THE CHILD AT ANY TIME;

(III) AGREE TO SURRENDER PHYSICAL CUSTODY OF THE CHILD TO THE INTENDED PARENT OR PARENTS IMMEDIATELY AFTER THE CHILD'S BIRTH;

(IV) AGREE TO COOPERATE IN ANY NECESSARY PROCEEDING TO RECOGNIZE THE INTENDED PARENT OR PARENTS AS THE LEGAL PARENT OR

PARENTS OR ANY OTHER PROCEEDING RELATED TO THE GESTATIONAL CARRIER AGREEMENT; AND

(V) AGREE TO ALL OTHER TERMS CONSISTENT WITH THIS SUBTITLE AND AS MUTUALLY NEGOTIATED AND AGREED ON BY THE PARTIES; AND

(2) THAT THE INTENDED PARENT OR PARENTS SHALL:

(I) ACCEPT LEGAL AND PHYSICAL CUSTODY OF THE CHILD IMMEDIATELY AFTER THE CHILD'S BIRTH, REGARDLESS OF THE CONDITION OF THE CHILD; AND

(II) ASSUME RESPONSIBILITY FOR THE SUPPORT OF THE CHILD IMMEDIATELY AFTER THE CHILD'S BIRTH, INCLUDING PAYING FOR ANY FUNERAL EXPENSES IF THERE IS A STILLBIRTH, PRETERM BIRTH, OR ANY OTHER BIRTH ISSUE THAT RESULTS IN THE CHILD'S DEATH.

(C) (1) THE GESTATIONAL CARRIER AGREEMENT SHALL REQUIRE THE INTENDED PARENT OR PARENTS TO PAY ALL REASONABLE MEDICAL AND ANCILLARY EXPENSES THAT ARE AGREED TO IN THE AGREEMENT.

(2) (I) ANCILLARY EXPENSES INCLUDE EXPENSES FOR MATERNITY CLOTHES, LEGAL AND COUNSELING EXPENSES, ACTUAL LOST WAGES, CHILD CARE EXPENSES, HOUSEKEEPING EXPENSES, INTANGIBLE EXPENSES ASSOCIATED WITH RISK, INCONVENIENCE, FORBEARANCE, OR RESTRICTION FROM USUAL ACTIVITIES, POSTPARTUM RECOVERY EXPENSES, AND TRAVEL EXPENSES, IF THE EXPENSES ARE INCURRED DURING, AND ARE DIRECTLY RELATED TO, THE GESTATIONAL CARRIER AGREEMENT, PREGNANCY, OR DELIVERY.

(II) ANCILLARY EXPENSES ARE PRESUMED TO BE REASONABLE IF THEY ARE SPECIFIED IN A GESTATIONAL CARRIER AGREEMENT THAT WAS NEGOTIATED BY INDEPENDENT ATTORNEYS.

(3) PAYMENTS TO THE GESTATIONAL CARRIER OTHER THAN REASONABLE MEDICAL AND ANCILLARY EXPENSES MAY NOT BE INCLUDED IN THE GESTATIONAL CARRIER AGREEMENT.

(4) (I) 1. THE INTENDED PARENT OR PARENTS SHALL DEPOSIT 75% OF THE TOTAL AMOUNT OF ESTIMATED REASONABLE MEDICAL AND ANCILLARY EXPENSES ON THE EXECUTION OF THE GESTATIONAL CARRIER AGREEMENT WITH AN INDEPENDENT, BONDED ESCROW AGENT OR WITH A

LICENSED ATTORNEY WHO IS SERVING IN THE CAPACITY OF AN INDEPENDENT ESCROW AGENT.

2. THE ESCROW AGENT SHALL MAKE DISTRIBUTIONS IN ACCORDANCE WITH THE TERMS OF THE GESTATIONAL CARRIER AGREEMENT, BUT NOT ON THE DIRECTION OF ANY SINGLE PARTY TO THE GESTATIONAL CARRIER AGREEMENT.

(II) THE REMAINING 25% OF THE TOTAL AMOUNT OF ESTIMATED REASONABLE MEDICAL AND ANCILLARY EXPENSES SHALL BE DEPOSITED IN ACCORDANCE WITH THE TERMS OF THE GESTATIONAL CARRIER AGREEMENT.

5-908.

(A) (1) (I) THE DISSOLUTION OF A GESTATIONAL CARRIER'S MARRIAGE, CIVIL UNION, OR OTHER LEGAL DOMESTIC PARTNERSHIP DOES NOT AFFECT A GESTATIONAL CARRIER AGREEMENT.

(II) AFTER A DIVORCE, LEGAL SEPARATION, OR DISSOLUTION, THE GESTATIONAL CARRIER'S FORMER SPOUSE OR PARTNER MAY BE REMOVED FROM THE GESTATIONAL CARRIER AGREEMENT BY ADDENDUM.

(2) (I) IF THE RELATIONSHIP OF THE INTENDED PARENTS DISSOLVES AFTER THE EMBRYO TRANSFER:

1. THE DISSOLUTION DOES NOT AFFECT THE GESTATIONAL CARRIER AGREEMENT;

2. BOTH INTENDED PARENTS SHALL BE THE PARENTS OF THE RESULTING CHILD AND SHALL HAVE ALL COROLLARY RIGHTS AND OBLIGATIONS WITH RESPECT TO THE CHILD; AND

3. BOTH INTENDED PARENTS SHALL REMAIN BOUND BY THE TERMS OF THE GESTATIONAL CARRIER AGREEMENT.

(II) 1. IF THE RELATIONSHIP OF THE INTENDED PARENTS DISSOLVES BEFORE THE EMBRYO TRANSFER, THE EMBRYO TRANSFER MAY NOT OCCUR UNLESS OTHERWISE AGREED TO IN WRITING BY BOTH INTENDED PARENTS.

2. IF AN UNAUTHORIZED EMBRYO TRANSFER OCCURS:

A. BOTH INTENDED PARENTS SHALL BE THE PARENTS OF THE RESULTING CHILD WITH ALL COROLLARY RIGHTS AND OBLIGATIONS WITH RESPECT TO THE CHILD; AND

B. BOTH INTENDED PARENTS SHALL REMAIN BOUND BY THE TERMS OF THE GESTATIONAL CARRIER AGREEMENT.

(B) (1) (I) AFTER THE EXECUTION OF A GESTATIONAL CARRIER AGREEMENT, IF A GESTATIONAL CARRIER ENTERS INTO A NEW MARRIAGE, CIVIL UNION, OR OTHER LEGAL DOMESTIC PARTNERSHIP, THE NEW SPOUSE OR PARTNER IS NOT A PARENT OF THE CHILD AND SHALL HAVE NO RIGHTS WITH RESPECT TO THE CHILD.

(II) THE NEW SPOUSE OR PARTNER MAY EXECUTE AN ADDENDUM TO THE GESTATIONAL CARRIER AGREEMENT THAT MAY ADD THE NEW SPOUSE OR PARTNER AS A PARTY WITHOUT ANY RIGHTS TO THE CHILD.

(2) AFTER THE EXECUTION OF A GESTATIONAL CARRIER AGREEMENT, IF AN INTENDED PARENT ENTERS INTO A NEW MARRIAGE, CIVIL UNION, OR OTHER LEGAL DOMESTIC PARTNERSHIP, THE NEW SPOUSE OR PARTNER MAY BE ADDED AS A PARTY TO THE GESTATIONAL CARRIER AGREEMENT BY ADDENDUM OR, AS PROVIDED BY LAW, THE NEW SPOUSE OR PARTNER MAY PETITION THE COURT FOR A STEPPARENT OR SECOND PARENT ADOPTION AFTER THE BIRTH OF THE CHILD.

(C) (1) IF AN INTENDED PARENT DIES AFTER AN EMBRYO TRANSFER, THE SURVIVING SPOUSE OR PARTNER OF THE INTENDED PARENT SHALL ASSUME ALL OBLIGATIONS WITH RESPECT TO THE GESTATIONAL CARRIER AGREEMENT AND THE DECEDENT AND THE SURVIVING SPOUSE OR PARTNER SHALL BE CONSIDERED THE PARENTS OF THE RESULTING CHILD.

(2) EXCEPT AS OTHERWISE PROVIDED IN § 1-205 OR § 3-107 OF THE ESTATES AND TRUSTS ARTICLE OR § 20-111 OF THE HEALTH - GENERAL ARTICLE, IF AN INTENDED PARENT DIES BEFORE THE EMBRYO TRANSFER, THE DECEDENT IS NOT A PARENT OF THE RESULTING CHILD.

5-909.

(A) AN INTENDED PARENT MAY REVOKE CONSENT TO A GESTATIONAL CARRIER AGREEMENT.

(B) A REVOCATION OF CONSENT SHALL BE:

- (1) IN WRITING;**
- (2) WITHIN A REASONABLE TIME BEFORE THE EMBRYO TRANSFER; AND**
- (3) DELIVERED TO ALL PARTIES TO THE GESTATIONAL CARRIER AGREEMENT AND TO THE MEDICAL PRACTICE THAT PERFORMS THE MEDICAL PROCEDURES RELATED TO THE COLLABORATIVE REPRODUCTION BY CERTIFIED MAIL OR BY HAND DELIVERY WITH RECEIPT ACKNOWLEDGED BY THE OTHER PARTIES AND THE MEDICAL PRACTICE OR WITH A WITNESS TO EACH HAND DELIVERY.**

(C) IF AN INTENDED PARENT REVOKES CONSENT IN A TIMELY MANNER AS PROVIDED UNDER THIS SECTION, AN EMBRYO TRANSFER MAY NOT OCCUR.

5-910.

(A) (1) A DISPUTE RELATED TO A GESTATIONAL CARRIER AGREEMENT SHALL BE RESOLVED BY THE PROCEDURES SPECIFIED IN THE GESTATIONAL CARRIER AGREEMENT.

(2) THE GESTATIONAL CARRIER AGREEMENT SHALL INCLUDE AN ALTERNATIVE DISPUTE RESOLUTION PROVISION.

(3) IF A RESOLUTION TO THE DISPUTE IS NOT POSSIBLE, A CIRCUIT COURT SHALL DETERMINE THE RESPECTIVE RIGHTS AND OBLIGATIONS OF THE PARTIES TO THE GESTATIONAL CARRIER AGREEMENT.

(B) EXCEPT AS EXPRESSLY PROVIDED IN THE GESTATIONAL CARRIER AGREEMENT, THE INTENDED PARENT OR PARENTS AND THE GESTATIONAL CARRIER SHALL BE ENTITLED TO ALL REMEDIES AVAILABLE AT LAW OR EQUITY IN ANY DISPUTE RELATED TO THE GESTATIONAL CARRIER AGREEMENT.

(C) (1) THERE IS NO SPECIFIC PERFORMANCE REMEDY AVAILABLE FOR A BREACH BY THE GESTATIONAL CARRIER OF A TERM OF A GESTATIONAL CARRIER AGREEMENT THAT REQUIRES THE GESTATIONAL CARRIER TO BE IMPREGNATED, TO TERMINATE A PREGNANCY, OR TO UNDERGO OR FAIL TO UNDERGO ANY MEDICAL PROCEDURE.

(2) SPECIFIC PERFORMANCE SHALL BE A REMEDY IF:

(I) THE GESTATIONAL CARRIER FAILS TO SURRENDER THE CHILD TO THE INTENDED PARENT OR PARENTS;

(II) THE INTENDED PARENT OR PARENTS FAIL TO TAKE CUSTODY OF THE CHILD AFTER THE COURT HAS ISSUED AN ORDER OF PARENTAGE UNDER § 5-911 OF THIS SUBTITLE; OR

(III) ANY PARTY FAILS TO COOPERATE IN A COURT PROCEEDING TO ESTABLISH THE PARENTAL RIGHTS OF AN INTENDED PARENT OR PARENTS.

5-911.

(A) A PETITION FOR PARENTAGE MAY BE FILED BY ANY PARTY TO A GESTATIONAL CARRIER AGREEMENT AT ANY TIME AFTER CONFIRMATION OF PREGNANCY, EITHER BEFORE OR AFTER THE BIRTH OF THE CHILD.

(B) A CIRCUIT COURT IN THE STATE HAS JURISDICTION OVER A PETITION FILED UNDER THIS SECTION IF THE COURT DETERMINES THAT:

(1) THE INTENDED PARENT OR THE GESTATIONAL CARRIER IS DOMICILED IN AND HAS BEEN A RESIDENT OF THE STATE FOR AT LEAST 90 DAYS;

(2) THE CHILD IS EXPECTED TO BE BORN IN THE STATE, AS DEMONSTRATED BY THE GESTATIONAL CARRIER'S PATIENT-PHYSICIAN RELATIONSHIP WITH AN OBSTETRICIAN OR OTHER OBSTETRICAL HEALTH CARE PROVIDER LICENSED IN THE STATE WHO HAS DELIVERY PRIVILEGES AT A HOSPITAL IN THE STATE WHERE THE GESTATIONAL CARRIER INTENDS TO DELIVER THE CHILD; OR

(3) THE EMBRYO TRANSFER IS TO BE PERFORMED OR HAS BEEN PERFORMED IN THE STATE.

(C) A PETITION FOR PARENTAGE SHALL INCLUDE:

(1) AN AFFIDAVIT BY THE PETITIONING PARTY'S ATTORNEY THAT THE REQUIREMENTS OF THIS SUBTITLE HAVE BEEN MET, SPECIFICALLY THE REQUIREMENTS OF §§ 5-906 AND 5-907 OF THIS SUBTITLE;

(2) AN AFFIDAVIT BY THE REPRODUCTIVE ENDOCRINOLOGIST ATTESTING TO THE FACTS PERTAINING TO THE CREATION OF THE EMBRYO AND THE EMBRYO TRANSFER;

(3) A COPY OF THE EXECUTED GESTATIONAL CARRIER AGREEMENT; AND

(4) AN AFFIDAVIT OF EACH ATTORNEY REPRESENTING A PARTY ATTESTING:

(I) TO THE IDENTITIES OF THE PARTIES;

(II) TO THE FACT THAT THE ATTORNEY DID NOT REPRESENT BOTH THE INTENDED PARENT OR PARENTS AND THE GESTATIONAL CARRIER AND HER SPOUSE OR PARTNER, IF ANY, DURING THE GESTATIONAL CARRIER AGREEMENT NEGOTIATION; AND

(III) THAT THE TERMS OF THE GESTATIONAL CARRIER AGREEMENT COMPLY WITH THE REQUIREMENTS SPECIFIED IN THIS SUBTITLE.

(D) IF THE REQUIREMENTS OF SUBSECTIONS (B) AND (C) OF THIS SECTION ARE MET, THE COURT SHALL ISSUE AN ORDER OF PARENTAGE THAT:

(1) ESTABLISHES THE PARENTAGE OF THE INTENDED PARENT OR PARENTS AS THE LEGAL PARENT OR PARENTS OF THE CHILD;

(2) ESTABLISHES THAT THE GESTATIONAL CARRIER AND HER SPOUSE OR PARTNER, IF ANY, ARE NOT THE PARENTS OF THE CHILD; AND

(3) ESTABLISHES THAT ANY GAMETE DONOR OR EMBRYO DONOR IS NOT A PARENT OF THE CHILD.

(E) UNDER AN ORDER OF PARENTAGE ISSUED UNDER THIS SECTION:

(1) EACH INTENDED PARENT IS A PARENT OF THE CHILD AND SHALL HAVE ALL COROLLARY RIGHTS AND OBLIGATIONS WITH RESPECT TO THE CHILD, REGARDLESS OF WHETHER THERE IS A GENETIC RELATIONSHIP TO THE CHILD;

(2) THE CHILD HAS ALL THE RIGHTS OF A PARENT-CHILD RELATIONSHIP WITH EACH INTENDED PARENT, INCLUDING RIGHTS OF INHERITANCE, FROM THE MOMENT OF BIRTH OF THE CHILD;

(3) THE GESTATIONAL CARRIER AND HER SPOUSE OR PARTNER, IF ANY, ARE NOT THE PARENTS OF THE CHILD AND DO NOT HAVE ANY RIGHTS OR OBLIGATIONS WITH RESPECT TO THE CHILD; AND

(4) ANY GAMETE DONOR OR EMBRYO DONOR IS NOT A PARENT OF THE CHILD AND HAS NO RIGHTS OR OBLIGATIONS WITH RESPECT TO THE CHILD.

(F) IF THE COURT ISSUES AN ORDER OF PARENTAGE UNDER THIS SECTION:

(1) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE SHALL ISSUE A BIRTH CERTIFICATE NAMING EACH INTENDED PARENT AS THE LEGAL PARENT AS PROVIDED UNDER § 5-912 OF THIS SUBTITLE; AND

(2) ALL HOSPITALS, MEDICAL FACILITIES, MEDICAL PERSONNEL, AND STATE AGENCIES SHALL RECOGNIZE EACH INTENDED PARENT AS THE CHILD'S PARENT.

(G) ON REQUEST OF AN INTENDED PARENT, THE ORDER OF PARENTAGE SHALL BE SEALED TO PROTECT THE PRIVACY OF THE CHILD AND THE PARTIES.

(H) THE STATE SHALL GIVE FULL FAITH AND CREDIT TO ANY ORDER, DETERMINATION, OR ACKNOWLEDGMENT OF PARENTAGE ISSUED IN COMPLIANCE WITH ANY OTHER STATE'S LAWS.

(I) IN THE ABSENCE OF AN ORDER OF PARENTAGE ISSUED UNDER THIS SECTION, THE PARENTAGE OF A CHILD BORN AS THE RESULT OF A GESTATIONAL CARRIER AGREEMENT SHALL BE DETERMINED AS PROVIDED BY LAW AND EQUITY.

5-912.

(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, ON RECEIPT BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE OF A CERTIFIED COPY OF AN ORDER OF PARENTAGE ISSUED UNDER § 5-911 OF THIS SUBTITLE:

(1) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE SHALL ENTER THE NAME OF EACH PARENT ON THE BIRTH CERTIFICATE IN ACCORDANCE WITH THE ORDER OF PARENTAGE; AND

(2) THE BIRTH CERTIFICATE MAY NOT NAME THE GESTATIONAL CARRIER OR HER SPOUSE OR PARTNER, IF ANY, AND MAY NOT REFERENCE THE FACT THAT THE CHILD WAS BORN BY MEANS OF A GESTATIONAL CARRIER.

(B) (1) THE PROVISIONS OF § 5-1028 OF THIS TITLE DO NOT APPLY TO THE PREPARATION OF A BIRTH CERTIFICATE UNDER THIS SUBSECTION.

(2) REGARDLESS OF WHETHER THE GESTATIONAL CARRIER IS MARRIED, THE GESTATIONAL CARRIER MAY, WITH THE CONSENT OF THE INTENDED PARENT, COMPLETE AN AFFIDAVIT OF PATERNITY IN WHICH THE GESTATIONAL CARRIER NAMES THE GENETIC FATHER AT THE HOSPITAL.

(3) ON RECEIPT OF AN AFFIDAVIT DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION, THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE SHALL ENTER THE NAME OF THE GESTATIONAL CARRIER AND THE GENETIC FATHER NAMED IN THE AFFIDAVIT OF PATERNITY ON THE BIRTH CERTIFICATE.

(4) THIS SUBSECTION DOES NOT AFFECT THE ABILITY OF AN INTENDED PARENT OR PARENTS TO OBTAIN A SUBSEQUENT ORDER OF PARENTAGE IN ACCORDANCE WITH § 5-911 OF THIS SUBTITLE NAMING THE INTENDED PARENT OR PARENTS AS THE LEGAL PARENT OR PARENTS OF THE CHILD.

5-913.

(A) THIS SECTION DOES NOT APPLY TO THE PARTICIPANTS IN COLLABORATIVE REPRODUCTION, INCLUDING A GESTATIONAL CARRIER, HER SPOUSE OR PARTNER, IF ANY, A GAMETE DONOR OR AN EMBRYO DONOR, OR AN INTENDED PARENT.

(B) A PERSON WHO HAS BEEN CONVICTED OF A CRIME INVOLVING IMPUNITY OF CHARACTER OR HONESTY, INCLUDING ANY CRIME INVOLVING FRAUD, MAY NOT BE INVOLVED IN OR PROFIT FROM, DIRECTLY OR INDIRECTLY, THE BUSINESS OF COLLABORATIVE REPRODUCTION, INCLUDING PROVIDING RECRUITING AND MATCHING SERVICES, ESCROW SERVICES, AND OTHER PROFESSIONAL SERVICES FOR INDIVIDUALS INVOLVED IN COLLABORATIVE REPRODUCTION.

(C) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 2 YEARS OR A FINE NOT EXCEEDING \$100,000 OR BOTH.

5-914.

THIS SUBTITLE MAY BE CITED AS THE MARYLAND COLLABORATIVE REPRODUCTION ACT.

SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.