

Part 8

Gestational Agreement

78B-15-801 Gestational agreement authorized.

- (1) A prospective gestational mother, the prospective gestational mother's spouse if the prospective gestational mother is married, a donor or the donors, and the intended parents may enter into a written agreement providing that:
 - (a) the prospective gestational mother agrees to pregnancy by means of assisted reproduction;
 - (b) the prospective gestational mother, the prospective gestational mother's spouse if the prospective gestational mother is married, and the donors relinquish all rights and duties as the parents of a child conceived through assisted reproduction; and
 - (c) the intended parents become the parents of the child.
- (2) The intended gestational mother may not currently be receiving Medicaid or any other state assistance.
- (3)
 - (a) The intended parents shall be married.
 - (b) Both intended parents must be parties to the gestational agreement.
- (4) A gestational agreement is enforceable only if validated as provided in Section 78B-15-803.
- (5) A gestational agreement does not apply:
 - (a) to the birth of a child conceived by means of sexual intercourse; or
 - (b) if neither intended parent is a donor.
- (6) The parties to a gestational agreement shall be 21 years old or older.
- (7) The gestational mother's eggs may not be used in the assisted reproduction procedure.
- (8) If the gestational mother is married, the gestational mother's spouse's sperm or eggs may not be used in the assisted reproduction procedure.

Amended by Chapter 367, 2024 General Session

78B-15-802 Requirements of petition.

- (1) The intended parents and the prospective gestational mother may file a petition in the district tribunal to validate a gestational agreement.
- (2) A petition to validate a gestational agreement may not be maintained unless either the mother or intended parents have been residents of this state for at least 90 days.
- (3) The prospective gestational mother's spouse, if the prospective gestational mother is married, must join in the petition.
- (4) A copy of the gestational agreement must be attached to the petition.

Amended by Chapter 367, 2024 General Session

78B-15-803 Hearing to validate gestational agreement.

- (1) If the requirements of Subsection (2) are satisfied, a tribunal may issue an order validating the gestational agreement and declaring that the intended parents will be the parents of a child born during the term of the agreement.
- (2) The tribunal may issue an order under Subsection (1) only on finding that:
 - (a) the residence requirements of Section 78B-15-802 have been satisfied and the parties have submitted to the jurisdiction of the tribunal under the jurisdictional standards of this part;

- (b) unless waived by the tribunal, a home study of the intended parents has been conducted in accordance with Sections 78B-6-128 through 78B-6-131, and the intended parents meet the standards of fitness applicable to adoptive parents;
 - (c) all parties have participated in counseling with a licensed mental health professional as evidenced by a certificate:
 - (i) signed by the licensed mental health professional that affirms that all parties have discussed options and consequences of the agreement; and
 - (ii) presented to the tribunal;
 - (d) all parties have voluntarily entered into the agreement and understand the agreement's terms;
 - (e) the prospective gestational mother has had at least one pregnancy and delivery and the prospective gestational mother's bearing another child will not pose an unreasonable health risk to the unborn child or to the physical or mental health of the prospective gestational mother;
 - (f) adequate provision has been made for all reasonable health-care expense associated with the gestational agreement until the birth of the child, including responsibility for all reasonable health-care expense if the agreement is terminated;
 - (g) the consideration, if any, paid to the prospective gestational mother is reasonable;
 - (h) all the parties to the agreement are 21 years old or older;
 - (i) the gestational mother's eggs are not being used in the assisted reproduction procedure; and
 - (j) if the gestational mother is married, the gestational mother's spouse's sperm or eggs are not being used in the assisted reproduction procedure.
- (3) Whether to validate a gestational agreement is within the discretion of the tribunal, subject only to review for abuse of discretion.

Amended by Chapter 367, 2024 General Session

78B-15-804 Inspection of records.

The proceedings, records, and identities of the individuals to a gestational agreement under this part are subject to inspection under the confidentiality standards applicable to adoptions as provided under other laws of this state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-805 Exclusive, continuing jurisdiction.

Subject to the jurisdictional standards of Section 78B-13-201, the tribunal conducting a proceeding under this part has exclusive, continuing jurisdiction of all matters arising out of the gestational agreement until a child born to the gestational mother during the period governed by the agreement attains the age of 180 days.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-806 Termination of gestational agreement.

- (1) After issuance of an order under this part, but before the prospective gestational mother becomes pregnant by means of assisted reproduction, the prospective gestational mother, the prospective gestational mother's spouse, or either of the intended parents may terminate the gestational agreement only by giving written notice of termination to all other parties.
- (2) The tribunal for good cause shown also may terminate the gestational agreement.

- (3) An individual who terminates an agreement shall file notice of the termination with the tribunal. On receipt of the notice, the tribunal shall vacate the order issued under this part. An individual who does not notify the tribunal of the termination of the agreement is subject to appropriate sanctions.
- (4) A prospective gestational mother, or the prospective gestational mother's spouse if married, is not liable to the intended parents for terminating an agreement pursuant to this section.

Amended by Chapter 367, 2024 General Session

78B-15-807 Parentage under validated gestational agreement.

- (1) Upon birth of a child to a gestational mother, the intended parents shall file notice with the tribunal that a child has been born to the gestational mother within 300 days after assisted reproduction. Thereupon, the tribunal shall issue an order:
 - (a) confirming that the intended parents are the parents of the child;
 - (b) if necessary, ordering that the child be surrendered to the intended parents; and
 - (c) directing the Office of Vital Records to issue a birth certificate naming the intended parents as parents of the child.
- (2) If the parentage of a child born to the gestational mother is in dispute as not the result of an assisted reproduction, the tribunal shall order genetic testing to determine the parentage of the child.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-808 Gestational agreement -- Miscellaneous provisions.

- (1) A gestational agreement may provide for payment of consideration.
- (2) A gestational agreement may not limit the right of the gestational mother to make decisions to safeguard the gestational mother's health or that of the embryo or fetus.
- (3) After the issuance of an order under this part, subsequent marriage of the gestational mother does not affect the validity of a gestational agreement, and the gestational mother's spouse's consent to the agreement is not required, nor is the gestational mother's spouse a presumed parent of the resulting child.

Amended by Chapter 367, 2024 General Session

78B-15-809 Effect of nonvalidated gestational agreement.

- (1) A gestational agreement, whether in a record or not, which is not validated by a tribunal is not enforceable.
- (2) If a birth results under a gestational agreement that is not judicially validated as provided in this part, the parent-child relationship is determined as provided in Part 2, Parent and Child Relationship.
- (3) The individuals who are parties to a nonvalidated gestational agreement as intended parents may be held liable for support of the resulting child, even if the agreement is otherwise unenforceable. The liability under this Subsection (3) includes assessing all expenses and fees as provided in Section 78B-15-622.

Renumbered and Amended by Chapter 3, 2008 General Session