

Senator Stephanie Pitcher proposes the following substitute bill:

GESTATIONAL AGREEMENT REQUIREMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephanie Pitcher

House Sponsor: Robert M. Spendlove

LONG TITLE

General Description:

This bill amends provisions relating to gestational agreements.

Highlighted Provisions:

This bill:

- ▶ amends requirements regarding a prospective gestational mother's spouse; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-15-801, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-15-802, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-15-803, as last amended by Laws of Utah 2020, Chapter 101

78B-15-806, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-15-808, as renumbered and amended by Laws of Utah 2008, Chapter 3



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

27 Section 1. Section **78B-15-801** is amended to read:

28 **78B-15-801. Gestational agreement authorized.**

29 (1) A prospective gestational mother, [~~her husband~~] the prospective gestational
30 mother's spouse if [~~she~~] the prospective gestational mother is married, a donor or the donors,
31 and the intended parents may enter into a written agreement providing that:

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

34 (b) the prospective gestational mother, [~~her husband~~] the prospective gestational
35 mother's spouse if [~~she~~] the prospective gestational mother is married, and the donors
36 relinquish all rights and duties as the parents of a child conceived through assisted
37 reproduction; and

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

39 (2) The intended gestational mother may not currently be receiving Medicaid or any
40 other state assistance.

41 (3) (a) The intended parents shall be married[~~, and both spouses~~].

42 (b) Both intended parents must be parties to the gestational agreement.

43 (4) A gestational agreement is enforceable only if validated as provided in Section
44 **78B-15-803**.

45 (5) A gestational agreement does not apply:

46 (a) to the birth of a child conceived by means of sexual intercourse; or

47 (b) if neither intended parent is a donor.

48 (6) The parties to a gestational agreement shall be 21 years [~~of age~~] old or older.

49 (7) The gestational mother's eggs may not be used in the assisted reproduction
50 procedure.

51 (8) If the gestational mother is married, [~~her husband's~~] the gestational mother's
52 spouse's sperm or eggs may not be used in the assisted reproduction procedure.

53 Section 2. Section **78B-15-802** is amended to read:

54 **78B-15-802. Requirements of petition.**

55 (1) The intended parents and the prospective gestational mother may file a petition in
56 the district tribunal to validate a gestational agreement.

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

59 (3) The prospective gestational mother's [~~husband~~] spouse, if [~~she~~] the prospective
60 gestational mother is married, must join in the petition.

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

62 Section 3. Section **78B-15-803** is amended to read:

63 **78B-15-803. Hearing to validate gestational agreement.**

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

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

68 (a) the residence requirements of Section **78B-15-802** have been satisfied and the
69 parties have submitted to the jurisdiction of the tribunal under the jurisdictional standards of
70 this part;

71 (b) unless waived by the tribunal, a home study of the intended parents has been
72 conducted in accordance with Sections **78B-6-128** through **78B-6-131**, and the intended
73 parents meet the standards of fitness applicable to adoptive parents;

74 (c) all parties have participated in counseling with a licensed mental health
75 professional as evidenced by a certificate:

76 (i) signed by the licensed mental health professional that affirms that all parties have
77 discussed options and consequences of the agreement; and

78 (ii) presented to the tribunal;

79 (d) all parties have voluntarily entered into the agreement and understand the
80 agreement's terms;

81 (e) the prospective gestational mother has had at least one pregnancy and delivery and
82 [~~her~~] the prospective gestational mother's bearing another child will not pose an unreasonable
83 health risk to the unborn child or to the physical or mental health of the prospective gestational
84 mother;

85 (f) adequate provision has been made for all reasonable health-care expense associated
86 with the gestational agreement until the birth of the child, including responsibility for all
87 reasonable health-care expense if the agreement is terminated;

88 (g) the consideration, if any, paid to the prospective gestational mother is reasonable;

89 (h) all the parties to the agreement are 21 years old or older;

90 (i) the gestational mother's eggs are not being used in the assisted reproduction
91 procedure; and

92 (j) if the gestational mother is married, [~~her husband's sperm is~~] the gestational
93 mother's spouse's sperm or eggs are not being used in the assisted reproduction procedure.

94 (3) Whether to validate a gestational agreement is within the discretion of the tribunal,
95 subject only to review for abuse of discretion.

96 Section 4. Section **78B-15-806** is amended to read:

97 **78B-15-806. Termination of gestational agreement.**

98 (1) After issuance of an order under this part, but before the prospective gestational
99 mother becomes pregnant by means of assisted reproduction, the prospective gestational
100 mother, [~~her husband~~] the prospective gestational mother's spouse, or either of the intended
101 parents may terminate the gestational agreement only by giving written notice of termination to
102 all other parties.

103 (2) The tribunal for good cause shown also may terminate the gestational agreement.

104 (3) An individual who terminates an agreement shall file notice of the termination with
105 the tribunal. On receipt of the notice, the tribunal shall vacate the order issued under this part.
106 An individual who does not notify the tribunal of the termination of the agreement is subject to
107 appropriate sanctions.

108 (4) [~~Neither a prospective gestational mother nor her husband, if any, is liable~~] A
109 prospective gestational mother, or the prospective gestational mother's spouse if married, is not
110 liable to the intended parents for terminating an agreement pursuant to this section.

111 Section 5. Section **78B-15-808** is amended to read:

112 **78B-15-808. Gestational agreement -- Miscellaneous provisions.**

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

114 (2) A gestational agreement may not limit the right of the gestational mother to make
115 decisions to safeguard [~~her~~] the gestational mother's health or that of the embryo or fetus.

116 (3) After the issuance of an order under this part, subsequent marriage of the
117 gestational mother does not affect the validity of a gestational agreement, and [~~her husband's~~]
118 the gestational mother's spouse's consent to the agreement is not required, nor is [~~her husband~~]

119 the gestational mother's spouse a presumed [~~father~~] parent of the resulting child.

120 Section 6. **Effective date.**

121 This bill takes effect on May 1, 2024.