

# SENATE BILL 508

D4, J1

2lr1199  
CF 2lr2979

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By: **Senator Kelley**

Introduced and read first time: February 3, 2012

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Assisted Reproduction Agreements – Court Approval, Notice, and Required**  
3 **Records**

4 FOR the purpose of authorizing intended parents, gamete donors, and a prospective  
5 gestational carrier to enter into a certain gestational agreement under certain  
6 circumstances; authorizing a gestational agreement to contain certain  
7 provisions; requiring a provider to provide each participant involved in an  
8 assisted reproduction with a certain notice containing certain information;  
9 authorizing the intended parents, gamete donors, or prospective gestational  
10 carrier to petition a circuit court to validate a gestational agreement under  
11 certain circumstances; authorizing a circuit court to validate a gestational  
12 agreement under certain circumstances; establishing that the circuit court has  
13 exclusive jurisdiction over certain matters for a certain period of time;  
14 authorizing certain parties to terminate a gestational agreement without  
15 liability in a certain manner; requiring the court to vacate an order validating a  
16 gestational agreement under certain circumstances; authorizing the court to  
17 impose sanctions or terminate a gestational agreement under certain  
18 circumstances; providing that the marriage of the gestational carrier after a  
19 gestational agreement is validated does not affect the validity of the gestational  
20 agreement; authorizing a gamete donor to be reimbursed under certain  
21 circumstances; requiring a certain notice to be filed within a certain period of  
22 time after a certain child is born; authorizing certain parties to file the notice  
23 under certain circumstances; requiring the court to issue a certain order after  
24 receiving the notice; requiring the court to order genetic testing of the child  
25 under certain circumstances; requiring a certain mental health professional to  
26 perform an initial mental health consultation that meets certain standards on  
27 each participant; requiring the mental health professional to offer certain  
28 additional counseling, perform a certain evaluation, and advise certain  
29 participants that they may request certain information; establishing certain  
30 circumstances under which it is presumed that the mental health professional  
31 offered additional counseling; requiring the mental health professional to

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 provide the provider with a certain statement; establishing that certain  
 2 information is medical information; requiring a provider to require a certain  
 3 participant who is an intended parent to sign a certain written consent;  
 4 establishing that failure to sign the written consent does not preclude a certain  
 5 finding of parentage under certain circumstances; requiring the provider to  
 6 register certain information with the Assisted Reproduction Registry developed  
 7 and maintained by the Department of Health and Mental Hygiene; authorizing  
 8 a participant to withdraw consent to participate in assisted reproduction at any  
 9 time before the transfer of gametes or embryos; establishing the parentage of a  
 10 child resulting from assisted reproduction under certain circumstances;  
 11 requiring certain consideration paid to be reasonable and negotiated in good  
 12 faith; prohibiting consideration paid to be conditioned on certain factors;  
 13 requiring the Department to develop and maintain an Assisted Reproduction  
 14 Registry; establishing that the registry consists of certain information;  
 15 authorizing the Department to disclose certain information under certain  
 16 circumstances; requiring the Department to adopt certain regulations; defining  
 17 certain terms; making the provisions of this Act severable; and generally  
 18 relating to assisted reproduction agreements.

19 BY adding to  
 20 Article – Family Law  
 21 Section 5–901 through 5–911 to be under the new subtitle “Subtitle 9. Assisted  
 22 Reproduction”  
 23 Annotated Code of Maryland  
 24 (2006 Replacement Volume and 2011 Supplement)

25 Preamble

26 WHEREAS, Maryland lacks any statutory or regulatory provisions for  
 27 protecting gestational carriers of unrelated children from commercial exploitation or  
 28 human trafficking; and

29 WHEREAS, Maryland lacks any statutory or regulatory scheme to guarantee  
 30 that all parties to a gestational agreement give informed consent; and

31 WHEREAS, Maryland lacks any statute or settled case law regarding essential  
 32 requirements of an enforceable gestational agreement; and

33 WHEREAS, Maryland lacks any statute or settled case law regarding the  
 34 categories of compensation that should be paid to a gestational carrier who is  
 35 unrelated to any child resulting from assisted reproduction; and

36 WHEREAS, Maryland lacks any statute or regulation regarding the fitness of  
 37 parties to a gestational agreement to serve as intended parents of a genetically  
 38 unrelated child; and

1 WHEREAS, Children born in Maryland as a result of assisted reproduction  
2 have no statutory or regulatory guarantee of access to their genetic history even if  
3 needed for appropriate medical treatment; now, therefore,

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

6 **Article – Family Law**

7 **Title 5. Children.**

8 **SUBTITLE 9. ASSISTED REPRODUCTION.**

9 **5-901.**

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

12 **(B) “ASSISTED REPRODUCTION” MEANS A METHOD OF CAUSING**  
13 **PREGNANCY THROUGH MEANS OTHER THAN BY SEXUAL INTERCOURSE,**  
14 **INCLUDING:**

15 **(1) INTRAUTERINE INSEMINATION;**

16 **(2) DONATION OF EGGS;**

17 **(3) DONATION OF EMBRYOS;**

18 **(4) IN-VITRO FERTILIZATION AND TRANSFER OF EMBRYOS; AND**

19 **(5) INTRACYTOPLASMIC SPERM INJECTION.**

20 **(C) “COLLABORATIVE REPRODUCTION” MEANS ANY ASSISTED**  
21 **REPRODUCTION IN WHICH AN INDIVIDUAL OTHER THAN AN INTENDED PARENT**  
22 **PROVIDES GENETIC MATERIAL OR AGREES TO ACT AS A GESTATIONAL CARRIER.**

23 **(D) “DEPARTMENT” MEANS THE DEPARTMENT OF HEALTH AND**  
24 **MENTAL HYGIENE.**

25 **(E) (1) “DONOR” MEANS AN INDIVIDUAL WHO DONATES EGGS OR**  
26 **SPERM USED FOR ASSISTED REPRODUCTION.**

27 **(2) “DONOR” DOES NOT INCLUDE AN INTENDED PARENT WHO**  
28 **PROVIDES GAMETES USED FOR ASSISTED REPRODUCTION.**

1           **(F) “EMBRYO” MEANS A CELL OR GROUP OF CELLS CONTAINING A**  
2 **DIPLOID COMPLEMENT OF CHROMOSOMES THAT HAS THE POTENTIAL TO**  
3 **DEVELOP INTO A LIVE BORN HUMAN BEING IF TRANSFERRED INTO THE BODY OF**  
4 **A WOMAN UNDER CONDITIONS IN WHICH GESTATION MAY BE REASONABLY**  
5 **EXPECTED TO OCCUR.**

6           **(G) (1) “GAMETE” MEANS A CELL CONTAINING A HAPLOID**  
7 **COMPLEMENT OF DNA THAT HAS THE POTENTIAL TO FORM AN EMBRYO WHEN**  
8 **COMBINED WITH ANOTHER GAMETE.**

9           **(2) “GAMETE” INCLUDES NUCLEAR DNA FROM ONE HUMAN**  
10 **THAT HAS BEEN COMBINED WITH THE CYTOPLASM, INCLUDING CYTOPLASMIC**  
11 **DNA, OF ANOTHER HUMAN.**

12           **(H) “GESTATIONAL AGREEMENT” MEANS A CONTRACT BETWEEN**  
13 **INTENDED PARENTS AND A GESTATIONAL CARRIER INTENDED TO RESULT IN A**  
14 **LIVE BIRTH.**

15           **(I) “GESTATIONAL CARRIER” MEANS AN ADULT WOMAN WHO IS NOT AN**  
16 **INTENDED PARENT, IS NOT GENETICALLY RELATED TO THE RESULTING CHILD,**  
17 **AND WHO ENTERS INTO A GESTATIONAL AGREEMENT TO BEAR A CHILD.**

18           **(J) “INTENDED PARENT” MEANS AN INDIVIDUAL WHO INTENDS TO BE**  
19 **LEGALLY BOUND AS THE PARENT OF A CHILD RESULTING FROM ASSISTED OR**  
20 **COLLABORATIVE REPRODUCTION.**

21           **(K) “MENTAL HEALTH PROFESSIONAL” MEANS AN INDIVIDUAL WHO:**

22                   **(1) HOLDS A MASTER’S OR DOCTORAL DEGREE IN PSYCHIATRY,**  
23 **PSYCHOLOGY, COUNSELING, SOCIAL WORK, PSYCHIATRIC NURSING, OR**  
24 **MARRIAGE AND FAMILY THERAPY;**

25                   **(2) IS LICENSED UNDER TITLE 8, TITLE 14, TITLE 17, TITLE 18,**  
26 **OR TITLE 19 OF THE HEALTH OCCUPATIONS ARTICLE; AND**

27                   **(3) HAS TRAINING IN REPRODUCTIVE PHYSIOLOGY, INFERTILITY,**  
28 **OR COLLABORATIVE REPRODUCTION.**

29           **(L) “PARTICIPANT” MEANS AN INDIVIDUAL WHO IS AN INTENDED**  
30 **PARENT, THE SPOUSE OF AN INTENDED PARENT, A GAMETE DONOR, OR A**  
31 **GESTATIONAL CARRIER.**

1           **(M) “PATIENT” MEANS AN INDIVIDUAL USING ASSISTED REPRODUCTIVE**  
2 **TECHNOLOGY UNDER THE DIRECTION OF A PROVIDER, INCLUDING AN**  
3 **INTENDED PARENT, GAMETE DONOR, OR GESTATIONAL CARRIER.**

4           **(N) “PROVIDER” MEANS A PERSON WHO PROVIDES ASSISTED**  
5 **REPRODUCTION SERVICES, INCLUDING MEDICAL, PSYCHOLOGICAL, OR**  
6 **COUNSELING SERVICES.**

7           **(O) “REGISTRY” MEANS THE ASSISTED REPRODUCTION REGISTRY**  
8 **DEVELOPED UNDER § 5-911 OF THIS SUBTITLE.**

9           **(P) “RETRIEVAL” MEANS THE REMOVAL AND RETENTION OF EGGS OR**  
10 **SPERM FROM A GAMETE DONOR.**

11           **(Q) “TRANSFER” MEANS THE PLACEMENT OF AN EMBRYO OR GAMETE**  
12 **INTO THE BODY OF A WOMAN WITH THE INTENT TO ACHIEVE PREGNANCY AND A**  
13 **LIVE BIRTH.**

14 **5-902.**

15           **(A) INTENDED PARENTS, GAMETE DONORS, AND A PROSPECTIVE**  
16 **GESTATIONAL CARRIER MAY ENTER INTO A GESTATIONAL AGREEMENT**  
17 **INTENDED TO RESULT IN THE BIRTH OF A CHILD IF:**

18                   **(1) THE INTENDED PARENT OR PARENTS AGREE TO BECOME THE**  
19 **LEGAL PARENTS OF THE CHILD;**

20                   **(2) THE GESTATIONAL CARRIER AGREES TO PREGNANCY BY**  
21 **ASSISTED REPRODUCTION; AND**

22                   **(3) THE GESTATIONAL CARRIER, GAMETE DONORS, AND THE**  
23 **GESTATIONAL CARRIER’S SPOUSE, IF ANY, AGREE TO RELINQUISH ALL RIGHTS**  
24 **AND DUTIES AS PARENTS OF ANY CHILD RESULTING FROM THE ASSISTED**  
25 **REPRODUCTION.**

26           **(B) A GESTATIONAL AGREEMENT ENTERED INTO UNDER SUBSECTION**  
27 **(A) OF THIS SECTION:**

28                   **(1) MAY PROVIDE FOR PAYMENT OF CONSIDERATION TO THE**  
29 **GESTATIONAL CARRIER OR GAMETE DONORS; AND**

1           **(2) MAY NOT LIMIT THE RIGHT OF THE GESTATIONAL CARRIER TO**  
2 **MAKE DECISIONS TO SAFEGUARD HER HEALTH OR THE HEALTH OF THE EMBRYO**  
3 **OR FETUS.**

4 **5-903.**

5           **(A) (1) THE INTENDED PARENTS, GAMETE DONORS, OR PROSPECTIVE**  
6 **GESTATIONAL CARRIER MAY PETITION A CIRCUIT COURT FOR THE COUNTY IN**  
7 **WHICH A PARTY TO THE GESTATIONAL AGREEMENT LIVES TO VALIDATE THE**  
8 **AGREEMENT IF:**

9                   **(I) AN INTENDED PARENT, GAMETE DONOR, OR THE**  
10 **PROSPECTIVE GESTATIONAL CARRIER HAVE BEEN RESIDENTS OF THE STATE**  
11 **FOR AT LEAST 90 DAYS; AND**

12                   **(II) THE PROSPECTIVE GESTATIONAL CARRIER'S SPOUSE, IF**  
13 **ANY, IS JOINED IN THE PROCEEDING.**

14           **(2) A COPY OF THE GESTATIONAL AGREEMENT SHALL BE**  
15 **INCLUDED WITH A PETITION FILED UNDER PARAGRAPH (1) OF THIS**  
16 **SUBSECTION.**

17           **(3) A GESTATIONAL AGREEMENT THAT IS NOT VALIDATED UNDER**  
18 **SUBSECTION (B) OF THIS SECTION IS UNENFORCEABLE.**

19           **(B) A CIRCUIT COURT MAY ISSUE AN ORDER VALIDATING A**  
20 **GESTATIONAL AGREEMENT AND DECLARING THAT AN INTENDED PARENT**  
21 **LISTED IN THE GESTATIONAL AGREEMENT WILL BE THE LEGAL PARENT OF THE**  
22 **CHILD RESULTING FROM THE ASSISTED REPRODUCTION IF THE COURT FINDS:**

23                   **(1) ALL PARTIES HAVE VOLUNTARILY ENTERED INTO THE**  
24 **GESTATIONAL AGREEMENT AND UNDERSTAND THE TERMS OF THE**  
25 **GESTATIONAL AGREEMENT;**

26                   **(2) THE CONSIDERATION, IF ANY, PAID TO THE PROSPECTIVE**  
27 **GESTATIONAL CARRIER AND GAMETE DONORS IS REASONABLE;**

28                   **(3) THE PARTIES HAVE PROVIDED FOR REASONABLE HEALTH**  
29 **CARE EXPENSES ASSOCIATED WITH THE ASSISTED REPRODUCTION UNTIL THE**  
30 **BIRTH OF THE CHILD, INCLUDING AN AGREEMENT AS TO THE PAYMENT OF**  
31 **THOSE EXPENSES IF THE GESTATIONAL AGREEMENT IS TERMINATED;**

1           **(4) UNLESS WAIVED BY THE COURT, THE INTENDED PARENTS**  
2 **MEET THE STANDARDS OF SUITABILITY APPLIED TO ADOPTIVE PARENTS, AS**  
3 **DETERMINED BY THE LOCAL DEPARTMENT; AND**

4           **(5) THE REQUIREMENTS OF THIS SUBTITLE HAVE BEEN MET.**

5           **(C) A CIRCUIT COURT HEARING A PETITION UNDER SUBSECTION (A) OF**  
6 **THIS SECTION HAS EXCLUSIVE, CONTINUING JURISDICTION OVER ALL MATTERS**  
7 **ARISING OUT OF THE GESTATIONAL AGREEMENT UNTIL A CHILD BORN AS A**  
8 **RESULT OF THE ASSISTED REPRODUCTION THAT IS THE SUBJECT OF THE**  
9 **GESTATIONAL AGREEMENT REACHES 180 DAYS OF AGE.**

10          **(D) (1) AFTER AN ORDER VALIDATING A GESTATIONAL AGREEMENT**  
11 **IS ISSUED UNDER SUBSECTION (B) OF THIS SECTION BUT BEFORE THE**  
12 **PROSPECTIVE GESTATIONAL CARRIER BECOMES PREGNANT BY ASSISTED**  
13 **REPRODUCTION, THE INTENDED PARENTS, THE GAMETE DONORS, THE**  
14 **PROSPECTIVE GESTATIONAL CARRIER, OR THE PROSPECTIVE GESTATIONAL**  
15 **CARRIER'S SPOUSE, IF ANY, MAY TERMINATE THE GESTATIONAL AGREEMENT**  
16 **WITHOUT LIABILITY BY:**

17                   **(I) FILING NOTICE OF THE TERMINATION WITH THE COURT;**  
18 **AND**

19                   **(II) PROVIDING NOTICE OF THE TERMINATION TO ALL**  
20 **OTHER PARTIES TO THE GESTATIONAL AGREEMENT.**

21           **(2) ON RECEIPT OF A NOTICE OF TERMINATION UNDER**  
22 **PARAGRAPH (1)(I) OF THIS SUBSECTION, THE COURT SHALL VACATE THE**  
23 **ORDER VALIDATING THE GESTATIONAL AGREEMENT.**

24           **(3) THE COURT MAY IMPOSE SANCTIONS ON AN INDIVIDUAL WHO**  
25 **DOES NOT FILE NOTICE OF THE TERMINATION WITH THE COURT.**

26           **(4) ON ITS OWN MOTION, THE COURT MAY TERMINATE A**  
27 **GESTATIONAL AGREEMENT FOR GOOD CAUSE.**

28          **(E) IF THE GESTATIONAL CARRIER MARRIES AFTER THE COURT ISSUES**  
29 **AN ORDER VALIDATING A GESTATIONAL AGREEMENT UNDER SUBSECTION (B)**  
30 **OF THIS SECTION:**

31           **(1) THE MARRIAGE DOES NOT AFFECT THE VALIDITY OF THE**  
32 **GESTATIONAL AGREEMENT;**

1           **(2) THE GESTATIONAL CARRIER'S SPOUSE IS NOT REQUIRED TO**  
2 **CONSENT TO THE GESTATIONAL AGREEMENT; AND**

3           **(3) THE GESTATIONAL CARRIER'S SPOUSE IS NOT A PRESUMED**  
4 **FATHER OF A CHILD BORN AS A RESULT OF ASSISTED REPRODUCTION THAT IS**  
5 **THE SUBJECT OF THE GESTATIONAL AGREEMENT.**

6           **(F) A GAMETE DONOR MAY BE REIMBURSED FOR ECONOMIC LOSSES**  
7 **RESULTING FROM THE RETRIEVAL OR STORAGE OF GAMETES OR EMBRYOS IF:**

8           **(1) THE LOSSES OCCURRED AFTER THE GAMETE DONOR**  
9 **ENTERED INTO A GESTATIONAL AGREEMENT VALIDATED UNDER SUBSECTION**  
10 **(B) OF THIS SECTION; OR**

11           **(2) THE LOSSES OCCURRED BEFORE THE GAMETE DONOR**  
12 **ENTERED INTO A GESTATIONAL AGREEMENT VALIDATED UNDER SUBSECTION**  
13 **(B) OF THIS SECTION BUT THE GESTATIONAL AGREEMENT WAS VALIDATED**  
14 **BEFORE THE GAMETES OR EMBRYOS WERE USED IN ASSISTED REPRODUCTION.**

15           **(G) (1) (I) WITHIN 30 DAYS AFTER THE BIRTH OF A CHILD**  
16 **RESULTING FROM THE ASSISTED REPRODUCTION THAT IS THE SUBJECT OF THE**  
17 **GESTATIONAL AGREEMENT, THE INTENDED PARENTS SHALL FILE NOTICE OF**  
18 **THE BIRTH WITH THE COURT.**

19           **(II) IF THE INTENDED PARENTS DO NOT FILE THE NOTICE**  
20 **AS REQUIRED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE**  
21 **GESTATIONAL CARRIER OR THE DEPARTMENT MAY FILE THE NOTICE.**

22           **(2) ON RECEIPT OF A NOTICE UNDER PARAGRAPH (1) OF THIS**  
23 **SUBSECTION, THE COURT SHALL ISSUE AN ORDER:**

24           **(I) AFFIRMING THAT THE INTENDED PARENTS ARE THE**  
25 **LEGAL PARENTS OF THE CHILD;**

26           **(II) DIRECTING THE DIVISION OF VITAL RECORDS TO ISSUE**  
27 **A BIRTH CERTIFICATE NAMING THE INTENDED PARENTS AS THE PARENTS OF**  
28 **THE CHILD; AND**

29           **(III) IF NECESSARY, ORDERING THE CHILD TO BE**  
30 **SURRENDERED TO THE INTENDED PARENTS.**

31           **(3) IF A PARTY ALLEGES THAT A CHILD BORN TO THE**  
32 **GESTATIONAL CARRIER IS NOT THE RESULT OF THE ASSISTED REPRODUCTION**



1 THAT IS THE SUBJECT OF THE GESTATIONAL AGREEMENT, THE COURT SHALL  
2 ORDER GENETIC TESTING TO DETERMINE THE PARENTAGE OF THE CHILD.

3 **5-904.**

4 (A) BEFORE ASSISTED REPRODUCTION MAY BEGIN, THE PROVIDER  
5 SHALL GIVE WRITTEN AND ORAL NOTICE TO EACH PARTICIPANT THAT  
6 INCLUDES:

7 (1) A STATEMENT THAT THE PATIENT HAS THE RIGHT TO  
8 WITHHOLD OR WITHDRAW CONSENT AT ANY TIME BEFORE THE TRANSFER OF  
9 GAMETES OR EMBRYOS WITHOUT AFFECTING THE RIGHT TO FUTURE CARE OR  
10 TREATMENT AND WITHOUT RISKING THE LOSS OR WITHDRAWAL OF ANY  
11 PROGRAM BENEFITS TO WHICH THE PATIENT WOULD OTHERWISE BE ENTITLED;

12 (2) A STATEMENT THAT THE DONOR'S RIGHT TO WITHHOLD OR  
13 WITHDRAW CONSENT TO FERTILIZATION TERMINATES WHEN THE GAMETE IS  
14 RETRIEVED FROM THE DONOR;

15 (3) A DESCRIPTION OF THE KNOWN AND POTENTIAL RISKS,  
16 CONSEQUENCES, AND BENEFITS OF THE ASSISTED REPRODUCTION, INCLUDING:

17 (I) THE INHERENT RISK OF EMBRYO LOSS DUE TO  
18 ANEUPLOIDY, FAILURE OF IMPLANTATION, OR THAWING; AND

19 (II) RISKS ASSOCIATED WITH THE USE OF HORMONES AND  
20 OTHER DRUGS, EGG RETRIEVAL, MULTIPLE PREGNANCIES, AND SELECTIVE  
21 REDUCTION;

22 (4) A STATEMENT THAT THERE MAY BE FORESEEN OR  
23 UNFORESEEN LEGAL CONSEQUENCES AND THAT IT IS ADVISABLE TO SEEK  
24 LEGAL COUNSEL;

25 (5) A DESCRIPTION OF ALTERNATIVE THERAPIES AND  
26 TREATMENTS, INCLUDING ADOPTION AND NATURAL CYCLING;

27 (6) A STATEMENT THAT LEGAL CONFIDENTIALITY PROTECTIONS  
28 APPLY AND A DESCRIPTION OF THOSE PROTECTIONS;

29 (7) A STATEMENT THAT THE PATIENT HAS ACCESS TO ALL OF THE  
30 PATIENT'S MEDICAL INFORMATION ALLOWED BY LAW AND THAT THE PATIENT  
31 MAY HAVE TO PAY A REASONABLE FEE FOR COPIES OF THE PATIENT'S MEDICAL  
32 RECORD;

1           **(8) A STATEMENT THAT AN INTENDED PARENT HAS THE RIGHT TO**  
2 **ACCESS A SUMMARY OF THE MEDICAL AND PSYCHOLOGICAL INFORMATION**  
3 **ABOUT DONORS AND GESTATIONAL CARRIERS;**

4           **(9) A STATEMENT THAT THE RELEASE OF ANY INFORMATION**  
5 **THAT IDENTIFIES A PARTICIPANT, INCLUDING IMAGES, MAY NOT OCCUR**  
6 **WITHOUT THE CONSENT OF THE PARTICIPANT;**

7           **(10) A STATEMENT THAT THE INTENDED PARENT, AND NOT THE**  
8 **CLINIC OR STORAGE FACILITY, HAS THE RIGHT TO POSSESSION AND CONTROL**  
9 **OF THE EMBRYOS;**

10           **(11) A STATEMENT OUTLINING THE RIGHTS OF POSSESSION AND**  
11 **CONTROL OF THE EMBRYOS OR GAMETES IN THE EVENT OF DISSOLUTION OF**  
12 **THE MARRIAGE OF THE INTENDED PARENTS, DEATH OF ONE OR BOTH**  
13 **INTENDED PARENTS, OR DISAGREEMENT OVER DISPOSITION;**

14           **(12) ANY POLICY OF THE PROVIDER LIMITING THE NUMBER OF**  
15 **EMBRYOS THAT MAY BE TRANSFERRED;**

16           **(13) A STATEMENT THAT NATIONAL GUIDELINES HAVE BEEN**  
17 **PUBLISHED BY THE AMERICAN SOCIETY FOR REPRODUCTIVE MEDICINE AND**  
18 **THE SOCIETY FOR ASSISTED REPRODUCTIVE TECHNOLOGIES;**

19           **(14) A STATEMENT ADVISING THE PARTICIPANTS TO DECIDE**  
20 **WHETHER THE EMBRYOS OR GAMETES MAY BE USED FOR PURPOSES OTHER**  
21 **THAN ASSISTED REPRODUCTION; AND**

22           **(15) A STATEMENT THAT GAMETE DONOR AND GESTATIONAL**  
23 **CARRIER MEDICAL AND GENETIC INFORMATION WILL BE PROVIDED TO THE**  
24 **ASSISTED REPRODUCTION REGISTRY.**

25           **(B) THE WRITTEN NOTICE PROVIDED UNDER SUBSECTION (A) OF THIS**  
26 **SECTION SHALL BE SIGNED AND DATED BY THE PROVIDER AND THE**  
27 **PARTICIPANT.**

28 **5-905.**

29           **(A) (1) BEFORE A GESTATIONAL AGREEMENT MAY BE EXECUTED AND**  
30 **BEFORE ASSISTED REPRODUCTION MAY BEGIN, A MENTAL HEALTH**  
31 **PROFESSIONAL EMPLOYED OR RETAINED BY THE PROVIDER SHALL PERFORM**

1 AN INITIAL MENTAL HEALTH CONSULTATION ON EACH PARTICIPANT KNOWN TO  
2 THE PROVIDER.

3 (2) THE CONSULTATION REQUIRED UNDER PARAGRAPH (1) OF  
4 THIS SUBSECTION SHALL BE IN ACCORDANCE WITH THE MOST RECENTLY  
5 PUBLISHED STANDARDS OF THE AMERICAN SOCIETY FOR REPRODUCTIVE  
6 MEDICINE AND THE SOCIETY FOR ASSISTED REPRODUCTIVE TECHNOLOGIES.

7 (B) DURING THE CONSULTATION, THE MENTAL HEALTH PROFESSIONAL  
8 SHALL:

9 (1) OFFER ADDITIONAL COUNSELING TO EACH PARTICIPANT;

10 (2) UNLESS THE PARTICIPANT IS AN INTENDED PARENT WHO IS A  
11 GAMETE DONOR, PERFORM A MENTAL HEALTH EVALUATION OF A PARTICIPANT  
12 WHO IS AN INTENDED PARENT OR WILL BE THE GESTATIONAL CARRIER TO  
13 DETERMINE THE PARTICIPANT'S SUITABILITY TO PARTICIPATE IN  
14 COLLABORATIVE REPRODUCTION; AND

15 (3) ADVISE A PARTICIPANT WHO IS AN INTENDED PARENT THAT  
16 THE INTENDED PARENT MAY REQUEST THE EVALUATION OF A PARTICIPANT'S  
17 SUITABILITY TO PARTICIPATE IN COLLABORATIVE REPRODUCTION PERFORMED  
18 UNDER PARAGRAPH (2) OF THIS SUBSECTION TO BE PROVIDED TO THE  
19 PROVIDER.

20 (C) IT SHALL BE PRESUMED THAT A MENTAL HEALTH PROFESSIONAL  
21 OFFERED A PARTICIPANT ADDITIONAL COUNSELING UNDER SUBSECTION (B)(1)  
22 OF THIS SECTION IF THE PARTICIPANT SIGNS A STATEMENT CONTAINING THE  
23 FOLLOWING LANGUAGE:

24 "I UNDERSTAND THAT COUNSELING IS RECOMMENDED FOR ALL  
25 PARTICIPANTS IN COLLABORATIVE REPRODUCTION AND THAT COUNSELING IS A  
26 SEPARATE PROCESS FROM ANY CONSULTATION THAT (THE PROVIDER) HAS  
27 REQUIRED ME TO COMPLETE. (THE PROVIDER) HAS GIVEN ME THE  
28 OPPORTUNITY TO MEET WITH AND RECEIVE COUNSELING FROM A MENTAL  
29 HEALTH PROFESSIONAL WITH SPECIALIZED KNOWLEDGE OF THE SOCIAL AND  
30 PSYCHOLOGICAL IMPACT ON PARTICIPANTS OF ASSISTED AND COLLABORATIVE  
31 REPRODUCTION. I UNDERSTAND THAT I MAY CHOOSE ANY MENTAL HEALTH  
32 PROFESSIONAL AND THAT I AM NOT REQUIRED TO CHOOSE ONE RECOMMENDED  
33 BY THIS TREATMENT FACILITY."

34 (D) THE MENTAL HEALTH PROFESSIONAL SHALL PROVIDE THE  
35 PROVIDER WITH A STATEMENT THAT:

1           **(1) THE MENTAL HEALTH PROFESSIONAL HAS PERFORMED AN**  
2 **INITIAL MENTAL HEALTH CONSULTATION ON EACH PARTICIPANT;**

3           **(2) IF APPLICABLE, THE INTENDED PARENTS AND GESTATIONAL**  
4 **CARRIER HAVE UNDERGONE A MENTAL HEALTH EVALUATION TO DETERMINE**  
5 **THE PARTICIPANTS' SUITABILITY TO PARTICIPATE IN COLLABORATIVE**  
6 **REPRODUCTION; AND**

7           **(3) THE MENTAL HEALTH PROFESSIONAL HAS OFFERED EACH**  
8 **PARTICIPANT THE OPPORTUNITY TO RECEIVE ADDITIONAL COUNSELING.**

9 **5-906.**

10           **INDIVIDUALLY IDENTIFIABLE INFORMATION OBTAINED OR CREATED IN**  
11 **THE COURSE OF ASSISTED REPRODUCTION TREATMENT IS MEDICAL**  
12 **INFORMATION AND IS SUBJECT TO ALL APPLICABLE CONFIDENTIALITY**  
13 **REQUIREMENTS.**

14 **5-907.**

15           **(A) BEFORE ASSISTED REPRODUCTION MAY BEGIN, THE PROVIDER**  
16 **SHALL REQUIRE A PARTICIPANT WHO IS AN INTENDED PARENT TO SIGN A**  
17 **WRITTEN CONSENT TO BE AN INTENDED PARENT, WHICH SHALL BE INCLUDED**  
18 **IN THE RECORD OF THE ASSISTED REPRODUCTION.**

19           **(B) THE REQUIREMENT IN SUBSECTION (A) OF THIS SECTION DOES NOT**  
20 **APPLY IF THE PARTICIPANT IS A GAMETE DONOR.**

21           **(C) FAILURE OF A PARTICIPANT TO SIGN THE WRITTEN CONSENT**  
22 **REQUIRED UNDER SUBSECTION (A) OF THIS SECTION DOES NOT PRECLUDE A**  
23 **FINDING OF PARENTAGE IF THE PARTICIPANT AND THE INTENDED PARENT:**

24           **(1) RESIDED TOGETHER DURING THE FIRST 2 YEARS OF THE**  
25 **CHILD'S LIFE; AND**

26           **(2) OPENLY ACKNOWLEDGED THE CHILD AS THEIR OWN.**

27 **5-908.**

28           **A PROVIDER SHALL:**

1           **(1) REGISTER THE RECORD OF EACH ASSISTED REPRODUCTION**  
2 **WITH THE ASSISTED REPRODUCTION REGISTRY, INCLUDING:**

3                   **(I) THE CONTACT ADDRESS OF EACH PARTICIPANT AND**  
4 **RESULTING CHILD; AND**

5                   **(II) MEDICAL AND GENETIC INFORMATION OF THE GAMETE**  
6 **DONORS AND THE GESTATIONAL CARRIER IF THE DONOR OR CARRIER**  
7 **CONSENTED TO THE RELEASE OF THE INFORMATION UNDER § 5-904 OF THIS**  
8 **SUBTITLE; AND**

9           **(2) MAINTAIN A RECORD OF THE DISPOSITION OF ALL GAMETES**  
10 **AND EMBRYOS ASSOCIATED WITH AN ASSISTED REPRODUCTION.**

11 **5-909.**

12           **(A) (1) A PARTICIPANT MAY WITHDRAW CONSENT TO PARTICIPATE IN**  
13 **ASSISTED REPRODUCTION AT ANY TIME BEFORE THE TRANSFER OF GAMETES**  
14 **OR EMBRYOS.**

15           **(2) A PARTICIPANT WHO WITHDRAWS CONSENT UNDER THIS**  
16 **SUBSECTION IS NOT A PARENT OF A CHILD RESULTING FROM THE ASSISTED**  
17 **REPRODUCTION.**

18           **(B) IF THE MARRIAGE OF TWO INTENDED PARENTS DISSOLVES BEFORE**  
19 **THE TRANSFER OF GAMETES OR EMBRYOS, AN INTENDED PARENT WHO IS NOT A**  
20 **GAMETE DONOR AND WHO IS THE FORMER SPOUSE OF AN INTENDED PARENT**  
21 **WHO IS A GAMETE DONOR IS NOT A PARENT OF THE CHILD RESULTING FROM**  
22 **THE ASSISTED REPRODUCTION UNLESS THE INTENDED PARENT CONSENTED**  
23 **THAT, IF ASSISTED REPRODUCTION WERE TO OCCUR AFTER THE ENTRY OF A**  
24 **JUDGMENT OF ABSOLUTE DIVORCE BY A COURT OF COMPETENT JURISDICTION,**  
25 **THE INTENDED PARENT WOULD BE A PARENT OF THE CHILD.**

26           **(C) IF A PARTICIPANT WHO CONSENTED TO BE AN INTENDED PARENT**  
27 **BY ASSISTED REPRODUCTION DIES BEFORE THE TRANSFER OF GAMETES OR**  
28 **EMBRYOS, THE PARTICIPANT IS NOT A PARENT OF A CHILD RESULTING FROM**  
29 **THE ASSISTED REPRODUCTION UNLESS THE DECEASED PARTICIPANT SIGNED A**  
30 **WRITTEN CONSENT THAT, IF THE ASSISTED REPRODUCTION WERE TO OCCUR**  
31 **AFTER THE PARTICIPANT'S DEATH, THE PARTICIPANT WOULD BE A PARENT OF**  
32 **THE CHILD RESULTING FROM THE ASSISTED REPRODUCTION.**

1           **(D) IF A CHILD RESULTING FROM ASSISTED REPRODUCTION IS BORN**  
2 **UNDER A GESTATIONAL AGREEMENT THAT IS NOT VALIDATED UNDER § 5-903**  
3 **OF THIS SUBTITLE:**

4           **(1) THE PROVISIONS OF THIS SUBTITLE RELATED TO**  
5 **DETERMINING THE PARENTS OF THE CHILD DO NOT APPLY; AND**

6           **(2) THE INDIVIDUALS DETERMINED TO BE THE PARENTS OF THE**  
7 **CHILD SHALL BE RESPONSIBLE FOR THE SUPPORT OF THE CHILD.**

8 **5-910.**

9           **(A) THE CONSIDERATION, IF ANY, PAID BY AN INTENDED PARENT OR**  
10 **PARENTS TO A GAMETE DONOR OR PROSPECTIVE GESTATIONAL CARRIER SHALL**  
11 **BE REASONABLE AND NEGOTIATED IN GOOD FAITH.**

12           **(B) CONSIDERATION PAID TO A GAMETE DONOR OR GESTATIONAL**  
13 **CARRIER MAY NOT BE CONDITIONED ON:**

14           **(1) THE ALLEGED QUALITY OR GENOME-RELATED TRAITS OF THE**  
15 **GAMETES OR EMBRYOS; OR**

16           **(2) ACTUAL GENOTYPIC OR PHENOTYPIC CHARACTERISTICS OF**  
17 **THE GAMETE DONOR OR OF THE CHILD.**

18 **5-911.**

19           **(A) THE DEPARTMENT SHALL DEVELOP AND MAINTAIN AN ASSISTED**  
20 **REPRODUCTION REGISTRY.**

21           **(B) THE REGISTRY SHALL CONSIST OF INFORMATION PROVIDED BY**  
22 **PROVIDERS UNDER § 5-908 OF THIS SUBTITLE.**

23           **(C) THE DEPARTMENT MAY DISCLOSE:**

24           **(1) MEDICAL AND GENETIC INFORMATION OF A GAMETE DONOR**  
25 **OR GESTATIONAL CARRIER:**

26           **(i) ON REQUEST AND FOR GOOD CAUSE TO A CHILD BORN**  
27 **AS A RESULT OF ASSISTED REPRODUCTION IN WHICH THE GAMETE DONOR OR**  
28 **GESTATIONAL CARRIER WAS A PARTICIPANT; AND**

1                   **(II) IF THE GAMETE DONOR OR GESTATIONAL CARRIER**  
2 **CONSENTS TO THE DISCLOSURE; AND**

3                   **(2) AGGREGATE, NONIDENTIFIABLE DATA FOR THE PURPOSE OF**  
4 **SHARING INFORMATION WITH GOVERNMENT AGENCIES AND RESEARCHERS TO**  
5 **STUDY THE PRACTICES OF ASSISTED REPRODUCTION.**

6                   **(D) THE DEPARTMENT SHALL ADOPT REGULATIONS GOVERNING THE**  
7 **DISCLOSURE OF MEDICAL AND GENETIC INFORMATION TO A CHILD BORN AS A**  
8 **RESULT OF ASSISTED REPRODUCTION.**

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

15                   SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
16 October 1, 2012.