

Assembly Bill No. 421—Committee on Judiciary

CHAPTER.....

AN ACT relating to parentage; revising provisions relating to assisted reproduction; revising provisions relating to gestational carrier arrangements; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes the circumstances under which the legal relationship of parent and child is established. Under existing law, the legal relationship of mother and child is established by: (1) proof that the woman has given birth to the child; (2) an adjudication that the woman is the mother of the child; or (3) proof that the woman has adopted the child. (NRS 126.041) The legal relationship of father and child is established by: (1) certain presumptions of paternity that arise if a man was married to, or cohabitating with, the natural mother of the child; (2) a presumption of paternity that arises if the man resides with and holds out the child as his natural child; (3) genetic testing establishing that the man is the father of the child; or (4) a certain voluntary acknowledgment of paternity by the man. (NRS 126.041, 126.051, 126.053) Existing law also establishes the parentage of a child: (1) conceived by means of artificial insemination; or (2) born pursuant to a surrogacy agreement. (NRS 126.045, 126.061) This bill replaces the provisions of existing law governing artificial insemination and surrogacy agreements with provisions governing assisted reproduction and gestational agreements which are based on the Uniform Parentage Act adopted by the Uniform Law Commission and the Model Act Governing Assisted Reproductive Technology promulgated by the American Bar Association.

Sections 16-22 of this bill provide for the parentage of a child conceived by a woman by means of assisted reproduction. Under **section 18**, a person who donates eggs, sperm or embryos for assisted reproduction by a woman is not a parent of the resulting child. **Sections 19 and 20** provide that a person who donates eggs, sperm or embryos for assisted reproduction, or a person who consents to assisted reproduction, with the intent of being a parent of the resulting child is a legal parent of that child. **Section 22** provides for the parentage of a child if the transfer of eggs, sperm or embryos occurs after a marriage or domestic partnership is dissolved.

Sections 23-33 of this bill enact provisions governing gestational agreements under which a woman carries and gives birth to a child intending that another person or persons become the legal parent or parents of the child. **Section 24** provides that if an enforceable gestational agreement is entered into by the gestational carrier, her spouse or domestic partner, if any, and the intended parent or parents: (1) the intended parent or parents under the gestational agreement become the legal parent or parents of the resulting child upon the birth of that child; and (2) the gestational carrier and her spouse or domestic partner, if any, are not the legal parents of the resulting child. **Sections 26 and 27** establish the requirements for: (1) a person to be eligible to be a gestational carrier; (2) the intended parent or parents; and (3) the execution and contents of an enforceable gestational agreement. **Sections 30 and 31** establish remedies for a breach of a gestational agreement. **Sections 32 and 33**: (1) authorize the reimbursement of certain expenses incurred by a donor of a gestational carrier in connection with a gestational agreement; and (2) enact provisions governing the compensation paid to a gestational carrier.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 126 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 33, inclusive, of this act.

Sec. 2. *As used in sections 2 to 33, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 15, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Assisted reproduction” means a method of causing pregnancy other than sexual intercourse. The term includes, without limitation:*

- 1. Intrauterine insemination;*
- 2. Donation of eggs;*
- 3. Donation of embryos;*
- 4. In vitro fertilization and transfer of embryos; and*
- 5. Intracytoplasmic sperm injection.*

Sec. 4. *“Domestic partner” means a person who is in a domestic partnership which is registered pursuant to chapter 122A of NRS and which has not been terminated pursuant to that chapter.*

Sec. 5. *“Domestic partnership” has the meaning ascribed to it in NRS 122A.040.*

Sec. 6. *“Donor” means a person with dispositional control of eggs, sperm or embryos who provides eggs, sperm or embryos to another person for gestation and relinquishes all present and future parental and inheritance rights and obligations to any resulting child.*

Sec. 7. *“Embryo” means a cell or group of cells containing a diploid complement of chromosomes or a group of such cells, not including a gamete, that has the potential to develop into a live born human being if transferred into the body of a woman under conditions in which gestation may be reasonably expected to occur.*

Sec. 8. *“Gamete” means a cell containing a haploid complement of deoxyribonucleic acid that has the potential to form an embryo when combined with another gamete. The term includes:*

- 1. Sperm.*
- 2. Eggs.*



3. Nuclear deoxyribonucleic acid from one human being combined with the cytoplasm, including, without limitation, cytoplasmic deoxyribonucleic acid, of another human being.

Sec. 9. "Gestational agreement" means a contract between an intended parent or parents and a gestational carrier intended to result in a live birth.

Sec. 10. "Gestational carrier" means an adult woman who is not an intended parent and who enters into a gestational agreement to bear a child conceived using the gametes of other persons and not her own.

Sec. 11. "Intended parent" means a person, married or unmarried, who manifests the intent as provided in sections 2 to 33, inclusive, of this act, to be legally bound as the parent of a child resulting from assisted reproduction.

Sec. 12. "In vitro fertilization" means the formation of a human embryo outside the human body.

Sec. 13. "Parent" means a person who has established the parent and child relationship.

Sec. 14. "Record" means information which is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

Sec. 15. "Sign" means, with present intent to authenticate or adopt a record:

1. To execute or adopt a tangible symbol; or

2. To attach to or logically associate with the record an electronic symbol, sound or process.

Sec. 16. Except as otherwise provided by any other provision of law, unless parental rights are terminated, a parent and child relationship established under sections 2 to 33, inclusive, of this act applies for all purposes.

Sec. 17. Sections 2 to 33, inclusive, of this act do not apply to the birth of a child conceived by means other than assisted reproduction.

Sec. 18. A donor is not a parent of a child conceived by means of assisted reproduction.

Sec. 19. A person who provides gametes for, or consents to, assisted reproduction by a woman, as provided in section 20 of this act, with the intent to be a parent of her child is a parent of the resulting child.

Sec. 20. 1. Consent by a person who intends to be a parent of a child born by assisted reproduction must be in a signed record.



2. Failure of a person to sign a consent required by subsection 1, before or after the birth of the child, does not preclude a finding of parentage if the woman and the person, during the first 2 years of the child's life, resided together in the same household with the child and openly held out the child as their own.

Sec. 21. 1. Except as otherwise provided in subsection 2, the legal spouse or domestic partner of a woman who gives birth to a child by means of assisted reproduction may not challenge the parentage of the child unless:

(a) Within 2 years after learning of the birth of the child, a proceeding is commenced to adjudicate parentage; and

(b) The court finds that, before or after the birth of the child, the legal spouse or domestic partner did not consent to the assisted reproduction.

2. A proceeding to adjudicate parentage may be maintained at any time if the court determines that:

(a) The legal spouse or domestic partner did not provide gametes for, or consent to, the assisted reproduction by the person who gave birth;

(b) The legal spouse or domestic partner and the woman who gave birth to the child have not cohabited since the probable time of the assisted reproduction; and

(c) The legal spouse or domestic partner never openly held out the child as his or her own.

Sec. 22. 1. If a marriage or domestic partnership is dissolved or terminated before the transfer of eggs, sperm or embryos, the former spouse or former domestic partner is not a parent of the resulting child unless the former spouse or former domestic partner consented in a record that if assisted reproduction were to occur after a dissolution or termination, the former spouse or former domestic partner would be a parent of the child.

2. The consent of a person to assisted reproduction may be withdrawn by that person in a record at any time before placement of the eggs, sperm or embryos.

Sec. 23. 1. A prospective gestational carrier, her legal spouse or domestic partner if she is married or in a domestic partnership, a donor or the donors and the intended parent or parents may enter into a written agreement providing that:

(a) The prospective gestational carrier agrees to pregnancy by means of assisted reproduction;



(b) The prospective gestational carrier, her legal spouse or domestic partner if she is married or in a domestic partnership, and the donor or donors relinquish all rights and duties as the parents of a child conceived through assisted reproduction; and

(c) The intended parent or parents become the parent or parents of any resulting child.

2. If two persons are the intended parents, both of the intended parents must be parties to the gestational agreement.

3. A gestational agreement is enforceable only if it satisfies the requirements of section 27 of this act.

4. A gestational agreement may provide for payment of consideration pursuant to sections 32 and 33 of this act.

Sec. 24. *1. If a gestational carrier arrangement satisfies the requirements of sections 26 and 27 of this act:*

(a) The intended parent or parents shall be considered the parent or parents of the resulting child immediately upon the birth of the child;

(b) The resulting child shall be considered the child of the intended parent or parents immediately upon the birth of the child;

(c) Parental rights vest in the intended parent or parents immediately upon the birth of the resulting child;

(d) Sole legal and physical custody of the resulting child vest with the intended parent or parents immediately upon the birth of the child; and

(e) Neither the gestational carrier nor her legal spouse or domestic partner, if any, shall be considered the parent of the resulting child.

2. If a gestational carrier arrangement satisfies the requirements of sections 26 and 27 of this act and if, because of a laboratory error, the resulting child is not genetically related to the intended parent or either of the intended parents or any donor who donated to the intended parent or parents, the intended parent or parents shall be considered the parent or parents of the child, unless a determination to the contrary is made by a court of competent jurisdiction in an action which may only be brought by one or more genetic parents of the resulting child within 60 days after the birth of the child.

3. The parties to a gestational carrier arrangement shall assume the rights and obligations of subsections 1 and 2 if:

(a) The gestational carrier satisfies the eligibility requirements set forth in subsection 1 of section 26 of this act;



(b) The intended parent or parents satisfy the requirement set forth in subsection 2 of section 26 of this act; and

(c) The gestational carrier arrangement occurs pursuant to a gestational agreement which meets the requirements set forth in section 27 of this act.

4. Before or after the birth of the resulting child, the intended parent or parents or the prospective gestational carrier or gestational carrier may commence a proceeding in any district court in this State to obtain an order designating the content of the birth certificate issued as provided in NRS 440.270 to 440.340, inclusive. If:

(a) The resulting child is to be born in this State;

(b) A copy of the gestational agreement is attached to the petition; and

(c) The requirements of sections 26 and 27 of this act are satisfied,

↳ the court may issue an order validating the gestational agreement and declaring the intended parent or parents to be the parent or parents of the resulting child.

Sec. 25. *1. Except as otherwise provided in NRS 239.0115, all hearings held in a proceeding under sections 23 to 33, inclusive, of this act are confidential and must be held in closed court, without admittance of any person other than the parties to a gestational agreement, their witnesses and attorneys, except by order of the court.*

2. The files and records pertaining to a gestational carrier arrangement, gestational agreement or proceeding under sections 23 to 33, inclusive, of this act are not open to inspection by any person except:

(a) Upon an order of the court expressly so permitting pursuant to a petition setting forth the reasons therefor; or

(b) As provided pursuant to subsection 3.

3. A person who intends to file a petition to enforce a gestational agreement may inspect the files or the records of the court concerning the gestational agreement.

Sec. 26. *1. A prospective gestational carrier is eligible to be a gestational carrier pursuant to sections 23 to 33, inclusive, of this act, if, at the time the gestational agreement is executed, she:*

(a) Has completed a medical evaluation relating to the anticipated pregnancy;

(b) Has undergone legal consultation with independent legal counsel regarding the terms of the gestational agreement and the



potential legal consequences of the gestational carrier arrangement; and

(c) Did not contribute any gametes that will ultimately result in an embryo that she will attempt to carry to term.

2. The intended parent or parents shall be deemed to have satisfied the requirements of sections 23 to 33, inclusive, of this act if, before the gestational carrier agreement is executed, he, she or they have undergone legal consultation with independent legal counsel regarding the terms of the gestational agreement and the potential legal consequences of the gestational carrier arrangement.

Sec. 27. 1. A gestational agreement is enforceable only if it satisfies the requirements of this section.

2. The gestational carrier and the intended parent or parents must be represented by separate, independent counsel in all matters concerning the gestational carrier arrangement and gestational agreement.

3. A gestational agreement must:

(a) Be in writing;

(b) Be executed before the commencement of any medical procedures in furtherance of the gestational carrier arrangement, other than the medical evaluation required by subsection 1 of section 26 of this act to determine the eligibility of the gestational carrier, by:

(1) A gestational carrier satisfying the eligibility requirements set forth in subsection 1 of section 26 of this act and the legal spouse or domestic partner of the gestational carrier, if any; and

(2) An intended parent or parents satisfying the requirement set forth in subsection 2 of section 26 of this act;

(c) Be notarized and signed by all the parties with attached declarations of the independent attorney of each party; and

(d) Include the separate, written and signed acknowledgment of the gestational carrier and the intended parent or parents stating that he or she has received information about the legal, financial and contractual rights, expectations, penalties and obligations of the gestational agreement.

4. A gestational agreement must provide for:

(a) The express written agreement of the gestational carrier to:

(1) Undergo embryo or gamete transfer and attempt to carry and give birth to any resulting child; and



(2) Surrender legal and physical custody of any resulting child to the intended parent or parents immediately upon the birth of the child;

(b) The express written agreement of the legal spouse or domestic partner, if any, of the gestational carrier to:

(1) Undertake the obligations imposed upon the gestational carrier pursuant to the terms of the gestational agreement; and

(2) Surrender legal and physical custody of any resulting child to the intended parent or parents immediately upon the birth of the child;

(c) The express written agreement of each party to the use by the gestational carrier of the services of a physician of her choosing, after consultation with the intended parent or parents, to provide care to the gestational carrier during the pregnancy; and

(d) The express written agreement of the intended parent or parents to:

(1) Accept legal and physical custody of any resulting child not biologically related to the gestational carrier or her spouse or domestic partner, if any, immediately upon the birth of the child or children regardless of the number, gender or mental or physical condition of the child or children; and

(2) Assume sole responsibility for the support of any resulting child not biologically related to the gestational carrier or her spouse or domestic partner, if any, immediately upon the birth of the child.

5. A gestational agreement is enforceable even if it contains one or more of the following provisions:

(a) The gestational carrier's agreement to undergo all medical examinations, treatments and fetal monitoring procedures recommended for the success of the pregnancy by the physician providing care to the gestational carrier during the pregnancy.

(b) The gestational carrier's agreement to abstain from any activities that the intended parent or parents or the physician providing care to the gestational carrier during the pregnancy reasonably believes to be harmful to the pregnancy and the future health of any resulting child, including, without limitation, smoking, drinking alcohol, using nonprescribed drugs, using prescription drugs not authorized by a physician aware of the pregnancy, exposure to radiation or any other activity proscribed by a health care provider.

(c) The agreement of the intended parent or parents to pay the gestational carrier reasonable compensation.



(d) The agreement of the intended parent or parents to pay for or reimburse the gestational carrier for reasonable expenses, including, without limitation, medical, legal or other professional expenses, related to the gestational carrier arrangement and the gestational agreement.

Sec. 28. *1. Any person who is considered to be the parent of a child under sections 23 to 33, inclusive, of this act is obligated to support the child.*

2. The breach of the gestational agreement by the intended parent or parents does not relieve such an intended parent or parents of the obligation to support a resulting child.

Sec. 29. *The marriage or domestic partnership of a gestational carrier after she executes a gestational agreement does not affect the validity of the gestational agreement and:*

1. The consent of the legal spouse or domestic partner of the gestational carrier to the gestational agreement is not required.

2. The legal spouse or domestic partner of the gestational carrier must not be presumed to be the parent of any resulting child.

Sec. 30. *1. A gestational carrier, her legal spouse or domestic partner, if any, or the intended parent or parents are in noncompliance when he, she or they breach any provision of the gestational agreement or fail to meet any of the requirements of sections 23 to 33, inclusive, of this act.*

2. In the event of noncompliance, a court of competent jurisdiction shall determine the respective rights and obligations of the parties to the gestational agreement based solely on the evidence of the original intent of the parties.

3. There must be no specific performance remedy available for breach of the gestational agreement by the gestational carrier that would require the gestational carrier to be impregnated.

Sec. 31. *1. Except as otherwise provided by section 30 of this act or by an express term of the gestational agreement, the intended parent or parents are entitled to any remedy available at law or equity.*

2. Except as expressly provided by an express term of the gestational agreement, the gestational carrier is entitled to any remedy available at law or equity.

Sec. 32. *1. A gestational carrier may receive reimbursement for expenses and economic losses resulting from participation in the gestational carrier arrangement.*

2. A donor may receive reimbursement for expenses and economic losses resulting from the retrieval or storage of gametes



or embryos and incurred after the donor has entered into a valid agreement in a record to be a donor.

3. Except as otherwise provided in subsection 4, economic losses occurring before the donor has entered into a valid agreement in a record to be a donor may not be reimbursed.

4. Any premiums paid for insurance against economic losses directly resulting from the retrieval or storage of gametes or embryos for donation may be reimbursed even if such premiums were paid before the donor entered into a valid agreement in a record, so long as such agreement becomes valid and effective before the gametes or embryos are used in assisted reproduction pursuant to the terms of the agreement.

Sec. 33. 1. *The consideration, if any, paid to a donor or prospective gestational carrier must be negotiated in good faith between the parties.*

2. Compensation must not be conditioned upon the purported quality or genome-related traits of the gametes or embryos.

Sec. 34. NRS 126.041 is hereby amended to read as follows:

126.041 The parent and child relationship between a child and:

1. ~~The natural mother~~ *A woman* may be established by :

(a) Except as otherwise provided in sections 23 to 33, inclusive, of this act proof of her having given birth to the child ~~-, or under~~ ;

(b) An adjudication of the woman's maternity pursuant to this chapter, or NRS 125B.150 or 130.701 ~~+~~ ;

(c) Proof of adoption of the child by the woman;

(d) An unrebutted presumption of the woman's maternity;

(e) The consent of the woman to assisted reproduction pursuant to sections 19 and 20 of this act which resulted in the birth of the child; or

(f) An adjudication confirming the woman as a parent of a child born to a gestational carrier if the gestational agreement is enforceable under the provisions of sections 23 to 33, inclusive, of this act or any other provision of law.

2. ~~The natural father~~ *A man* may be established ~~under~~ :

(a) Under this chapter, or NRS 125B.150, 130.701 or 425.382 to 425.3852, inclusive ~~+~~ .

~~3. An adoptive parent may be established by proof of adoption. ~~+~~ ;~~

(b) By proof of adoption of the child by the man;

(c) By the consent of the man to assisted reproduction pursuant to sections 19 and 20 of this act which resulted in the birth of the child; or



(d) By an adjudication confirming the man as a parent of a child born to a gestational carrier if the gestational agreement was validated pursuant to the provisions of sections 23 to 33, inclusive, of this act, or other provision of law.

Sec. 35. NRS 127.287 is hereby amended to read as follows:

127.287 1. Except as otherwise provided in subsection 3, it is unlawful for any person to pay or offer to pay money or anything of value to the natural parent of a child in return for the natural parent's placement of the child for adoption or consent to or cooperation in the adoption of the child.

2. It is unlawful for any person to receive payment for medical and other necessary expenses related to the birth of a child from a prospective adoptive parent with the intent of not consenting to or completing the adoption of the child.

3. A person may pay the medical and other necessary living expenses related to the birth of a child of another as an act of charity so long as the payment is not contingent upon the natural parent's placement of the child for adoption or consent to or cooperation in the adoption of the child.

4. This section does not prohibit a natural parent from refusing to place a child for adoption after its birth.

5. The provisions of this section do not apply if a woman enters into a lawful contract to act as a ~~{surrogate, be inseminated and give birth to the child of a man who is not her husband.}~~ *gestational carrier, as defined in section 10 of this act.*

Sec. 36. NRS 126.045 and 126.061 are hereby repealed.

