

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 216

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO GESTATIONAL AGREEMENTS; AMENDING TITLE 7, IDAHO CODE, BY THE
2 ADDITION OF A NEW CHAPTER 16, TITLE 7, IDAHO CODE, TO PROVIDE A SHORT
3 TITLE, TO PROVIDE STATUTORY PURPOSE, TO DEFINE TERMS, TO PROVIDE FOR
4 GESTATIONAL AGREEMENTS, TO PROVIDE FOR VALIDATION OF GESTATIONAL
5 AGREEMENTS, TO PROVIDE FOR TERMINATION OF GESTATIONAL AGREEMENTS, TO
6 PROVIDE FOR RECOGNITION OF PARENTAGE UNDER THE TERMS OF A VALIDATED
7 GESTATIONAL AGREEMENT, TO PROVIDE FOR THE DETERMINATION OF PARENTAGE
8 WHEN PARENTAGE IS DISPUTED, TO PROVIDE FOR A SEALED RECORD OF CERTAIN
9 PROCEEDINGS, TO PROVIDE JURISDICTION, TO PROVIDE FOR FULL FAITH AND
10 CREDIT, AND TO PROVIDE FOR THE DISCLOSURE OF DONOR MEDICAL INFORMA-
11 TION UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTION 7-601, IDAHO CODE,
12 TO ESTABLISH THAT FAILURE TO PROVIDE CERTAIN NOTICE SHALL CONSTITUTE
13 CONTEMPT OF COURT AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION
14 10-1301, IDAHO CODE, TO REVISE A DEFINITION; AMENDING CHAPTER 2, TITLE
15 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-255A, IDAHO CODE, TO
16 ESTABLISH REQUIREMENTS FOR CERTAIN BIRTH RECORDS; AMENDING CHAPTER 2,
17 TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-260A, IDAHO
18 CODE, TO PROVIDE FOR RECORDS OF CERTAIN STILLBIRTHS; PROVIDING SEVER-
19 ABILITY; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
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21 Be It Enacted by the Legislature of the State of Idaho:

22 SECTION 1. That Title 7, Idaho Code, be, and the same is hereby amended
23 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
24 ter 16, Title 7, Idaho Code, and to read as follows:

25 CHAPTER 16
26 GESTATIONAL AGREEMENTS ACT

27 7-1601. SHORT TITLE. This chapter shall be known and may be cited as
28 the "Gestational Agreements Act."

29 7-1602. PURPOSE. The purpose of this chapter is to:

- 30 (1) Facilitate the use of gestational agreements in accordance with the
31 public policy of the state of Idaho;
32 (2) Establish consistent standards and procedural safeguards for the
33 protection of all parties to gestational agreements;
34 (3) Protect the welfare of children born as a result of gestational
35 agreements; and
36 (4) Clarify the parentage of children born under the terms of gesta-
37 tional agreements.

38 7-1603. DEFINITIONS. As used in this chapter:

1 (1) "Assisted reproduction" means the laboratory and medical proce-
2 dures used by a medical professional in which human gametes are used outside
3 the body for reproductive purposes.

4 (2) "Gamete" means a mature male or female germ cell usually possessing
5 a haploid chromosome set and capable of initiating formation of a new diploid
6 individual by fusion with a gamete of the opposite sex.

7 (3) "Genetic testing" means an analysis of genetic markers to exclude
8 or identify a person as the parent of a child, including an analysis of one
9 (1) or a combination of the following:

10 (a) Deoxyribonucleic acid; and

11 (b) Blood group antigens, red cell antigens, human leukocyte antigens,
12 serum enzymes, serum proteins, or red cell enzymes.

13 (4) "Gestational agreement" means a contract under which a gestational
14 carrier agrees to become pregnant by means of assisted reproduction in order
15 to give birth to a child who will be parented by an intended parent.

16 (5) "Gestational carrier" means an adult woman who:

17 (a) Becomes pregnant or intends to become pregnant under the terms of a
18 gestational agreement; or

19 (b) Gives birth or intends to give birth to a child under the terms of a
20 gestational agreement.

21 (6) "Intended parent" means an individual who intends to be the parent
22 of a child born under the terms of a gestational agreement.

23 (a) There may be one (1) intended parent or two (2) intended parents un-
24 der a gestational agreement.

25 (b) Except where context otherwise requires, any provision of this
26 chapter relating to an intended parent shall relate to both intended
27 parents if there are two (2).

28 (7) "Order of parentage" means an order issued by a court or administra-
29 tive body with authority to issue the order, which order identifies the legal
30 parent or parents of a child born under the terms of a gestational agreement.

31 7-1604. GESTATIONAL AGREEMENT. (1) Prior to assisted reproduction, a
32 gestational carrier and an intended parent shall enter into a written gesta-
33 tional agreement. If the gestational carrier is married, her spouse shall
34 also be a party to the agreement. Neither the gestational carrier nor her
35 spouse may contribute gametes for use in assisted reproduction under the
36 gestational agreement.

37 (2) The gestational agreement shall provide that the intended parent
38 will be the parent of any child conceived through assisted reproduction and
39 born under the terms of the agreement.

40 (3) The gestational agreement shall include the following:

41 (a) Acceptance by the intended parent of all rights and duties of a par-
42 ent for any child conceived through assisted reproduction and born un-
43 der the terms of the gestational agreement;

44 (b) Verification that:

45 (i) All parties to the agreement are at least twenty-one (21)
46 years of age;

47 (ii) The gestational carrier has given birth to a live child at
48 least once before; and

1 (iii) The gestational carrier agrees to become pregnant by means
2 of assisted reproduction; and

3 (c) Relinquishment by the prospective gestational carrier, the
4 prospective gestational carrier's spouse if she is married, and the
5 prospective donor of a gamete for use in assisted reproduction if such
6 prospective donor is not an intended parent of all rights and duties of
7 a parent for any child conceived through assisted reproduction and born
8 under the terms of the agreement.

9 (4) A prospective gestational carrier may not be receiving public as-
10 sistance as defined by section 56-201, Idaho Code.

11 (5) A gestational agreement may provide for payment of consideration.

12 (6) A gestational agreement shall not limit the right of the gesta-
13 tional carrier to make decisions to safeguard her health or that of an embryo
14 or a fetus that she is carrying.

15 (7) In matters relating to the gestational agreement, the gestational
16 carrier and the intended parent shall be represented by separate attorneys,
17 unless representation is declined by a party in a signed writing. The ges-
18 tational agreement shall provide that the gestational carrier will be reim-
19 bursed by the intended parent for the cost of representation if the gesta-
20 tional carrier is unable to afford an attorney.

21 7-1605. VALIDATION OF AGREEMENT. (1) A gestational agreement entered
22 under this chapter is enforceable only if it is validated pursuant to this
23 section.

24 (2) For a gestational agreement to be validated pursuant to this sec-
25 tion, at least one (1) party to the agreement must reside in Idaho and have
26 so resided for at least six (6) months prior to entering into the gestational
27 agreement or have contacts with the state of Idaho sufficient to justify ju-
28 risdiction in the opinion of an Idaho district court.

29 (3) The parties seeking validation of a gestational agreement shall
30 file a petition in an Idaho district court.

31 (a) The petition shall be filed after entry of the agreement but no
32 later than seven (7) days after the birth of a child under the terms of
33 the agreement.

34 (b) The gestational agreement shall be attached to the petition.

35 (4) The district court may hold a hearing to determine the validity of
36 the agreement. The district court shall issue an order validating the agree-
37 ment and declaring that the intended parent is or will be the parent of any
38 child born under the terms of the agreement upon finding that:

39 (a) The gestational agreement satisfies the provisions of this chap-
40 ter;

41 (b) The parties have voluntarily entered into the agreement and under-
42 stand its terms;

43 (c) Adequate provision has been made for all reasonable health care ex-
44 penses associated with the gestational agreement, including responsi-
45 bility for those expenses if the agreement is terminated; and

46 (d) The consideration provided for in the agreement, if any, is reason-
47 able.

1 7-1606. TERMINATION OF AGREEMENT. (1) A party to a gestational agree-
2 ment may terminate the agreement at any time prior to the gestational carrier
3 becoming pregnant by means of assisted reproduction under the terms of the
4 agreement. The terminating party must give written notice of termination to
5 the other parties.

6 (a) If the agreement has been validated pursuant to section 7-1605,
7 Idaho Code, the terminating party shall file notice of termination with
8 the district court, and the court shall vacate the order of validation.

9 (b) Failure to provide the notice required by paragraph (a) of this sub-
10 section shall be considered contempt of the authority of the court pur-
11 suant to chapter 6, title 7, Idaho Code.

12 (2) The district court for good cause shown may terminate a gestational
13 agreement.

14 (3) Neither a gestational carrier nor a gestational carrier's spouse
15 shall be liable to any intended parent for terminating a gestational agree-
16 ment.

17 7-1607. PARENTAGE UNDER A VALIDATED GESTATIONAL AGREEMENT. (1) This
18 section shall apply in determining the parentage of a child born under the
19 terms of a gestational agreement that has been validated pursuant to section
20 7-1605, Idaho Code.

21 (2) No later than fourteen (14) days after the birth of the child, the
22 intended parent shall file notice of the birth with the district court that
23 issued the validation order. The court shall then issue an order of parent-
24 age confirming that the intended parent is the parent of the child and di-
25 recting the state registrar of vital statistics to file a birth certificate
26 naming the intended parent as the parent of the child. If necessary, the
27 court shall further order that the child be surrendered to the intended par-
28 ent. The order of parentage shall contain the following information:

29 (a) The child's full name;

30 (b) The child's date of birth;

31 (c) The child's place of birth;

32 (d) The gestational carrier's full name;

33 (e) The full name of the gestational carrier's spouse, if the gesta-
34 tional carrier is married; and

35 (f) The full name of each intended parent.

36 (3) If the intended parent fails to file notice as required under sub-
37 section (2) of this section, the gestational carrier or the department of
38 health and welfare may file such notice, and the court shall order that the
39 intended parent is the parent of the child and financially responsible for
40 the child.

41 (4) Failure to file notice required by this section shall be considered
42 contempt of the authority of the court pursuant to chapter 6, title 7, Idaho
43 Code.

44 7-1608. DISPUTED PARENTAGE. (1) If a party to a gestational agreement
45 validated pursuant to section 7-1605, Idaho Code, disputes the parentage
46 of a child allegedly born under the terms of the agreement, the court that
47 issued the validation order shall order genetic testing to determine the
48 parentage of the child.

1 (a) If the results of genetic testing are consistent with assisted re-
2 production as provided for in the agreement, then parentage shall be de-
3 termined according to the agreement.

4 (b) If the results of genetic testing are inconsistent with assisted
5 reproduction as provided for in the agreement, then parentage shall be
6 determined according to other applicable law.

7 (2) If a child is born under the terms of an agreement found to be in-
8 valid and parentage of the child is disputed, then parentage shall be deter-
9 mined according to other applicable law.

10 7-1609. SEALED RECORD OF PROCEEDING. On the motion of any party to
11 a proceeding under this chapter, the district court shall order that the
12 record of its proceedings under this chapter be sealed. When such order has
13 been made and entered, the court shall seal the record, and thereafter the
14 seal shall not be broken except on the motion of a party to the proceeding or
15 of a person whose parentage was determined under this chapter. If the seal is
16 broken, the record may again be sealed as provided in this section.

17 7-1610. JURISDICTION. Subject to the jurisdictional standards of
18 chapter 11, title 32, Idaho Code, the court that conducts a proceeding under
19 this chapter shall have exclusive, continuing jurisdiction of all matters
20 arising out of the gestational agreement until a child born under the terms
21 of the agreement attains the age of one hundred eighty (180) days.

22 7-1611. FULL FAITH AND CREDIT. (1) An order of parentage issued by a
23 court or administrative body of another state with jurisdiction to make the
24 order shall be entitled to full faith and credit and shall be accepted by the
25 courts of this state.

26 (2) To certify an order of parentage issued in another state, a person
27 seeking to register the order shall:

28 (a) Provide, to the court or administrative body that issued the order,
29 notice of intent to register the order in this state; and

30 (b) File as a foreign judgment certified copies of the order in a court
31 of any appropriate county of this state.

32 7-1612. MEDICAL INFORMATION OF DONOR. A gestational agreement may
33 provide for the disclosure of a gamete donor's medical information to a child
34 born according to the terms of the gestational agreement and may describe
35 the circumstances warranting such disclosure. However, if a gamete donor
36 wishes to remain anonymous, only non-identifying medical information may be
37 disclosed pursuant to the gestational agreement.

38 SECTION 2. That Section 7-601, Idaho Code, be, and the same is hereby
39 amended to read as follows:

40 7-601. CONTEMPTS DEFINED. The following acts or omissions in respect
41 to a court of justice, or proceedings therein, are contempts of the authority
42 of the court:

43 1. Disorderly, contemptuous or insolent behavior toward the judge
44 while holding the court, tending to interrupt the due course of a trial or
45 other judicial proceedings.

1 2. A breach of the peace, boisterous conduct, or violent disturbance
2 tending to interrupt the due course of a trial or other judicial proceedings.

3 3. Misbehavior in office or other ~~wilful~~ willful neglect or violation
4 of duty by an attorney, counsel, clerk, sheriff, coroner or other person ap-
5 pointed or elected to perform a judicial or ministerial service.

6 4. Deceit or abuse of the process or proceedings of the court by a party
7 to an action or special proceeding.

8 5. Disobedience of any lawful judgment, order or process of the court.

9 6. Assuming to be an officer, attorney, counsel of a court, and acting
10 as such without authority.

11 7. Rescuing any person or property in the custody of an officer by
12 virtue of an order or process of such court.

13 8. Unlawfully detaining a witness or party to an action while going to,
14 remaining at, or returning from, the court where the action is on the calen-
15 dar for trial.

16 9. Any other unlawful interference with the process or proceedings of a
17 court.

18 10. Disobedience of a subpoena duly served, or refusing to be sworn or
19 answer as a witness.

20 11. When summoned as a juror in a court, neglecting to attend or serve
21 as such, or improperly conversing with a party to an action to be tried at
22 such court, or with any other person in relation to the merits of such action,
23 or receiving a communication from a party or other person in respect to it,
24 without immediately disclosing the same to the court.

25 12. Disobedience, by an inferior tribunal, magistrate or officer of the
26 lawful judgment, order or process of a superior court, or proceeding in an
27 action or special proceeding contrary to law, after such action or special
28 proceeding is removed from the jurisdiction of such inferior tribunal, mag-
29 istrate or officer. Disobedience of the lawful orders or process of a judi-
30 cial officer is also a contempt of the authority of such officer.

31 13. Failure to provide notice required under chapter 16, title 7, Idaho
32 Code.

33 SECTION 3. That Section 10-1301, Idaho Code, be, and the same is hereby
34 amended to read as follows:

35 10-1301. "FOREIGN JUDGMENT" DEFINED. In this act, "foreign judgment"
36 means any judgment, decree, or order of a court of the United States or of
37 any other court or an order of an administrative body of any state regard-
38 ing the support of a child, spouse, or former spouse or the establishment
39 of parentage or paternity ~~which~~ that is entitled to full faith and credit in
40 this state.

41 SECTION 4. That Chapter 2, Title 39, Idaho Code, be, and the same is
42 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
43 igned as Section 39-255A, Idaho Code, and to read as follows:

44 39-255A. REGISTRATION OF BIRTHS TO GESTATIONAL CARRIERS. (1) Subject
45 to the requirements set forth in section 39-255, Idaho Code, a certificate
46 of live birth shall be filed with the bureau of vital records and health sta-
47 tistics by the certifier with parentage as determined by the final court or-

1 der of parentage issued pursuant to the provisions of chapter 16, title 7,
2 Idaho Code. The birth record shall include all the facts of birth, includ-
3 ing the gestational carrier's demographic, medical, and health information.
4 No certificate shall be deemed complete until every item of information re-
5 quired has been provided or its omission satisfactorily accounted for.

6 (2) Upon receipt by the bureau of the complete certificate of live birth
7 from the certifier and the certified copy of the order of parentage, the bu-
8 reau of vital records and health statistics shall accept the record for per-
9 manent filing. The birth certificate shall make no reference to the gesta-
10 tional carrier. The facts of birth as relating to the gestational carrier
11 shall be filed with and remain part of the records of the bureau of vital
12 records and health statistics in a sealed file with a certified copy of the
13 order of parentage.

14 (3) In the absence of an order of parentage, the birth certificate shall
15 be filed listing the gestational carrier as the mother of the child. The ges-
16 tational carrier's information may not be removed, and an intended parent's
17 information may not be listed on the birth certificate except:

18 (a) According to the provisions of section 39-255(e), Idaho Code, to
19 add a biological father; or

20 (b) Upon receipt of a certified copy of an order of parentage and a cer-
21 tified report of gestational birth. The report form will be prescribed
22 and furnished by the state registrar. Copies of birth certificates
23 showing the gestational carrier as the mother of the child shall not be
24 issued except upon order of an Idaho court.

25 (4) Information necessary to prepare the report of gestational birth
26 shall be furnished by the intended parent or parents or the attorney for the
27 intended parent or parents. The order of parentage and the report of gesta-
28 tional birth shall contain all known facts of birth and the identity of the
29 intended parent or parents.

30 (5) Upon receipt by the bureau of the certified report of gestational
31 birth and the certified order of parentage, a new certificate of birth shall
32 be established bearing the full name of the child born and the identity of
33 the intended parent or parents. The new birth certificate shall make no ref-
34 erence to the gestational carrier and shall not be marked as amended. The
35 new birth certificate shall supplant and constitute replacement of any birth
36 certificate for the child previously filed with the bureau of vital records
37 and health statistics and shall be the only birth certificate subject to is-
38 suance. The certified report of gestational birth and certified order of
39 parentage shall be filed with and remain part of the records of the bureau of
40 vital records and health statistics in a sealed file with the original cer-
41 tificate.

42 (6) In respect to form and nature of contents, the new birth certificate
43 shall be identical to the birth certificate originally filed with the bureau
44 of vital records and health statistics, except that the intended parent or
45 parents shall be entered on the certificate as shown in the report of gesta-
46 tional birth. The child's name shall remain as shown on the original birth
47 certificate unless the order of parentage specifically states how the bureau
48 of vital records and health statistics should list the child's name on the
49 birth certificate.

1 (7) An order of parentage may be amended only to correct a clerical er-
2 ror.

3 (8) All records and information specified in this section, other than a
4 birth certificate issued pursuant to this section, and all records, files,
5 and information of any court in this state relating to gestational birth and
6 parentage proceedings shall not be open to inspection except on order of a
7 court of record of this state; provided, however, that any Idaho magistrate
8 judge may furnish a certified copy of an order of parentage to any duly autho-
9 rized agency of the United States or the state of Idaho without procuring any
10 prior court order.

11 SECTION 5. That Chapter 2, Title 39, Idaho Code, be, and the same is
12 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
13 ignated as Section 39-260A, Idaho Code, and to read as follows:

14 39-260A. REGISTRATION OF STILLBIRTHS TO A GESTATIONAL CARRIER. If a
15 stillbirth occurs and the stillborn child was delivered under the terms of a
16 gestational agreement entered and validated pursuant to chapter 16, title 7,
17 Idaho Code, then a certificate of stillbirth shall be filed with the bureau
18 of vital records and health statistics according to the provisions of sec-
19 tion 39-260(4) and (5), Idaho Code. The certificate shall show the name of
20 the gestational carrier and shall note her status as a gestational carrier.
21 No certificate shall be deemed completed until every item of information re-
22 quired has been provided or its omission satisfactorily accounted for.

23 SECTION 6. SEVERABILITY. The provisions of this act are hereby declared
24 to be severable and if any provision of this act or the application of such
25 provision to any person or circumstance is declared invalid for any reason,
26 such declaration shall not affect the validity of the remaining portions of
27 this act.

28 SECTION 7. An emergency existing therefor, which emergency is hereby
29 declared to exist, this act shall be in full force and effect on and after
30 July 1, 2023.