

**Representative LaVar Christensen** proposes the following substitute bill:

**PARENTAGE ACT**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Lyle W. Hillyard**

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**LONG TITLE**

**General Description:**

This bill enacts the Gestational Agreement Act.

**Highlighted Provisions:**

This bill:

- ▶ sets specific guidelines for surrogacy and assisted reproduction arrangements.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

**78-45a-18**, Utah Code Annotated 1953

**78-45a-19**, Utah Code Annotated 1953

**78-45a-20**, Utah Code Annotated 1953

**78-45a-21**, Utah Code Annotated 1953

**78-45a-22**, Utah Code Annotated 1953

**78-45a-23**, Utah Code Annotated 1953

**78-45a-24**, Utah Code Annotated 1953

**78-45a-25**, Utah Code Annotated 1953



26 78-45a-26, Utah Code Annotated 1953

27 REPEALS:

28 76-7-204, as last amended by Chapters 116 and 241, Laws of Utah 1991

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30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section 78-45a-18 is enacted to read:

32 **78-45a-18. Gestational agreement authorized.**

33 (1) A prospective gestational mother, her husband if she is married, a donor or the  
34 donors, and the intended parents may enter into a written agreement providing that:

35 (a) the prospective gestational mother agrees to pregnancy by means of assisted  
36 reproduction;

37 (b) the prospective gestational mother, her husband if she is married, and the donors  
38 relinquish all rights and duties as the parents of a child conceived through assisted  
39 reproduction; and

40 (c) the intended parents become the parents of the child.

41 (2) The intended parents shall be married, and both spouses must be parties to the  
42 gestational agreement.

43 (3) A gestational agreement is enforceable only if validated as provided in Section  
44 78-45a-20.

45 (4) A gestational agreement does not apply to the birth of a child conceived by means  
46 of sexual intercourse.

47 Section 2. Section 78-45a-19 is enacted to read:

48 **78-45a-19. Gestational Agreement -- Requirements of petition.**

49 (1) The intended parents and the prospective gestational mother may file a petition in  
50 the district court to validate a gestational agreement.

51 (2) A petition to validate a gestational agreement may not be maintained unless either  
52 the mother or intended parents have been residents of this state for at least 90 days.

53 (3) The prospective gestational mother's husband, if she is married, must join in the  
54 petition.

55 (4) A copy of the gestational agreement must be attached to the petition.

56 Section 3. Section 78-45a-20 is enacted to read:

57 **78-45a-20. Gestational Agreement -- Hearing to validate gestational agreement.**

58 (1) If the requirements of Subsection (2) are satisfied, a court may issue an order  
59 validating the gestational agreement and declaring that the intended parents will be the parents  
60 of a child born during the term of the agreement.

61 (2) The court may issue an order under Subsection (1) only on finding that:

62 (a) the residence requirements of Section 78-45a-19 have been satisfied and the parties  
63 have submitted to jurisdiction of the court under the jurisdictional standards of this part;

64 (b) medical evidence shows that the intended mother is unable to bear a child or is  
65 unable to do so without unreasonable risk to her physical or mental health or to the unborn  
66 child;

67 (c) unless waived by the court, a home study of the intended parents has been  
68 conducted in accordance with Section 78-30-3.5, and the intended parents meet the standards  
69 of fitness applicable to adoptive parents;

70 (d) all parties have voluntarily entered into the agreement and understand its terms;

71 (e) the prospective gestational mother has had at least one pregnancy and delivery and  
72 her bearing another child will not pose an unreasonable health risk to the unborn child or to the  
73 physical or mental health of the prospective gestational mother;

74 (f) adequate provision has been made for all reasonable health-care expense associated  
75 with the gestational agreement until the birth of the child, including responsibility for those  
76 expenses if the agreement is terminated; and

77 (g) the consideration, if any, paid to the prospective gestational mother is reasonable.

78 (3) Whether to validate a gestational agreement is within the discretion of the court,  
79 subject only to review for abuse of discretion.

80 Section 4. Section **78-45a-21** is enacted to read:

81 **78-45a-21. Gestational Agreement -- Inspection of records.**

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

85 Section 5. Section **78-45a-22** is enacted to read:

86 **78-45a-22. Gestational Agreement -- Exclusive, continuing jurisdiction.**

87 Subject to the jurisdictional standards of Section 78-45c-201, the court conducting a

88 proceeding under this part has exclusive, continuing jurisdiction of all matters arising out of the  
89 gestational agreement until a child born to the gestational mother during the period governed  
90 by the agreement attains the age of 180 days.

91 Section 6. Section **78-45a-23** is enacted to read:

92 **78-45a-23. Gestational Agreement -- Termination of gestational agreement.**

93 (1) After issuance of an order under this part, but before the prospective gestational  
94 mother becomes pregnant by means of assisted reproduction, the prospective gestational  
95 mother, her husband, or either of the intended parents may terminate the gestational agreement  
96 only by giving written notice of termination to all other parties.

97 (2) The court for good cause shown also may terminate the gestational agreement.

98 (3) An individual who terminates an agreement shall file notice of the termination with  
99 the court. On receipt of the notice, the court shall vacate the order issued under this part. An  
100 individual who does not notify the court of the termination of the agreement is subject to  
101 appropriate sanctions.

102 (4) Neither a prospective gestational mother nor her husband, if any, is liable to the  
103 intended parents for terminating an agreement pursuant to this section.

104 Section 7. Section **78-45a-24** is enacted to read:

105 **78-45a-24. Gestational Agreement -- Parentage under validated gestational**  
106 **agreement.**

107 (1) Upon birth of a child to a gestational mother, the intended parents shall file notice  
108 with the court that a child has been born to the gestational mother within 300 days after assisted  
109 reproduction. Thereupon, the court shall issue an order:

110 (a) confirming that the intended parents are the parents of the child;

111 (b) if necessary, ordering that the child be surrendered to the intended parents; and

112 (c) directing the Office of Vital Records to issue a birth certificate naming the intended  
113 parents as parents of the child.

114 (2) If the parentage of a child born to the gestational mother is in dispute as not the  
115 result of an assisted reproduction, the court shall order genetic testing to determine the  
116 parentage of the child.

117 Section 8. Section **78-45a-25** is enacted to read:

118 **78-45a-25. Gestational agreement -- Miscellaneous provisions.**

119           (1) A gestational agreement may provide for payment of consideration.

120           (2) A gestational agreement may not limit the right of the gestational mother to make  
121 decisions to safeguard her health or that of the embryo or fetus.

122           (3) After the issuance of an order under this part, subsequent marriage of the  
123 gestational mother does not affect the validity of a gestational agreement, and her husband's  
124 consent to the agreement is not required, nor is her husband a presumed father of the resulting  
125 child.

126           Section 9. Section **78-45a-26** is enacted to read:

127           **78-45a-26. Gestational Agreement -- Effect of nonvalidated gestational agreement.**

128           (1) A gestational agreement, whether in a record or not, which is not validated by a  
129 court is not enforceable.

130           (2) If a birth results under a gestational agreement that is not judicially validated as  
131 provided in this part, the parent-child relationship is determined as provided by law.

132           (3) The individuals who are parties to a nonvalidated gestational agreement as intended  
133 parents may be held liable for support of the resulting child, even if the agreement is otherwise  
134 unenforceable.

135           Section 10. **Repealer.**

136           This bill repeals:

137           Section **76-7-204, Prohibition of surrogate parenthood agreements -- Status of**  
138 **child -- Basis of custody.**