

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 968
Judiciary

(Delegate Dumais)

Family Law - Collaborative Reproduction - Orders of Parentage

This bill establishes a legal process for (1) confirming the parentage of children born as a result of “collaborative reproduction” and (2) determining that specified individuals involved in collaborative reproduction are not parents of children who are born as a result.

Fiscal Summary

State Effect: The bill does not materially impact the workload of the Judiciary.

Local Effect: The bill does not materially impact the workload of the circuit courts.

Small Business Effect: None.

Analysis

Bill Summary:

Definitions

“Assisted reproduction” means the laboratory and medical procedures performed by a medical professional in which human gametes are used outside of the body for reproductive purposes.

“Collaborative reproduction” means assisted reproduction that involves a gestational carrier, a gamete donor or an embryo donor, or both.

“Embryo donor” means an individual other than an intended parent who contributes embryos (a fertilized egg until the eighth week of pregnancy) for use in collaborative reproduction.

“Gamete donor” means an individual other than an intended parent who contributes gametes (either a sperm or an egg) for use in collaborative reproduction.

“Gestational carrier” means a woman other than an intended parent or gamete donor who agrees to become pregnant for an intended parent with the intention of gestating and delivering the intended parent’s child, and is not the biological mother of the child.

“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.

Petitions for Parentage

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 a child. The bill establishes provisions by which a circuit court may establish jurisdiction over a petition for parentage and requires a petition to include specified information, including the gestational carrier agreement. If the requirements for the petition are met, the court must issue an order of parentage, which establishes that (1) each intended parent is a legal parent of the child with all corollary rights and obligations with respect to the child; (2) the child has all the rights of a parent-child relationship with each intended parent; (3) the gestational carrier and her spouse or partner are not the parents of the child and do not have any rights or obligations with respect to the child; and (4) any gamete or embryo donor is not a parent of the child and has no rights or obligations with respect to the child.

If a court issues an order of parentage, the Department of Health and Mental Hygiene (DHMH) must issue a birth certificate naming each intended parent as the legal parent, in accordance with the order of parentage.

All hospitals, medical facilities, medical personnel, and State agencies are required to recognize each intended parent named in an order of parentage as the child’s parent. The order of parentage and the court record must be sealed to protect the privacy of the child and the parties. In the absence of an order of parentage issued pursuant to the bill’s provisions, the parentage of a child born as a result of a gestational carrier agreement must be determined as provided by law and equity. The bill also requires the State to give full faith and credit to any order, determination, or acknowledgment of parentage issued by another state.

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: HB 220 of 2015, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 273, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. HB 236 of 2014 received a hearing in the House Judiciary Committee but was subsequently withdrawn. Its cross file, SB 208, passed the Senate as amended and was referred to the House Rules and Executive Nomination Committee, but no further action was taken. Similar bills were also introduced in the 2012 and 2013 sessions.

Cross File: None.

Information Source(s): Maryland Association of County Health Officers, Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene, Department of Legislative Services

Fiscal Note History: First Reader - March 7, 2016
min/kdm

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