

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1477
Judiciary

(Delegate McMillan)

Gestational Agreements - Rights of Parties

This bill establishes the rights and responsibilities of specified individuals when a child is born to a gestational carrier in accordance with a gestational agreement.

Fiscal Summary

State Effect: The bill does not directly affect governmental operations or finances.

Local Effect: The bill does not directly affect governmental operations or finances.

Small Business Effect: None.

Analysis

Bill Summary:

Definitions

“Gestational agreement” means an agreement 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 born to the gestational carrier.

“Gestational carrier” means a woman other than an intended parent who agrees to become pregnant for an intended parent with the intention of gestating and delivering the intended parent’s child.

“Intended parent” means an individual, whether married or unmarried, who manifests the intent to be the legal parent of a child born to a gestational carrier.

When a child is born to a gestational carrier in accordance with a gestational agreement (1) each intended parent is a parent of the child and must have equal rights and responsibilities 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 sperm, egg, or embryo donor other than an intended parent is not a parent of the child and has no rights or obligations with respect to the child.

Current Law/Background: Assisted reproduction is a method of achieving pregnancy other than by sexual intercourse. Forms of assisted reproduction include artificial insemination, in vitro fertilization, and surrogacy. The science of assisted reproduction has vastly outpaced the legal aspects stemming from its use. While the legal implications of a couple using assisted reproduction to aid in the conception of a child using only the couple’s own genetic material are few, complicated legal issues concerning parentage arise, for example, where third parties contribute genetic material or where a surrogate agrees to gestate a child for the couple.

Maryland does not have a comprehensive statute on assisted reproduction. Artificial insemination is addressed in the Estates and Trusts Article, which provides that a child conceived by artificial insemination of a married woman with the consent of her husband is the legitimate child of both of them for all purposes. Additionally, Chapter 649 of 2012 prohibits a person from using the sperm or eggs of a known donor after the donor’s death for purposes of assisted reproduction without the prior written consent of the donor.

Under Maryland law, the status of surrogacy contracts is unclear as there is little statutory regulation of them. In *In re Roberto d.B.*, 399 Md. 267 (2007), the Court of Appeals held that the name of a genetically unrelated gestational host of a fetus, with whom the genetic father contracted to carry in vitro fertilized embryos to term, was not required to be listed on the birth certificate when a child is born as a result. The court also noted that “surrogacy contracts, that is, payment of money for a child, are illegal in Maryland” under § 3-603 of the Criminal Law Article, which prohibits the sale of a minor and § 5-3B-32 of the Family Law Article, which prohibits the payment of compensation in connection with an adoption.

Other States

State laws vary tremendously from one state to the next, resulting in a significant lack of uniformity. Among those states that have enacted statutes, many have adopted some form of the Uniform Parentage Act promulgated by the National Conference of Commissioners on Uniform State Laws. The original Uniform Parentage Act, approved in 1973, established that, if a donor provides semen to a licensed physician for use in the artificial insemination of a married woman (other than the donor's wife), the donor is not the father. The 2002 Uniform Parentage Act updated and expanded the original Act to include egg and sperm donors and in vitro fertilization. Under the Act, a donor (of sperm or egg) is not a parent of a child conceived by means of assisted reproduction. A father-child relationship is created between a man and the resulting child if the man provides sperm for, or consents to, assisted reproduction by a woman with the intent to be the parent of her child. The 2002 Act also contained an optional provision legalizing and regulating surrogacy agreements; however, this option has not been widely adopted.

Other states have taken various individualized approaches, with states at one end of the spectrum providing a detailed regulatory framework favorable to the regulation and enforceability of assisted reproduction agreements, and states at the other end of the spectrum banning and even criminalizing surrogacy agreements. Michigan law, for example, provides that surrogacy is a felony punishable by five years imprisonment and/or a \$50,000 fine. Finally, some states' statutes are silent with regard to the legal implications of assisted reproduction.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Board of Contract Appeals, Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene, Department of Human Resources, Department of Legislative Services

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min/kdm

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