

HOUSE BILL 968

D4

6lr3278

By: **Delegate Dumais**

Introduced and read first time: February 10, 2016

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Family Law – Collaborative Reproduction – Orders of Parentage**

3 FOR the purpose of authorizing a party to a gestational carrier agreement to file a petition
4 for parentage under certain circumstances; establishing the purposes of this Act;
5 establishing the jurisdiction of a circuit court of the State over a petition for
6 parentage under certain circumstances; specifying the required contents of a petition
7 for parentage; requiring a court to issue an order of parentage under certain
8 circumstances; establishing the legal effect of an order of parentage; requiring
9 certain persons, agencies, and facilities to recognize an intended parent as a child's
10 parent under certain circumstances; requiring an order of parentage and a court
11 record to be sealed; requiring the State to give full faith and credit to any order,
12 determination, or acknowledgment of parentage issued by another state; requiring
13 that, in the absence of an order of parentage, the parentage of a child born as the
14 result of a gestational carrier agreement be determined in a certain manner;
15 providing for the issuance of a birth certificate under certain circumstances; defining
16 certain terms; making the provisions of this Act severable; and generally relating to
17 collaborative reproduction and orders of parentage.

18 BY adding to

19 Article – Family Law

20 Section 5–901 through 5–903 to be under the new subtitle “Subtitle 9. Collaborative
21 Reproduction”

22 Annotated Code of Maryland

23 (2012 Replacement Volume and 2015 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

25 That the Laws of Maryland read as follows:

26 **Article – Family Law**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

4 **(K) “PARTNER” MEANS AN INDIVIDUAL JOINED WITH ANOTHER INDIVIDUAL**
5 **IN A CIVIL UNION OR ANY OTHER LEGAL DOMESTIC PARTNERSHIP.**

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

10 **5-902.**

11 **THE PURPOSES OF THIS SUBTITLE ARE:**

12 **(1) TO ESTABLISH A LEGAL PROCESS FOR:**

13 **(I) CONFIRMING THE PARENTAGE OF CHILDREN BORN AS A**
14 **RESULT OF COLLABORATIVE REPRODUCTION; AND**

15 **(II) DETERMINING THAT GESTATIONAL CARRIERS, GAMETE**
16 **DONORS, AND EMBRYO DONORS INVOLVED IN COLLABORATIVE REPRODUCTION ARE**
17 **NOT PARENTS OF CHILDREN BORN AS A RESULT OF COLLABORATIVE**
18 **REPRODUCTION; AND**

19 **(2) TO ESTABLISH CONSISTENT PROCEDURES FOR ENSURING THAT**
20 **THE LEGAL STATUS OF CHILDREN BORN AS A RESULT OF COLLABORATIVE**
21 **REPRODUCTION IS PROTECTED.**

22 **5-903.**

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

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

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

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

6 **(C) A PETITION FOR PARENTAGE SHALL INCLUDE:**

7 **(1) AN AFFIDAVIT BY THE REPRODUCTIVE ENDOCRINOLOGIST**
8 **ATTESTING TO THE FACTS PERTAINING TO THE CREATION OF THE EMBRYO AND THE**
9 **EMBRYO TRANSFER;**

10 **(2) A COPY OF THE GESTATIONAL CARRIER AGREEMENT; AND**

11 **(3) AN AFFIDAVIT OF EACH ATTORNEY REPRESENTING A PARTY**
12 **ATTESTING TO:**

13 **(I) THE IDENTITIES OF THE PARTIES; AND**

14 **(II) THE FACT THAT THE ATTORNEY DID NOT REPRESENT BOTH**
15 **THE INTENDED PARENT OR PARENTS AND THE GESTATIONAL CARRIER AND HER**
16 **SPOUSE OR PARTNER, IF ANY, DURING THE GESTATIONAL CARRIER AGREEMENT**
17 **NEGOTIATION.**

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

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

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

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

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

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

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

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

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

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

10 **(1) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE SHALL**
11 **ISSUE A BIRTH CERTIFICATE NAMING EACH INTENDED PARENT AS THE LEGAL**
12 **PARENT IN ACCORDANCE WITH THE ORDER OF PARENTAGE; AND**

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

16 **(G) THE ORDER OF PARENTAGE AND THE COURT RECORD SHALL BE SEALED**
17 **TO PROTECT THE PRIVACY OF THE CHILD AND THE PARTIES.**

18 **(H) THE STATE SHALL GIVE FULL FAITH AND CREDIT TO ANY ORDER,**
19 **DETERMINATION, OR ACKNOWLEDGMENT OF PARENTAGE ISSUED BY ANOTHER**
20 **STATE.**

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

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

29 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2016.