

GESTATIONAL AGREEMENTS REVISIONS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: _____

LONG TITLE

General Description:

This bill addresses gestational agreements.

Highlighted Provisions:

This bill:

- ▶ repeals provisions addressing gestational agreements; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-15-102, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-15-104, as last amended by Laws of Utah 2010, Chapter 237

78B-15-201, as last amended by Laws of Utah 2017, Chapter 156

78B-15-602, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-15-701, as renumbered and amended by Laws of Utah 2008, Chapter 3

REPEALS:

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



- 28 **78B-15-803**, as renumbered and amended by Laws of Utah 2008, Chapter 3
 - 29 **78B-15-804**, as renumbered and amended by Laws of Utah 2008, Chapter 3
 - 30 **78B-15-805**, as renumbered and amended by Laws of Utah 2008, Chapter 3
 - 31 **78B-15-806**, as renumbered and amended by Laws of Utah 2008, Chapter 3
 - 32 **78B-15-807**, as renumbered and amended by Laws of Utah 2008, Chapter 3
 - 33 **78B-15-808**, as renumbered and amended by Laws of Utah 2008, Chapter 3
 - 34 **78B-15-809**, as renumbered and amended by Laws of Utah 2008, Chapter 3
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36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section **78B-15-102** is amended to read:

38 **78B-15-102. Definitions.**

39 As used in this chapter:

40 (1) "Adjudicated father" means a man who has been adjudicated by a tribunal to be the
41 father of a child.

42 (2) "Alleged father" means a man who alleges himself to be, or is alleged to be, the
43 genetic father or a possible genetic father of a child, but whose paternity has not been
44 determined.

45 (3) "Assisted reproduction" means a method of causing pregnancy other than sexual
46 intercourse. The term includes:

- 47 (a) intrauterine insemination;
- 48 (b) donation of eggs;
- 49 (c) donation of embryos;
- 50 (d) in vitro fertilization and transfer of embryos; and
- 51 (e) intracytoplasmic sperm injection.

52 (4) "Birth expenses" means all medical costs associated with the birth of a child,
53 including the related expenses for the biological mother during her pregnancy and delivery.

54 (5) "Birth mother" means the biological mother of a child.

55 (6) "Child" means an individual of any age whose parentage may be determined under
56 this chapter.

57 (7) "Commence" means to file the initial pleading seeking an adjudication of parentage
58 in the appropriate tribunal of this state.

59 (8) "Declarant father" means a male who, along with the biological mother claims to be
60 the genetic father of a child, and signs a voluntary declaration of paternity to establish the man's
61 paternity.

62 (9) "Determination of parentage" means the establishment of the parent-child
63 relationship by the signing of a valid declaration of paternity under Part 3, Voluntary
64 Declaration of Paternity Act, or adjudication by a tribunal.

65 (10) "Donor" means an individual who produces eggs or sperm used for assisted
66 reproduction, whether or not for consideration. The term does not include:

67 (a) a husband who provides sperm, or a wife who provides eggs, to be used for assisted
68 reproduction by the wife;

69 (b) a woman who gives birth to a child by means of assisted reproduction~~[-except as
70 otherwise provided in Part 8, Gestational Agreement];~~ or

71 (c) a parent under Part 7, Assisted Reproduction~~[-or an intended parent under Part 8,
72 Gestational Agreement].~~

73 (11) "Ethnic or racial group" means, for purposes of genetic testing, a recognized group
74 that an individual identifies as all or part of the individual's ancestry or that is so identified by
75 other information.

76 (12) "Financial support" means a base child support award as defined in Section
77 [78B-12-102](#), all past-due support which accrues under an order for current periodic payments,
78 and sum certain judgments for past-due support.

79 (13) "Genetic testing" means an analysis of genetic markers to exclude or identify a
80 man as the father or a woman as the mother of a child. The term includes an analysis of one or
81 a combination of the following:

82 (a) deoxyribonucleic acid; or

83 (b) blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes,
84 serum proteins, or red-cell enzymes.

85 ~~[(14) "Gestational mother" means an adult woman who gives birth to a child under a
86 gestational agreement.]~~

87 ~~[(15)]~~ (14) "Man," as defined in this chapter, means a male individual of any age.

88 ~~[(16)]~~ (15) "Medical support" means a provision in a support order that requires the
89 purchase and maintenance of appropriate insurance for health and dental expenses of

90 dependent children, and assigns responsibility for uninsured medical expenses.

91 ~~[(17)]~~ (16) "Parent" means an individual who has established a parent-child
92 relationship under Section 78B-15-201.

93 ~~[(18)]~~ (17) "Parent-child relationship" means the legal relationship between a child and
94 a parent of the child. The term includes the mother-child relationship and the father-child
95 relationship.

96 ~~[(19)]~~ (18) "Paternity index" means the likelihood of paternity calculated by computing
97 the ratio between:

98 (a) the likelihood that the tested man is the father, based on the genetic markers of the
99 tested man and child, conditioned on the hypothesis that the tested man is the father of the
100 child; and

101 (b) the likelihood that the tested man is not the father, based on the genetic markers of
102 the tested man and child, conditioned on the hypothesis that the tested man is not the father of
103 the child and that the father is of the same ethnic or racial group as the tested man.

104 ~~[(20)]~~ (19) "Presumed father" means a man who, by operation of law under Section
105 78B-15-204, is recognized as the father of a child until that status is rebutted or confirmed as
106 set forth in this chapter.

107 ~~[(21)]~~ (20) "Probability of paternity" means the measure, for the ethnic or racial group
108 to which the alleged father belongs, of the probability that the man in question is the father of
109 the child, compared with a random, unrelated man of the same ethnic or racial group, expressed
110 as a percentage incorporating the paternity index and a prior probability.

111 ~~[(22)]~~ (21) "Record" means information that is inscribed on a tangible medium or that
112 is stored in an electronic or other medium and is retrievable in perceivable form.

113 ~~[(23)]~~ (22) "Signatory" means an individual who authenticates a record and is bound by
114 its terms.

115 ~~[(24)]~~ (23) "State" means a state of the United States, the District of Columbia, Puerto
116 Rico, the United States Virgin Islands, any territory, Native American Tribe, or insular
117 possession subject to the jurisdiction of the United States.

118 ~~[(25)]~~ (24) "Support-enforcement agency" means a public official or agency authorized
119 under Title IV-D of the Social Security Act which has the authority to seek:

120 (a) enforcement of support orders or laws relating to the duty of support;

- 121 (b) establishment or modification of child support;
- 122 (c) determination of parentage; or
- 123 (d) location of child-support obligors and their income and assets.

124 ~~[(26)]~~ (25) "Tribunal" means a court of law, administrative agency, or quasi-judicial
 125 entity authorized to establish, enforce, or modify support orders or to determine parentage.

126 Section 2. Section **78B-15-104** is amended to read:

127 **78B-15-104. Adjudication -- Jurisdiction.**

128 (1) The district court, the juvenile court, and the Office of Recovery Services in
 129 accordance with Section [62A-11-304.2](#) and Title 63G, Chapter 4, Administrative Procedures
 130 Act, are authorized to adjudicate parentage under Part 1, General Provisions, Part 2, Parent and
 131 Child Relationship, Part 3, Voluntary Declaration of Paternity Act, Part 4, Registry, Part 5,
 132 Genetic Testing, Part 6, Adjudication of Parentage, and Part 9, Miscellaneous.

133 (2) The district court and the juvenile court have jurisdiction over proceedings under
 134 Part 7, Assisted Reproduction~~[-, and Part 8, Gestational Agreement]~~.

135 (3) The court shall, without adjudicating paternity, dismiss a petition that is filed under
 136 this chapter by an unmarried biological father if he is not entitled to consent to the adoption of
 137 the child under Sections [78B-6-121](#) and [78B-6-122](#).

138 Section 3. Section **78B-15-201** is amended to read:

139 **78B-15-201. Establishment of parent-child relationship.**

140 (1) (a) The mother-child relationship is established between a woman and a child by:

141 (i) the woman's having given birth to the child~~[-, except as otherwise provided in Part 8,~~
 142 ~~Gestational Agreement]~~;

143 (ii) an adjudication of the woman's maternity;

144 (iii) adoption of the child by the woman; or

145 ~~[(iv) an adjudication confirming the woman as a parent of a child born to a gestational~~
 146 ~~mother if the agreement was validated under Part 8, Gestational Agreement, or is enforceable~~
 147 ~~under other law; or]~~

148 ~~[(v)]~~ (iv) an un rebutted presumption of maternity of the child established in the same
 149 manner as under Section [78B-15-204](#).

150 (b) In this chapter, the presumption of maternity shall be treated the same as a
 151 presumption of paternity as established in Subsection [78B-15-201](#)(2)(a).

- 152 (2) The father-child relationship is established between a man and a child by:
- 153 (a) an un rebutted presumption of the man's paternity of the child under Section
- 154 78B-15-204;
- 155 (b) an effective declaration of paternity by the man under Part 3, Voluntary Declaration
- 156 of Paternity Act, unless the declaration has been rescinded or successfully challenged;
- 157 (c) an adjudication of the man's paternity;
- 158 (d) adoption of the child by the man; or
- 159 (e) the man having consented to assisted reproduction by a woman under Part 7,
- 160 Assisted Reproduction, which resulted in the birth of the child[~~;~~or].

161 [~~(f) an adjudication confirming the man as a parent of a child born to a gestational~~

162 ~~mother if the agreement was validated under Part 8, Gestational Agreement, or is enforceable~~

163 ~~under other law.]~~

164 Section 4. Section 78B-15-602 is amended to read:

165 **78B-15-602. Standing to maintain proceeding.**

166 Subject to Part 3, Voluntary Declaration of Paternity Act, and Sections 78B-15-607 and

167 78B-15-609, a proceeding to adjudicate parentage may be maintained by:

- 168 (1) the child;
- 169 (2) the mother of the child;
- 170 (3) a man whose paternity of the child is to be adjudicated;
- 171 (4) the support-enforcement agency or other governmental agency authorized by other
- 172 law;
- 173 (5) an authorized adoption agency or licensed child-placing agency; or
- 174 (6) a representative authorized by law to act for an individual who would otherwise be
- 175 entitled to maintain a proceeding but who is deceased, incapacitated, or a minor[~~;~~or].

176 [~~(7) an intended parent under Part 8, Gestational Agreement.]~~

177 Section 5. Section 78B-15-701 is amended to read:

178 **78B-15-701. Scope.**

179 This part does not apply to the birth of a child conceived by means of sexual

180 intercourse[~~, or as result of a gestational agreement as provided in Part 8, Gestational~~

181 ~~Agreement].~~

182 Section 6. **Repealer.**

- 183 This bill repeals:
- 184 Section **78B-15-801**, Gestational agreement authorized.
- 185 Section **78B-15-802**, Requirements of petition.
- 186 Section **78B-15-803**, Hearing to validate gestational agreement.
- 187 Section **78B-15-804**, Inspection of records.
- 188 Section **78B-15-805**, Exclusive, continuing jurisdiction.
- 189 Section **78B-15-806**, Termination of gestational agreement.
- 190 Section **78B-15-807**, Parentage under validated gestational agreement.
- 191 Section **78B-15-808**, Gestational agreement -- Miscellaneous provisions.
- 192 Section **78B-15-809**, Effect of nonvalidated gestational agreement.
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Legislative Review Note
Office of Legislative Research and General Counsel