

**SB0208/678076/1**

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL 208  
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 13, after “agreement;” insert “requiring a gestational carrier agreement to be approved by a circuit court prior to the embryo transfer; requiring the parties to a gestational carrier agreement to jointly petition for approval of the agreement; establishing the jurisdiction of the circuit court; specifying the contents of the petition; requiring the court to hold a hearing on the petition within a certain period of time; requiring the court to hold separate hearings under certain circumstances; requiring the petitioning parties to be present at the hearing; requiring the court to issue an order approving the gestational carrier agreement if the court makes certain findings; requiring a certain hearing to be closed to the public; establishing that certain records are not subject to public inspection except under certain circumstances;”; and in line 18, after “parent” insert “or gestational carrier”.

On page 2, in line 1, after “penalties;” insert “requiring a certain person to register with the Department of Health and Mental Hygiene under certain circumstances; specifying the information that a person required to register must provide to the Department; requiring the Department to publish certain information on its Web site; authorizing the Department to adopt certain regulations;”; and in line 6, strike “5-914” and substitute “5-916”.

AMENDMENT NO. 2

On page 5, in line 21, strike “AND”; and in line 23, after “SUBTITLE” insert “;  
AND

**(3) THE AGREEMENT IS APPROVED BY A COURT UNDER § 5-908 OF THIS SUBTITLE**”.

(Over)

On page 7, in line 4, strike “AND”; and in line 8, after “NUMBERS” insert “; AND”

**(IV) BE APPROVED BY A CIRCUIT COURT JUDGE PRIOR TO THE EMBRYO TRANSFER**”.

On page 9, after line 11, insert:

**“(A) BEFORE AN EMBRYO TRANSFER, THE PARTIES TO A GESTATIONAL CARRIER AGREEMENT SHALL JOINTLY PETITION THE CIRCUIT COURT FOR APPROVAL OF THE GESTATIONAL CARRIER AGREEMENT.**

**(B) A PETITION UNDER THIS SECTION MAY BE FILED IN THE CIRCUIT COURT FOR THE COUNTY IN WHICH:**

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

**(2) THE CHILD IS EXPECTED TO BE BORN, 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.**

**(C) A PETITION FILED UNDER THIS SECTION SHALL INCLUDE:**

**(1) AN AFFIDAVIT BY EACH ATTORNEY REPRESENTING A PARTY TO THE GESTATIONAL CARRIER AGREEMENT ATTESTING:**

(I) THAT THE REQUIREMENTS OF THIS SUBTITLE HAVE BEEN MET, INCLUDING A SPECIFIC ATTESTATION THAT THE REQUIREMENTS OF §§ 5-906 AND 5-907 OF THIS SUBTITLE HAVE BEEN MET;

(II) TO THE IDENTITIES OF THE PARTIES;

(III) 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 PREPARATION, COUNSELING, OR NEGOTIATION OF THE GESTATIONAL CARRIER AGREEMENT;  
AND

(IV) THAT THE TERMS OF THE GESTATIONAL CARRIER AGREEMENT COMPLY WITH THE REQUIREMENTS SPECIFIED IN THIS SUBTITLE;  
AND

(2) A COPY OF THE EXECUTED GESTATIONAL CARRIER AGREEMENT.

(D) (1) THE COURT SHALL HOLD A HEARING WITHIN 60 DAYS AFTER THE FILING OF A PETITION UNDER THIS SECTION.

(2) IF A PARTY TO THE PETITION REQUESTS SEPARATE HEARINGS, THE COURT SHALL HOLD SEPARATE HEARINGS ON THE PETITION FOR APPROVAL OF THE GESTATIONAL CARRIER AGREEMENT.

(3) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE INTENDED PARENT OR PARENTS, THE GESTATIONAL CARRIER, AND THE

(Over)

GESTATIONAL CARRIER'S SPOUSE OR PARTNER, IF ANY, SHALL BE PRESENT AT A HEARING UNDER THIS SECTION.

(II) IF A PARTY TO THE PETITION REQUESTS A SEPARATE HEARING UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE PARTIES TO THE GESTATIONAL CARRIER AGREEMENT SHALL BE PRESENT AT THE SEPARATE HEARING APPROPRIATE FOR THAT PARTY.

(E) THE COURT SHALL ISSUE AN ORDER APPROVING A GESTATIONAL CARRIER AGREEMENT IF THE COURT MAKES THE FOLLOWING FINDINGS:

(1) ALL PARTIES TO THE GESTATIONAL CARRIER AGREEMENT HAVE VOLUNTARILY ENTERED INTO THE AGREEMENT AND UNDERSTAND ITS TERMS;

(2) THE EVALUATIONS REQUIRED UNDER § 5-906 OF THIS SUBTITLE HAVE BEEN CONDUCTED AND THE PARTIES SATISFY THE REQUIREMENTS OF § 5-906 OF THIS SUBTITLE;

(3) THE GESTATIONAL CARRIER AGREEMENT SATISFIES THE REQUIREMENTS OF § 5-907 OF THIS SUBTITLE;

(4) ADEQUATE PROVISION HAS BEEN MADE FOR ALL REASONABLE MEDICAL AND ANCILLARY EXPENSES THAT ARE AGREED TO IN THE GESTATIONAL CARRIER AGREEMENT UNTIL THE BIRTH OF THE CHILD, INCLUDING RESPONSIBILITY FOR THOSE EXPENSES IF THE AGREEMENT IS TERMINATED; AND

**(5) THE COMPENSATION, IF ANY, PAID TO THE PROSPECTIVE GESTATIONAL CARRIER IS REASONABLE.**

**(F) (1) A HEARING UNDER THIS SECTION SHALL BE CLOSED TO THE PUBLIC.**

**(2) RECORDS OF A HEARING UNDER THIS SECTION ARE NOT SUBJECT TO PUBLIC INSPECTION UNDER THE MARYLAND PUBLIC INFORMATION ACT UNLESS:**

**(I) ALL PARTIES TO THE PETITION CONSENT TO THE INSPECTION; OR**

**(II) A COURT ORDER IS ISSUED ON A SHOWING OF GOOD CAUSE BY THE PARTY PETITIONING FOR THE INSPECTION.**

**5-909.”.**

On page 10, in line 32, strike “**5-909.**” and substitute “**5-910.**”.

On page 11, in line 13, strike “**5-910.**” and substitute “**5-911.**”.

On page 12, in line 5, strike “**§ 5-911**” and substitute “**§ 5-912**”; in line 9, strike “**5-911.**” and substitute “**5-912.**”; and strike beginning with “**BY**” in line 10 down through “**EITHER**” in line 12 and substitute “**AT THE TIME A PETITION FOR APPROVAL OF A GESTATIONAL CARRIER AGREEMENT IS FILED UNDER § 5-908 OF THIS SUBTITLE OR AT ANY OTHER TIME**”.

On page 14, in line 10, strike “§ 5-912” and substitute “§ 5-913”; in line 23, strike “5-912.” and substitute “5-913.”; and in line 26, strike “§ 5-911” and substitute “§ 5-912”.

On page 15, in line 16, strike “§ 5-911” and substitute “§ 5-912”; and in lines 19 and 34, strike “5-913.” and “5-914.”, respectively, and substitute “5-914.” and “5-915.”, respectively.

AMENDMENT NO. 3

On page 8, in line 5, strike “AND”; and in line 13, after “DEATH” insert “;AND”

**(3) THAT THE GESTATIONAL CARRIER MAY NOT BE REQUIRED TO TERMINATE A PREGNANCY RESULTING FROM THE COLLABORATIVE REPRODUCTION WITHOUT THE CONSENT OF THE GESTATIONAL CARRIER**”.

On page 11, in line 22, after “(B)” insert “(1)”; in line 23, after “AGREEMENT” insert “AND AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION”; and after line 25, insert:

**“(2) A GESTATIONAL CARRIER MAY NOT BE LIABLE FOR CIVIL DAMAGES FOR BREACH OF CONTRACT FOR CARRYING A PREGNANCY TO TERM.”**

AMENDMENT NO. 4

On page 10 in line 33, and on page 11 in line 11, in each instance, after “PARENT” insert “OR GESTATIONAL CARRIER”.

AMENDMENT NO. 5

On page 15, after line 34, insert:

**“(A) IN THIS SECTION, “DEPARTMENT” MEANS THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE.**

**(B) THIS SECTION DOES NOT APPLY TO AN ATTORNEY:**

**(1) PROVIDING LEGAL ADVICE TO AN INTENDED PARENT OR GESTATIONAL CARRIER; OR**

**(2) PREPARING A GESTATIONAL CARRIER AGREEMENT.**

**(C) A PERSON RECEIVING COMPENSATION FOR RECRUITING OR PROCURING A GESTATIONAL CARRIER OR OTHERWISE ARRANGING OR INDUCING AN INTENDED PARENT AND A GESTATIONAL CARRIER TO ENTER INTO A GESTATIONAL CARRIER AGREEMENT IN THE STATE SHALL REGISTER WITH THE DEPARTMENT.**

**(D) A PERSON REQUIRED TO REGISTER UNDER SUBSECTION (C) OF THIS SECTION SHALL PROVIDE TO THE DEPARTMENT:**

**(1) THE PERSON'S NAME;**

**(2) THE NAME OF THE PERSON'S COMPANY OR FIRM, IF ANY;**

**(3) THE PERSON'S ADDRESS; AND**

**(4) ANY OTHER INFORMATION REQUIRED BY THE DEPARTMENT.**

**(E) THE DEPARTMENT SHALL PUBLISH THE REGISTRATION INFORMATION PROVIDED UNDER SUBSECTION (D) OF THIS SECTION ON THE DEPARTMENT'S WEB SITE.**

**(F) THE DEPARTMENT MAY ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.**

**5-916.”.**