

TITLE XII

PUBLIC SAFETY AND WELFARE

CHAPTER 168-B

SURROGACY

Section 168-B:1

168-B:1 Definitions. – In this chapter:

I. "Artificial insemination" means the introduction of semen into a women's vagina, cervical canal, or uterus through extracorporeal or noncoital means.

II. "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse. The term includes, but is not limited to:

- (a) Artificial insemination.
- (b) Donation of eggs.
- (c) Donation of embryos.
- (d) In-vitro fertilization and transfer of embryos.
- (e) Intracytoplasmic sperm injection.

III. "Compensation" means payment of any reasonable, valuable consideration to the gestational carrier.

IV. "Court" means that superior court in the county where the gestational carrier resides, where the intended parent or parents reside, or where the resulting child is born or is expected to be born, unless otherwise indicated in this chapter or by the gestational carrier agreement.

V. "Donor" means an individual who contributes a gamete or gametes or an embryo or embryos for the purpose of assisted reproduction with no claim or claims to present or future parental rights and obligations to any resulting child.

VI. "Embryo" means the fertilized egg.

VII. "Embryo transfer" means all medical and laboratory procedures that are necessary to effectuate the transfer of an embryo into the uterine cavity.

VIII. "Gamete" means either the ovum (egg) or the spermatozoa (sperm).

IX. "Gestational carrier" means a woman who is neither an intended parent nor a donor, who agrees to become pregnant with a child, to whom she is not genetically related, by assisted reproduction and pursuant to a gestational carrier arrangement.

X. "Gestational carrier agreement" means a written contract between the gestational carrier, her spouse or partner, if any, and the intended parent or parents, that sets forth the obligations, rights, and duties of the parties to a gestational carrier arrangement.

XI. "Gestational carrier arrangement" means the process by which a gestational carrier attempts to become pregnant with a child through assisted reproduction using the gamete or gametes provided by the intended parent or parents and/or donor or donors, which may or may not be genetically related to the intended parent or parents, and to which the gestational carrier has made no genetic contribution, and carry and give birth to such a child with the intention that the child will be solely the legal child of the intended parent or parents.

XII. "Health care provider" means a person who is duly licensed, certified, authorized, or

registered under the laws of the state to provide health care, and includes all medical, psychological, counseling, and social work professionals.

XIII. "Intended parent" means a person who intends to become a parent of any child that results from a gestational carrier agreement. This term shall include intended mothers, intended fathers, or a combination of both. In the case of a married couple, any reference to an intended parent shall include both spouses for all purposes of this chapter.

XIV. "In vitro fertilization" means all medical and laboratory procedures that are necessary to effectuate the extracorporeal combining of egg and sperm and the resulting fertilization of the egg.

XV. "Mental health consultation" means an in-person meeting with a licensed mental health professional for the purposes of educating the participants about the effects and potential consequences of their participation in a gestational carrier arrangement, and of evaluating any potential psychological issues and risks posed by a party to a gestational carrier arrangement, including, but not limited to, the intended parent or parents or the gestational carrier's mental health, external and environmental factors, ability to manage relationships, potential attachment issues, and ability to carry out his or her obligations, rights, and duties under a gestational carrier arrangement.

XVI. "Mental health professional" means an individual who:

(a) Holds a masters or doctoral degree in the field of psychiatry, psychology, counseling, social work, psychiatric nursing, or marriage and family therapy; and

(b) Is duly licensed, certified, authorized, or registered under the laws of a state to practice in the mental health field.

Source. 2014, 248:2, eff. July 21, 2014.

Section 168-B:2

168-B:2 Parent-Child Relationship. –

I. A person is the parent of a child to whom she has given birth, except as otherwise provided in this chapter and if the pregnancy was established pursuant to a gestational carrier arrangement.

II. A person is the parent of a child conceived via assisted reproduction if the person, except when acting in the capacity of a donor, consents to the performance of assisted reproduction or provides a gamete or gametes or an embryo or embryos for use in the assisted reproduction.

III. A donor is not a parent of a child conceived through assisted reproduction.

IV. If a child is conceived via assisted reproduction after the death of the person referenced in paragraph II, consent to assisted reproduction shall be deemed valid only if the person had consented in writing prior to death that if assisted reproduction were to occur after death, the deceased individual would be a parent of the child.

V. Notwithstanding any other provision of law, a person is presumed to be the parent of a child if:

(a) The child is born to a person's spouse during the marriage, or within 300 days after the marriage is terminated for any reason, or after a decree of separation is entered by the court.

(b) Before the child's birth, the person and the child's other parent have attempted to marry each other by a marriage solemnized in apparent compliance with the law, although the attempted marriage is or could be declared void, voidable, or otherwise invalid; and

(1) If the attempted marriage could be declared invalid only by a court, the child is born

during the attempted marriage, or within 300 days after its termination for any reason; or

(2) If the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation.

(c) After the child's birth, the person and the child's other parent have married, or attempted to marry each other by a marriage solemnized in apparent compliance with the law, although the attempted marriage is or could be declared void, voidable, or otherwise invalid; and

(1) The person has acknowledged parentage of the child in a writing filed with the appropriate court or state agency;

(2) With the person's consent, the person is named as the child's parent on the birth certificate; or

(3) The person is obligated to support the child under a written voluntary promise or by court order.

(d) While the child is under the age of majority, the person receives the child into the person's home and openly holds out the child as that person's child.

VI. A presumption under paragraph V may be rebutted in an appropriate action only by clear and convincing evidence. The existence of the parent-child relationship presumed under paragraph V shall not, however, be rebutted by evidence that the child was conceived by means of assisted reproduction, so long as the presumptive parent complies with the requirements of paragraph II. In the absence of such compliance, a presumptive parent's consent shall be conclusively presumed by such parent's failure to object to the parent-child relationship by filing an action to dispute parentage within 30 days after the child's birth. If 2 or more presumptions of parentage arise that conflict with each other, the presumption that on the facts is founded on the weightier considerations of policy and logic controls. The presumption shall be rebutted by a court decree establishing parentage of the child with another person.

Source. 2014, 248:2, eff. July 21, 2014.

Section 168-B:3

168-B:3 Legitimacy. – If, under the provisions of this chapter, a parent-child relationship is created between 2 persons, the child shall be considered, for all purposes of law, the legitimate child of the parent.

Source. 2014, 248:2, eff. July 21, 2014.

Section 168-B:4

168-B:4 Effect of Noncompliance. – Noncompliance with the requirements of this chapter shall not affect the determination of parenthood under this chapter.

Source. 2014, 248:2, eff. July 21, 2014.

Section 168-B:5

168-B:5 Parental Status of a Gestational Carrier and Her Spouse or Partner, If Any. – Neither a gestational carrier nor her spouse or partner, if any, shall be a parent of a child conceived as a result of assisted reproduction and a gestational carrier arrangement.

Source. 2014, 248:2, eff. July 21, 2014.

Section 168-B:6

168-B:6 Parental Status of a Donor. – A donor shall not be a parent of a child conceived as a result of assisted reproduction and a gestational carrier arrangement.

Source. 2014, 248:2, eff. July 21, 2014.

Section 168-B:7

168-B:7 Parental Status of the Intended Parent. – A child conceived as a result of assisted reproduction and a gestational carrier arrangement shall be the child solely of the intended parent or parents. The parental rights of physical custody shall vest with the intended parent or parents immediately upon the birth of the child.

Source. 2014, 248:2, eff. July 21, 2014.

Section 168-B:8

168-B:8 Rights and Responsibilities of Intended Parent. – An intended parent of any child resulting from assisted reproduction and a gestational carrier arrangement shall meet each of the following requirements prior to any medical procedures to impregnate the gestational carrier:

- I. He, she, or they have completed a mental health consultation.
- II. He, she, or they have undergone legal consultation with independent legal counsel regarding the terms of the gestational carrier agreement and have been advised of the potential legal consequences of the gestational carrier agreement.

Source. 2014, 248:2, eff. July 21, 2014.

Section 168-B:9

168-B:9 Eligibility of a Gestational Carrier. – Prior to any medical procedures to impregnate the gestational carrier, a woman, intending to be a gestational carrier, shall meet all of the following requirements:

- I. She is at least 21 years of age.
- II. She has given birth to at least one child.
- III. She has completed a physical medical evaluation, in substantial conformance with the guidelines set forth by the American Society for Reproductive Medicine, relating to the anticipated pregnancy.
- IV. She has completed a mental health consultation.
- V. She, and her spouse or partner, if any, have undergone legal consultation with independent

legal counsel regarding the terms of the gestational carrier agreement and have been advised of the potential legal consequences of the gestational carrier agreement.

Source. 2014, 248:2, eff. July 21, 2014.

Section 168-B:10

168-B:10 Enforceability of Gestational Carrier Agreement. – To best protect all parties entering into a gestational carrier arrangement, a gestational carrier agreement shall meet the minimum requirements under RSA 168-B:11. A gestational carrier agreement that conforms to these requirements is a legal contract that is presumed to be valid and enforceable and is legally enforceable by the court. The parties to a gestational carrier agreement may petition the court for an order affirming the status of a gestational carrier agreement. The court shall issue such an order upon a finding that the agreement meets the minimum requirements under RSA 168-B:11.

Source. 2014, 248:2, eff. July 21, 2014.

Section 168-B:11

168-B:11 Requirements for a Gestational Carrier Agreement. – A gestational carrier agreement shall meet all of the following minimum requirements:

- I. It shall be in writing.
- II. It shall be executed prior to the commencement of any medical procedures to impregnate the gestational carrier.
- III. All parties shall be represented by legal counsel regarding the gestational carrier agreement and the gestational carrier and her spouse or partner, if any, shall have legal counsel that is separate and independent from the legal counsel for the intended parents.
- IV. It shall expressly provide for the following:
 - (a) The express written agreement of the gestational carrier to:
 - (1) Undergo embryo transfer, become pregnant by means of assisted reproduction, and attempt to carry and give birth to the resulting child;
 - (2) Relinquish all rights, obligations, and duties as a parent of the resulting child; and
 - (3) Surrender physical custody of the resulting child to the intended parent or parents immediately upon birth of the child.
 - (b) The express written agreement of the gestational carrier's spouse or partner, if any, if such spouse or partner is a party to the agreement, to abide by the obligations imposed on the spouse or partner pursuant to the terms of the gestational carrier agreement, including, but not limited to, the relinquishment of all rights, obligations, and duties as a parent of the resulting child.
 - (c) The express written agreement of the intended parent or parents to:
 - (1) Accept sole rights, obligations, and duties as parent or parents of the resulting child;
 - (2) Accept sole physical custody of the resulting child immediately upon birth, regardless of number, gender, and/or physical or mental condition; and
 - (3) Assume sole responsibility for the support of the resulting child immediately upon birth.
 - (d) The express written agreement of all parties as to how reasonable compensation, if any,

shall be paid to the gestational carrier, including, but not limited to, payment of the gestational carrier's reasonable medical, counseling, legal, and/or other expenses related to the gestational carrier arrangement.

(e) The express written agreement of all parties as to how, if the gestational carrier breaches a provision of this chapter or of the gestational carrier agreement, and such a breach causes harm to the resulting child, the gestational carrier will cover her potential liability for such harm, pursuant to RSA 168-B:18.

(f) The express written agreement of all parties as to how decisions regarding termination of the pregnancy shall be made.

Source. 2014, 248:2, eff. July 21, 2014.

Section 168-B:12

168-B:12 Parentage Orders. –

I. Any of the parties to a gestational carrier agreement may petition the circuit court for a parentage order declaring that the intended parent or parents are the sole parents of a child resulting from assisted reproduction and a gestational carrier arrangement, and that the gestational carrier and her spouse or partner, if any, are not the parent or parents of such a child. Such a petition may be brought in the circuit court in the county where the gestational carrier resides, where the intended parent or parents reside, or where the resulting child is born or is expected to be born. Such a petition may be brought either before, during, or subsequent to the pregnancy. The court shall, within 30 days, grant the petition upon a finding that the parties have substantially complied with the requirements of this chapter pertaining to the execution of a gestational carrier agreement. Sworn affidavits demonstrating substantial compliance shall be sufficient to permit such a finding and a hearing shall not be required unless the court requires additional information which cannot reasonably be ascertained without a hearing. In the absence of such substantial compliance, the court may in its discretion issue such parentage order upon a finding that the parties intended to enter into a gestational carrier arrangement and the best interests of the child would be met by permitting parentage to be established in this manner. Such parentage orders issued under this section shall conclusively establish or affirm, where applicable, the parent-child relationship.

II. Upon the request of any party, such parentage order shall direct that the certificate of birth name the intended parent or parents as the sole parent or parents of the resulting child and that such a certificate of birth shall not name the gestational carrier or her spouse or partner, if any, as the parent or parents of the resulting child.

III. All proceedings pursuant to this section shall be closed to the public, and papers and records pertaining to such proceedings shall be subject to inspection only upon consent of all the parties or upon a showing of good cause supported by a court order.

Source. 2014, 248:2, eff. July 21, 2014.

Section 168-B:13

168-B:13 Marriage or Partnership of a Gestational Carrier During the Gestational Carrier Arrangement. – The marriage or partnership of a gestational carrier after she executes

a gestational carrier agreement does not affect the validity or the terms of the gestational carrier agreement, and her spouse or partner shall not be a parent of the resulting child.

Source. 2014, 248:2, eff. July 21, 2014.

Section 168-B:14

168-B:14 Intestate and Testate Succession. – Subject to the provisions of RSA 168-B:15, a child shall be considered a child only of his or her parent or parents and the parent or parents shall be considered the parent or parents of the child, as determined for the purposes of:

- I. Intestate succession.
- II. Taking against the will of any person.
- III. Taking under the will of any person, unless such will provides otherwise.
- IV. Being entitled to any support or similar allowance during the administration of a parent's estate.

Source. 2014, 248:2, eff. July 21, 2014.

Section 168-B:15

168-B:15 Death of the Intended Parent or Parents. –

I. Prior to any embryo transfer pursuant to the gestational carrier arrangement, the intended parent or parents shall make guardianship provisions for the prospective child by amending their existing estate planning documents, or by executing estate planning documents containing such provisions if they have no existing estate planning documents.

II. In the event that the intended parent or parents predecease the birth of the resulting child, the terms and conditions of the gestational carrier agreement shall remain in full force and effect, and the resulting child shall be delivered into the sole care and custody of the guardian nominated in the estate planning documents of the intended parent or parents, or of the guardian designated by a court of appropriate jurisdiction, if both parents are deceased, or into the sole care and custody of the surviving intended parent if only one of the 2 intended parents is deceased.

III. Any child conceived by assisted reproduction and pursuant to the terms of the gestational carrier agreement shall have all testamentary and inheritance rights from the intended parent or parents, and shall have no testamentary or inheritance rights from the gestational carrier and her spouse or partner, if any. The intended parent or parents shall have testamentary and inheritance rights from the resulting child as parents.

Source. 2014, 248:2, eff. July 21, 2014.

Section 168-B:16

168-B:16 Noncompliance. – Noncompliance by the gestational carrier, the gestational carrier's spouse or partner, if any, or by the intended parent or parents occurs when that party breaches a provision of this chapter and/or a provision of the gestational carrier agreement.

Source. 2014, 248:2, eff. July 21, 2014.

Section 168-B:17

168-B:17 Effect of Noncompliance. – Except as otherwise provided in this chapter, in the event of a party's noncompliance with the requirements of this chapter and/or with a provision of the gestational carrier agreement, the court shall determine the respective rights and obligations of the parties, unless the gestational carrier agreement provides otherwise.

Source. 2014, 248:2, eff. July 21, 2014.

Section 168-B:18

168-B:18 Remedies. –

I. Except as expressly provided in the gestational carrier agreement, the intended parent or parents shall be entitled to all remedies available at law or equity.

II. Except as expressly provided in the gestational carrier agreement, the gestational carrier shall be entitled to all remedies available at law or equity.

III. A breach of a provision of this chapter and/or of the gestational carrier agreement by the intended parent or parents, after the gestational carrier is impregnated, shall not relieve such intended parent or parents of the intended parent's or parents' obligations imposed by this chapter.

IV. In the event of a breach of a provision of this chapter and/or of the gestational carrier agreement by the intended parent or parents, after the gestational carrier is impregnated, the gestational carrier shall be entitled to receive all compensation and other moneys due to the gestational carrier under the gestational carrier agreement.

V. A breach of a provision of this chapter and/or of the gestational carrier agreement by the gestational carrier, after the gestational carrier is impregnated, shall not relieve the gestational carrier of her obligations imposed by this chapter.

VI. If the gestational carrier breaches a provision of this chapter and/or of the gestational carrier agreement, and such a breach causes harm to the resulting child, the gestational carrier may be liable for payment of the resulting child's medical expenses not otherwise covered by the intended parent's or parents' insurance.

Source. 2014, 248:2, eff. July 21, 2014.

Section 168-B:19

168-B:19 Irrevocability. – No action to invalidate a gestational carrier agreement meeting the requirements of this chapter or to challenge the rights of parentage established pursuant to this chapter for a gestational carrier arrangement shall commence once the pregnancy is established.

Source. 2014, 248:2, eff. July 21, 2014.

Section 168-B:20

168-B:20 Rulemaking. – The department of health and human services shall adopt rules, pursuant to RSA 541-A, to carry out its duties under this chapter. Until such time as the department of health and human services adopts rules pursuant to this section, medical evaluations, mental health consultations, and other procedures required under this chapter shall be conducted in accordance with the relevant sections of guidelines published by the American Society for Reproductive Medicine (ASRM), the Society for Assisted Reproductive Technologies (SART), and the American College of Obstetricians and Gynecologists (ACOG).

Source. 2014, 248:2, eff. July 21, 2014.

Section 168-B:21

168-B:21 Severability. – If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter, which can be given effect without the invalid provisions or applications, and to this end the provisions of this chapter are severable.

Source. 2014, 248:2, eff. July 21, 2014.