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"Laws covering surrogate births revised." The Star-Ledger, 6-1-2018

RW/JA

P.L. 2018, CHAPTER 18, *approved May 30, 2018*
Senate, No. 482 (*Second Reprint*)

1 **AN ACT** concerning gestational carrier agreements, supplementing
2 Title 9 of the Revised Statutes and amending P.L.1983, c.17 and
3 R.S.26:8-28.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) Title.
9 This act shall be known as the “New Jersey Gestational Carrier
10 Agreement Act.”

11
12 2. (New section) Purpose.
13 a. The Legislature finds and declares that gestational carrier
14 agreements executed pursuant to this act are in accord with the
15 public policy of this State.

16 b. It is the intent and purpose of the Legislature to:
17 (1) Establish consistent standards and procedural safeguards to
18 promote the best interests of the children who will be born as a
19 result of gestational carrier agreements executed pursuant to
20 P.L. , c. (C.)(pending before the Legislature as this bill);
21 (2) Protect all parties involved in gestational carrier agreements
22 executed pursuant to P.L. , c. (C.)(pending before the
23 Legislature as this bill); and
24 (3) Recognize the technological advances in assisted
25 reproductive medicine in ways that allow the use of these advances
26 by intended parents and gestational carriers according to the public
27 policy of New Jersey.

28
29 3. (New section) Definitions.
30 As used in this act:
31 “Advanced practice nurse” means a person certified in
32 accordance with the provisions of section 8 or 9 of P.L.1991, c.377
33 (C.45:11-47 or 45:11-48).

34 “Assisted reproductive technology” means procreative laboratory
35 procedures involving human eggs or pre-embryos, including, but
36 not limited to: in vitro fertilization; embryo transfer; gamete
37 transfer; pronuclear stage transfer; and zygote transfer.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate floor amendments adopted February 26, 2018.

²Senate SBA committee amendments adopted March 13, 2018.

1 “Attorney” means a person licensed to practice law in New
2 Jersey or another state or the District of Columbia.

3 “Certified nurse midwife” means a midwife licensed by the State
4 Board of Medical Examiners as a certified nurse midwife pursuant
5 to the provisions of P.L.1991, c.97 (C.45:10-17 et al.).

6 “Donor” means a person who contributes gametes for use in
7 assisted reproduction. The term does not include an intended parent
8 who contributes gametes to be used in assisted reproduction
9 pursuant to a valid gestational carrier agreement.

10 “Fertilization” means the initial union of the sperm and the egg.

11 “Gamete” means sperm or egg.

12 “Gestational carrier” means a woman 21 years of age or older
13 who agrees to become pregnant for an intended parent by assisted
14 reproductive technology without the use of her own egg.

15 “Gestational carrier agreement” means the written contract
16 between the gestational carrier and the intended parent, pursuant to
17 which the intended parent agrees to become the legal parent of a
18 child created through assisted reproductive technology and carried
19 by the gestational carrier.

20 “Implantation” means when the fertilized egg adheres to the
21 gestational carrier’s uterine wall.

22 “Intended parent” means a person who enters into a gestational
23 carrier agreement with a gestational carrier pursuant to section 6 of
24 P.L. , c. (C.) (pending before the Legislature as this bill),
25 pursuant to which the person shall be the legal parent of the
26 resulting child. The term shall include persons who are single,
27 married, partners in a civil union or domestic partnership, and
28 couples who are not married or in a civil union or domestic
29 partnership. Any reference to an intended parent shall include both
30 spouses or partners in a civil union or domestic partnership. This
31 term shall include the intended mother, the intended father, the
32 intended mother and intended father, the intended mother and
33 intended mother, or the intended father and intended father.

34 “In vitro fertilization” means all medical and laboratory
35 procedures that are required to effectuate the formation of a human
36 embryo outside the human body.

37 “Medical evaluation” means an evaluation and consultation by a
38 physician, ¹a physician assistant,¹ a certified nurse midwife, or an
39 advanced practice nurse.

40 “Order of parentage” means a judgment determining parentage
41 pursuant to the provisions of a gestational carrier agreement that
42 satisfies P.L. , c. (C.) (pending before the Legislature as
43 this bill).

44 “Physician” means a person licensed to practice medicine in New
45 Jersey pursuant to R.S.45:9-1 et seq. or licensed to practice in any
46 one of the United States or its territories, or the District of
47 Columbia.

1 ¹“Physician assistant” means a health professional who meets the
2 qualifications under P.L.1991, c.378 (C.45:9-27.10 et seq.) and
3 holds a current, valid license issued pursuant to section 4 of
4 P.L.1991, c.378 (C.45:9-27.13).¹

5 “Pre-embryo” is a fertilized egg prior to 14 days of development.

6 “Pre-embryo transfer” means all medical and laboratory
7 procedures that are necessary to effectuate the transfer of a pre-
8 embryo into the uterine cavity.

9 “Psychological evaluation” means an evaluation and consultation
10 by a clinical social worker, psychotherapist, or psychiatrist licensed
11 by the State of New Jersey or licensed to practice in any one of the
12 United States or its territories, or the District of Columbia.

13 “Reasonable expenses” means medical, hospital, counseling or
14 other similar expenses incurred in connection with the gestational
15 carrier agreement, reasonable attorney fees and costs for legal
16 services in connection with the gestational carrier agreement, and
17 the reasonable living expenses of the gestational carrier during her
18 pregnancy including payments for reasonable food, clothing,
19 medical expenses, shelter, and religious, psychological, vocational,
20 or similar counseling services during the period of the pregnancy
21 and during the period of postpartum recovery. These payments may
22 be made directly to the gestational carrier or on the gestational
23 carrier’s behalf to the supplier of the goods or services pursuant to
24 the gestational carrier agreement.

25

26 4. (New section) Rights of Parentage.

27 a. Provided that the gestational carrier and the intended parent
28 satisfy the eligibility requirements set forth in section 5 of
29 P.L. , c. (C.)(pending before the Legislature as this bill)
30 and the gestational carrier agreement satisfies the requirements set
31 forth in section 6 of P.L. , c. (C.)(pending before the
32 Legislature as this bill), immediately upon the birth of the child:

33 (1) The intended parent shall be the legal parent of the child;

34 (2) In the case of an intended parent who is a spouse or partner
35 in a civil union or domestic partnership, both spouses or partners
36 shall be the parents of the child; and

37 (3) Neither the gestational carrier nor her spouse or partner, if
38 any, shall be the legal parent of the child.

39 b. In the event of a medical or laboratory error in which the
40 resulting child is not genetically related to an intended parent whose
41 gamete was intended to be used under the agreement, the intended
42 parent shall be the parent of the child where the gestational carrier
43 agreement satisfies the requirements set forth in section 6 of
44 P.L. , c. (C.)(pending before the Legislature as this
45 bill), unless otherwise determined by a court of competent
46 jurisdiction pursuant to a complaint challenging parentage filed by a
47 genetic parent within 120 days of birth.

1 5. (New section) Eligibility.

2 a. A gestational carrier shall be deemed to have satisfied the
3 requirements of P.L. , c. (C.)(pending before the
4 Legislature as this bill) if, at the time the gestational carrier
5 agreement is executed, she:

6 (1) Is at least 21 years of age;

7 (2) Has given birth to at least one child;

8 (3) Has completed a medical evaluation approving her
9 suitability to serve as a gestational carrier;

10 (4) Has completed a psychological evaluation approving her
11 suitability to serve as a gestational carrier;

12 (5) Has retained an attorney, independent of the intended parent,
13 but for whose services the intended parent may pay, who has
14 consulted with her about the terms of the gestational carrier
15 agreement and the potential legal consequences of being a
16 gestational carrier under the terms of this agreement.

17 b. The intended parent shall be deemed to have satisfied the
18 requirements of P.L. , c. (C.)(pending before the
19 Legislature as this bill) if, at the time the gestational carrier
20 agreement is executed, the intended parent:

21 (1) Has completed a psychological evaluation approving the
22 intended parent's suitability to participate in a gestational carrier
23 agreement; and

24 (2) Is represented by an attorney who consulted with the
25 intended parent about the terms of the gestational carrier agreement
26 and the potential legal consequences of the agreement.

27

28 6. (New section) Requirements for a Gestational Carrier
29 Agreement.

30 a. A gestational carrier agreement shall satisfy the following
31 requirements:

32 (1) It is in writing and executed by the gestational carrier, her
33 spouse or partner in a civil union or domestic partnership, if any,
34 and each intended parent. If the intended parent is married or in a
35 domestic partnership or civil union at the time the intended parent
36 enters the agreement, both spouses or partners shall meet the
37 requirements of subsection b. of section 5 of P.L. , c. (C.)
38 (pending before the Legislature as this bill) and shall be required to
39 enter into the agreement as intended parents. If the intended parent
40 is not married or in a civil union or domestic partnership, no other
41 person shall be deemed a legal parent of the child unless that person
42 meets the requirements of subsection b. of section 5 of
43 P.L. , c. (C.)(pending before the Legislature as this bill)
44 and duly executes the agreement;

45 (2) It is executed after the required medical and psychological
46 screenings of the gestational carrier and the psychological screening
47 of the intended parent, but prior to the commencement of any other

1 necessary medical procedures in furtherance of the implantation of
2 the pre-embryo; and

3 (3) The gestational carrier and her spouse or partner, if any, and
4 the intended parent shall have been represented by separate
5 attorneys in all matters relating to the gestational carrier agreement
6 and each attorney provides an affidavit of such representation.

7 b. A gestational carrier agreement shall provide:

8 (1) Express terms that the gestational carrier shall:

9 (a) Undergo pre-embryo transfer and attempt to carry and give
10 birth to the child;

11 (b) Surrender custody of the child to the intended parent
12 immediately upon the child's birth; and

13 (c) Have the right to medical care for the pregnancy, labor,
14 delivery, and postpartum recovery provided by a physician,
15 'physician assistant,' advance practice nurse, or certified nurse
16 midwife of her choice, after she notifies, in writing, the intended
17 parent of her choice;

18 (2) An express term that, if the gestational carrier is married or
19 in a civil union or domestic partnership, the spouse or partner
20 agrees to the obligations imposed on the gestational carrier pursuant
21 to the terms of the gestational carrier agreement and to surrender
22 custody of the child to the intended parent immediately upon the
23 child's birth; and

24 (3) Express terms that the intended parent shall:

25 (a) Accept custody of the child immediately upon the child's
26 birth; and

27 (b) Assume sole responsibility for the support of the child
28 immediately upon the child's birth.

29 c. A gestational carrier agreement shall be presumed
30 enforceable if:

31 (1) It satisfies the contractual requirements set forth in
32 subsection a. of this section; and

33 (2) It contains at a minimum each of the terms set forth in
34 subsection b. of this section.

35 In addition, an enforceable gestational carrier agreement shall
36 include a provision setting forth the financial responsibilities of the
37 parties and shall include a provision that the intended parent shall
38 pay the gestational carrier's reasonable expenses, as defined herein,
39 unless expressly waived, in whole or in part, in writing by the
40 gestational carrier.

41 d. In the event that any of the requirements of this section are
42 not met, a court of competent jurisdiction shall determine parentage
43 based on the parties' intent.

44

45 7. (New section) Duty to Support.

46 a. The establishment of the parent and child relationship
47 pursuant to a valid gestational carrier agreement shall be the basis
48 upon which an action for child support may be brought against the

- 1 intended parent and acted upon by the court without further
2 evidentiary proceedings.
- 3 b. The breach of the gestational carrier agreement by the
4 intended parent shall not relieve the intended parent of the support
5 obligations imposed by the parent and child relationship created by
6 the provisions of P.L. , c. (C.)(pending before the
7 Legislature as this bill).
- 8 c. Unless a person who donates gametes for use in assisted
9 reproduction enters into a written contract to the contrary, the
10 gamete donor is treated in law as if the gamete donor were not the
11 legal parent of a child thereby conceived and shall have no rights or
12 duties stemming from the conception of the child.
- 13
- 14 8. (New section) Establishment of Parent-Child Relationship.
- 15 a. After the gestational carrier becomes pregnant in accordance
16 with the gestational carrier agreement provided for in
17 P.L. , c. (C.)(pending before the Legislature as this bill),
18 the intended parent shall file a complaint for an order of parentage
19 with the Superior Court, Chancery Division, Family Part of the
20 county of the child's anticipated birth or the intended parent's or
21 gestational carrier's county of residence.
- 22 b. Attached to the complaint shall be:
- 23 (1) An affidavit by the gestational carrier and her spouse or
24 partner, if any, and the intended parent that they have entered into a
25 gestational carrier agreement in conformity with New Jersey law
26 and, after consultation with legal counsel, agreed to be bound by the
27 terms of the agreement;
- 28 (2) An affidavit of representation by the attorney for the
29 intended parent and the attorney for the gestational carrier and her
30 spouse or partner, if any; and
- 31 (3) A statement from the medical facility which performed the
32 assisted reproduction regarding the achievement of pregnancy in
33 accordance with the gestational carrier agreement.
- 34 c. The Superior Court shall, to the extent possible, schedule
35 and expedite a hearing on the matter, except that if the matter is
36 uncontested, the court may decide the matter without the need for
37 an appearance by the parties. Notice to all necessary parties shall
38 be made in accordance with the Rules of Court.
- 39 d. The attorney representing the intended parent shall appear at
40 the hearing unless the court waives an appearance.
- 41 e. Notwithstanding any other law concerning public hearings
42 and records, any action or proceeding held under P.L. , c. (C.)
43 (pending before the Legislature as this bill), shall be held in closed
44 court without admittance of any persons other than those necessary
45 to the action or proceeding.
- 46 f. If the court finds that the parties have complied with the
47 provisions of P.L. , c. (C.)(pending before the

1 Legislature as this bill), the court shall enter an order of parentage
2 naming the intended parent as the legal parent of the child.

3 g. After the birth of the child, the order of parentage and
4 application for the child's birth certificate shall be filed with the
5 State Registrar of Vital Statistics pursuant to the requirements of
6 R.S.:26:8-28. The State Registrar shall issue the child's birth
7 certificate naming the intended parent as the parent of the child.

8 h. All records and filings in connection with a gestational
9 carrier agreement shall remain confidential and unavailable to the
10 public, except that such records and filings may be made available
11 to a child born as a result of a valid gestational carrier agreement
12 who has attained at least 18 years of age and who has submitted a
13 written, notarized request for the records or filings.

14
15 9. (New section) Certain Provisions of Law not Applicable to
16 Gestational Carrier Agreements.

17 a. A gestational carrier agreement shall not be considered:

18 (1) An adoption pursuant to Title 9 of the Revised Statutes; or

19 (2) A surrender of custody or termination of parental rights to
20 the child by the gestational carrier in violation of the requirements
21 of Title 9 of the Revised Statutes.

22 b. The payment of reasonable expenses in connection with a
23 valid gestational carrier agreement shall not constitute a violation of
24 section 18 of P.L.1993, c.345 (C.9:3-39.1).

25
26 10. Section 2 of P.L.1983, c.17 (C.9:17-39) is amended to read
27 as follows:

28 2. As used in this act, "parent and child relationship" means the
29 legal relationship existing between a child and the child's natural or
30 adoptive parents or between the child and the child's intended
31 parents pursuant to a gestational carrier agreement executed in
32 accordance with the provisions of P.L. , c. (C.)(pending
33 before the Legislature as this bill), incident to which the law confers
34 or imposes rights, privileges, duties, and obligations. It includes the
35 mother and child relationship and the father and child relationship.

36 (cf: P.L.1983, c.17, s.2)

37

38 11. Section 4 of P.L.1983, c.17 (C.9:17-41) is amended to read
39 as follows:

40 4. The parent and child relationship between a child and:

41 a. The natural mother, may be established by:

42 (1) proof of her having given birth to the child unless the child
43 is born in connection with a gestational carrier agreement executed
44 in accordance with the provisions of P.L. , c. (C.)(pending
45 before the Legislature as this bill), or

46 (2) under P.L.1983, c.17 (C.9:17-38 et seq.);

47 b. The natural father, may be established by proof that his
48 paternity has been adjudicated under prior law; under the laws

1 governing probate; by giving full faith and credit to a determination
2 of paternity made by any other state or jurisdiction, whether
3 established through voluntary acknowledgment or through judicial
4 or administrative processes; by a Certificate of Parentage as
5 provided in section 7 of P.L.1994, c.164 (C.26:8-28.1) that is
6 executed by the father, including an unemancipated minor, prior to
7 or after the birth of a child, and filed with the appropriate State
8 agency; by a default judgment or order of the court; or by an order
9 of the court based on a blood test or genetic test that meets or
10 exceeds the specific threshold probability as set by subsection i. of
11 section 11 of P.L.1983, c.17 (C.9:17-48) creating a rebuttable
12 presumption of paternity.

13 In accordance with [section 331 of Pub.L.104-193] 42 U.S.C.
14 s.666(a)(5), a signed voluntary acknowledgment of paternity shall
15 be considered a legal finding of paternity subject to the right of the
16 signatory to rescind the acknowledgment within 60 days of the date
17 of signing, or by the date of establishment of a support order to
18 which the signatory is a party, whichever is earlier.

19 The adjudication of paternity shall only be voided upon a finding
20 that there exists clear and convincing evidence of: fraud, duress or a
21 material mistake of fact, with the burden of proof upon the
22 challenger;

23 c. (1) An adoptive parent, may be established by proof of
24 adoption;

25 (2) An intended parent, may be established by proof of an order
26 of parentage related to a gestational carrier agreement executed in
27 accordance with the provisions of P.L. , c. (C.)(pending
28 before the Legislature as this bill);

29 d. The natural mother or the natural father, may be terminated
30 by an order of a court of competent jurisdiction in granting a
31 judgment of adoption or as the result of an action to terminate
32 parental rights;

33 e. The establishment of the parent and child relationship
34 pursuant to subsections a., b., and c. of this section shall be the
35 basis upon which an action for child support may be brought by a
36 party and acted upon by the court without further evidentiary
37 proceedings;

38 f. In any case in which the parties execute a Certificate of
39 Parentage or a rebuttable presumption of paternity is created
40 through genetic testing, the presumption of paternity under section
41 6 of P.L.1983, c.17 (C.9:17-43) shall not apply;

42 g. Pursuant to the provisions of [section 331 of Pub.L.104-
43 193] 42 U.S.C. s.666(a)(5), the child and other parties in a
44 contested paternity case shall submit to a genetic test upon the
45 request of one of the parties, unless that person has good cause for
46 refusal, if the request is supported by a sworn statement by the
47 requesting party:

1 (1) alleging paternity and setting forth the facts establishing a
2 reasonable possibility of the requisite sexual contact between the
3 parties; or

4 (2) denying paternity and setting forth the facts establishing a
5 reasonable possibility of the nonexistence of sexual contact between
6 the parties;

7 h. In a contested paternity case in which the State IV-D agency
8 requires or the court orders genetic testing, the State IV-D agency
9 shall:

10 (1) pay the costs of the genetic test and may recoup payment
11 from the alleged father whose paternity is established; and

12 (2) obtain additional testing if the initial test results are
13 contested, and upon the request and advance payment for the
14 additional test by the contestant.

15 (cf: P.L.1998, c.1, s.38)

16

17 12. Section 6 of P.L.1983, c.17 (C.9:17-43) is amended to read
18 as follows:

19 6. a. A man is presumed to be the biological father of a child
20 if:

21 (1) He and the child's biological mother are or have been
22 married to each other and the child is born during the marriage, or
23 within 300 days after the marriage is terminated by death,
24 annulment or divorce;

25 (2) Before the child's birth, he and the child's biological mother
26 have attempted to marry each other by a marriage solemnized in
27 apparent compliance with law, although the attempted marriage is
28 or could be declared invalid, and:

29 (a) if the attempted marriage could be declared invalid only by a
30 court, the child is born during the attempted marriage, or within 300
31 days after its termination by death, annulment or divorce; or

32 (b) if the attempted marriage is invalid without a court order, the
33 child is born within 300 days after the termination of cohabitation;

34 (3) After the child's birth, he and the child's biological mother
35 have married, or attempted to marry, each other by a marriage
36 solemnized in apparent compliance with law, although the
37 attempted marriage is or could be declared invalid, and:

38 (a) he has acknowledged his paternity of the child in writing
39 filed with the local registrar of vital statistics;

40 (b) he has sought to have his name placed on the child's birth
41 certificate as the child's father, pursuant to R.S.26:8-40; or

42 (c) he openly holds out the child as his natural child; or

43 (d) he is obligated to support the child under a written voluntary
44 agreement or court order;

45 (4) While the child is under the age of majority, he receives the
46 child into his home and openly holds out the child as his natural
47 child;

1 (5) While the child is under the age of majority, he provides
2 support for the child and openly holds out the child as his natural
3 child; or

4 (6) He acknowledges his paternity of the child in a writing filed
5 with the local registrar of vital statistics, which shall promptly
6 inform the mother of the filing of the acknowledgment, and she
7 does not dispute the acknowledgment within a reasonable time after
8 being informed thereof, in a writing filed with the local registrar. If
9 another man is presumed under this section to be the child's father,
10 acknowledgment may be effected only with the written consent of
11 the presumed father. Each attempted acknowledgment, whether or
12 not effective, shall be kept on file by the local registrar of vital
13 statistics and shall entitle the person who filed it to notice of all
14 proceedings concerning parentage and adoption of the child, as
15 provided in section 10 of P.L.1983, c.17 (C.9:17-47) and pursuant
16 to section 9 of P.L.1977, c.367 (C.9:3-45).

17 b. A presumption under this section may be rebutted in an
18 appropriate action only by clear and convincing evidence. If two or
19 more presumptions arise which conflict with each other, the
20 presumption which on the facts is founded on the weightier
21 considerations of policy and logic controls. The presumption is
22 rebutted by a court order terminating the presumed father's paternal
23 rights or by establishing that another man is the child's biological or
24 adoptive father.

25 c. Notwithstanding the provisions of this section to the
26 contrary, in an action brought under this act against the legal
27 representative or the estate of a deceased alleged father, the criteria
28 in paragraphs (4) and (5) of subsection a. of this section shall not
29 constitute presumptions but shall be considered by the court
30 together with all of the evidence submitted. The decision of the
31 court shall be based on a preponderance of the evidence.

32 d. In the absence of a presumption, the court shall decide
33 whether the parent and child relationship exists, based upon a
34 preponderance of the evidence.

35 e. There is a rebuttable presumption that a man has knowledge
36 of his paternity and the birth of a child if he had sexual intercourse
37 with the biological mother within 300 days of the child's birth. This
38 presumption may be rebutted only by clear and convincing evidence
39 in an appropriate action based on fraud, duress, or
40 misrepresentation by the biological mother concerning the paternity
41 or birth of the child. This claim of fraud, duress, or
42 misrepresentation must be asserted prior to the finalization of the
43 adoption.

44 f. This section shall not apply to a child born in connection
45 with a gestational carrier agreement executed in accordance with
46 the provisions of P.L. , c. (C.)(pending before the
47 Legislature as this bill).

48 (cf: P.L.1998, c.20, s.4)

1 13. Section 7 of P.L.1983, c.17 (C.9:17-44) is amended to read
2 as follows:

3 7. a. If, under the supervision of a licensed physician ²[¹or], ²
4 a physician assistant^{1 2}, or an advanced practice nurse,² and with
5 the consent of her ²[husband] spouse² or partner in a civil union, a
6 [wife] woman is inseminated artificially with semen donated by a
7 man not her ²[husband] spouse² or partner, the ²[husband] spouse²
8 or partner is treated in law as if [he] [were the natural father] the
9 ²[husband] spouse² or partner were the ²[natural] legal^{2 1}parent of
10 a child thereby conceived. The [husband's] consent of the
11 ²[husband] spouse² or partner shall be in writing and signed by
12 [him and his wife] both parties to the marriage or civil union. The
13 physician ²[¹or],² physician assistant^{1 2}, or advance practice nurse²
14 shall certify their signatures and the date of the insemination, upon
15 forms provided by the Department of Health, and file the
16 [husband's] consent with the ¹[State]¹ Department of Health,
17 where it shall be kept confidential and in a sealed file. However,
18 the physician's ²[¹or],² physician assistant's^{1 2}, or advance practice
19 nurse's² failure to do so shall not affect the [father] parent and
20 child relationship of the ²[husband] spouse² or partner. All papers
21 and records pertaining to the insemination, whether part of the
22 permanent record of a court or of a file held by the supervising
23 physician ²[¹or],² physician's assistant^{1 2}, or advance practice
24 nurse² or elsewhere, are subject to inspection only upon an order of
25 the court for compelling reasons clearly and convincingly shown.

26 b. Unless the donor of semen and the woman have entered into
27 a written contract to the contrary, the donor of semen provided to a
28 licensed physician ²[¹or],² physician assistant^{1 2}, or advance
29 practice nurse² for use in artificial insemination of a woman other
30 than the ²[donor's wife] spouse² or partner in a civil union is
31 treated in law as if ²[he] the donor of semen² were not the
32 ²[father] legal parent² of a child thereby conceived and shall have
33 no rights or duties stemming from the conception of a child.

34 c. This section shall not apply in a proceeding to determine
35 parentage of a child born in connection with a gestational carrier
36 agreement executed in accordance with the provisions of
37 P.L. , c. (C.) (pending before the Legislature as this bill).

38 (cf: P.L.1983, c.17, s.7)

39

40 14. Section 15 of P.L.1983, c.17 (C.9:17-52) is amended to read
41 as follows:

42 15. Evidence relating to paternity may include:

43 a. Evidence of sexual intercourse between the mother and
44 alleged father at any possible time of conception;

- 1 b. An expert's opinion concerning the statistical probability of
2 the alleged father's paternity, based upon the duration of the
3 mother's pregnancy;
- 4 c. Genetic or blood tests, weighted in accordance with
5 evidence, if available, of the statistical probability of the alleged
6 father's paternity;
- 7 d. Medical or anthropological evidence relating to the alleged
8 father's paternity of the child, based on tests performed by experts.
9 If a man has been identified as a possible father of the child, the
10 court may, and upon request of a party shall, require the child, the
11 mother, and the man to submit to appropriate tests; **[and]**
- 12 e. All other evidence on behalf of any party, relevant to the
13 issue of paternity of the child; and
- 14 f. A gestational carrier agreement executed in accordance with
15 the provisions of P.L. , c. (C.)(pending before the
16 Legislature as this bill).
17 (cf: P.L.1983, c.17, s.15)
18
- 19 15. R.S.26:8-28 is amended to read as follows:
- 20 26:8-28. a. (1) Except as provided by subsection e. of this
21 section, within five days after each birth, there shall be filed with
22 the local registrar of the district in which the birth occurred a
23 certificate of the birth filled out with durable black or blue ink in a
24 legible manner.
- 25 (2) The name of the father shall be included on the record of
26 birth of the child of unmarried parents only if the father and mother
27 have signed a voluntary acknowledgment of paternity; or a court or
28 an administrative agency of competent jurisdiction has issued an
29 adjudication of paternity.
- 30 (3) In the case of a child born in connection with a gestational
31 carrier agreement executed in accordance with the provisions of
32 P.L. , c. (C.)(pending before the Legislature as this bill),
33 the name of the intended parent shall be included on the record of
34 birth as the child's parent.
- 35 (4) Nothing in this section shall preclude the State IV-D agency
36 from obtaining an admission of paternity from the father for
37 submission in a judicial or administrative proceeding, or prohibit
38 the issuance of an order in a judicial or administrative proceeding
39 which bases a legal finding of paternity on an admission of
40 paternity by the father and any other additional showing required by
41 State law.
- 42 b. As part of the birth record, all information required by the
43 State IV-D agency pursuant to section 7 of P.L.1994, c.164 (C.26:8-
44 28.1) shall be recorded on a separate form provided or approved by
45 the State registrar pursuant to subsection c. of R.S.26:8-24, and
46 filed with the State IV-D agency pursuant to R.S.26:8-30 and
47 R.S.26:8-31 for the establishment and enforcement of child support
48 matters in the State. For the purposes of this subsection, "State IV-

1 D agency" means the agency in the Department of Human Services
2 designated to administer the Title IV-D Child Support Program.

3 c. The State registrar shall require each parent to provide his
4 Social Security number in accordance with procedures established
5 by the State registrar. The Social Security numbers furnished
6 pursuant to this section shall be used exclusively for child support
7 enforcement purposes.

8 d. The certificate of birth shall include the blood type of the
9 child.

10 e. Notwithstanding the provisions of subsection a. of this
11 section to the contrary, the filing of a child's birth certificate may be
12 delayed, based on the parent's religious beliefs, until such time as
13 the child is named; however, no such delay shall result in the filing
14 of the birth certificate more than 15 days after the child's date of
15 birth. Any parent whose religious beliefs necessitate a delay in the
16 filing of a birth certificate pursuant to this subsection, shall: (1)
17 provide notice of the religious need for a filing delay, within five
18 days after the child's date of birth, to the person who is responsible
19 for filing the birth certificate, as provided by R.S.26:8-30 or
20 R.S.26:8-31, except that, if the parent is responsible for such filing,
21 no such notice shall be required; and (2) file the child's birth
22 certificate, or authorize such filing by the person responsible
23 therefor, as soon as possible after the child is named, but in no case
24 more than 15 days after the child's birth. If a child is not named
25 within the 15-day extended timeframe provided by this subsection,
26 the child's birth certificate shall be filed, and the naming procedure
27 outlined in R.S.26:8-34 shall be applied.

28 (cf: P.L.2017, c.4, s.1)

29

30 16. This act shall take effect immediately and shall apply only
31 to gestational carrier agreements entered into on or after the
32 effective date.

33

34

35

36

37

Authorizes certain gestational carrier agreements.

SENATE, No. 482

STATE OF NEW JERSEY
218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Co-Sponsored by:

Senator Ruiz

SYNOPSIS

Authorizes certain gestational carrier agreements.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning gestational carrier agreements, supplementing
2 Title 9 of the Revised Statutes and amending P.L.1983, c.17 and
3 R.S.26:8-28.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) Title.

9 This act shall be known as the “New Jersey Gestational Carrier
10 Agreement Act.”

11
12 2. (New section) Purpose.

13 a. The Legislature finds and declares that gestational carrier
14 agreements executed pursuant to this act are in accord with the
15 public policy of this State.

16 b. It is the intent and purpose of the Legislature to:

17 (1) Establish consistent standards and procedural safeguards to
18 promote the best interests of the children who will be born as a
19 result of gestational carrier agreements executed pursuant to
20 P.L. , c. (C.)(pending before the Legislature as this bill);

21 (2) Protect all parties involved in gestational carrier agreements
22 executed pursuant to P.L. , c. (C.)(pending before the
23 Legislature as this bill); and

24 (3) Recognize the technological advances in assisted
25 reproductive medicine in ways that allow the use of these advances
26 by intended parents and gestational carriers according to the public
27 policy of New Jersey.

28
29 3. (New section) Definitions.

30 As used in this act:

31 “Advanced practice nurse” means a person certified in
32 accordance with the provisions of section 8 or 9 of P.L.1991, c.377
33 (C.45:11-47 or C.45:11-48).

34 “Assisted reproductive technology” means procreative laboratory
35 procedures involving human eggs or pre-embryos, including, but
36 not limited to: in vitro fertilization; embryo transfer; gamete
37 transfer; pronuclear stage transfer; and zygote transfer.

38 “Attorney” means a person licensed to practice law in New
39 Jersey or another state or the District of Columbia.

40 “Certified nurse midwife” means a midwife licensed by the State
41 Board of Medical Examiners as a certified nurse midwife pursuant
42 to the provisions of P.L.1991, c.97 (C.45:10-17 et al.).

43 “Donor” means a person who contributes gametes for use in
44 assisted reproduction. The term does not include an intended parent

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 who contributes gametes to be used in assisted reproduction
2 pursuant to a valid gestational carrier agreement.

3 “Fertilization” means the initial union of the sperm and the egg.

4 “Gamete” means sperm or egg.

5 “Gestational carrier” means a woman 21 years of age or older
6 who agrees to become pregnant for an intended parent by assisted
7 reproductive technology without the use of her own egg.

8 “Gestational carrier agreement” means the written contract
9 between the gestational carrier and the intended parent, pursuant to
10 which the intended parent agrees to become the legal parent of a
11 child created through assisted reproductive technology and carried
12 by the gestational carrier.

13 “Implantation” means when the fertilized egg adheres to the
14 gestational carrier’s uterine wall.

15 “Intended parent” means a person who enters into a gestational
16 carrier agreement with a gestational carrier pursuant to section 6 of
17 P.L. , c. (C.)(pending before the Legislature as this bill),
18 pursuant to which the person shall be the legal parent of the
19 resulting child. The term shall include persons who are single,
20 married, partners in a civil union or domestic partnership, and
21 couples who are not married or in a civil union or domestic
22 partnership. Any reference to an intended parent shall include both
23 spouses or partners in a civil union or domestic partnership. This
24 term shall include the intended mother, the intended father, the
25 intended mother and intended father, the intended mother and
26 intended mother, or the intended father and intended father.

27 “In vitro fertilization” means all medical and laboratory
28 procedures that are required to effectuate the formation of a human
29 embryo outside the human body.

30 “Medical evaluation” means an evaluation and consultation by a
31 physician, a certified nurse midwife, or an advanced practice nurse.

32 “Order of parentage” means a judgment determining parentage
33 pursuant to the provisions of a gestational carrier agreement that
34 satisfies P.L. , c. (C.)(pending before the Legislature as
35 this bill).

36 “Physician” means a person licensed to practice medicine in New
37 Jersey pursuant to R.S.45:9-1 et seq. or licensed to practice in any
38 one of the United States or its territories, or the District of
39 Columbia.

40 “Pre-embryo” is a fertilized egg prior to 14 days of development.

41 “Pre-embryo transfer” means all medical and laboratory
42 procedures that are necessary to effectuate the transfer of a pre-
43 embryo into the uterine cavity.

44 “Psychological evaluation” means an evaluation and consultation
45 by a clinical social worker, psychotherapist, or psychiatrist licensed
46 by the State of New Jersey or licensed to practice in any one of the
47 United States or its territories, or the District of Columbia.

1 “Reasonable expenses” means medical, hospital, counseling or
2 other similar expenses incurred in connection with the gestational
3 carrier agreement, reasonable attorney fees and costs for legal
4 services in connection with the gestational carrier agreement, and
5 the reasonable living expenses of the gestational carrier during her
6 pregnancy including payments for reasonable food, clothing,
7 medical expenses, shelter, and religious, psychological, vocational,
8 or similar counseling services during the period of the pregnancy
9 and during the period of postpartum recovery. These payments may
10 be made directly to the gestational carrier or on the gestational
11 carrier’s behalf to the supplier of the goods or services pursuant to
12 the gestational carrier agreement.

13

14 4. (New section) Rights of Parentage.

15 a. Provided that the gestational carrier and the intended parent
16 satisfy the eligibility requirements set forth in section 5 of P.L. ,
17 c. (C.)(pending before the Legislature as this bill) and the
18 gestational carrier agreement satisfies the requirements set forth in
19 section 6 of P.L. , c. (C.)(pending before the Legislature
20 as this bill), immediately upon the birth of the child:

21 (1) The intended parent shall be the legal parent of the child;

22 (2) In the case of an intended parent who is a spouse or partner
23 in a civil union or domestic partnership, both spouses or partners
24 shall be the parents of the child; and

25 (3) Neither the gestational carrier nor her spouse or partner, if
26 any, shall be the legal parent of the child.

27 b. In the event of a medical or laboratory error in which the
28 resulting child is not genetically related to an intended parent whose
29 gamete was intended to be used under the agreement, the intended
30 parent shall be the parent of the child where the gestational carrier
31 agreement satisfies the requirements set forth in section 6 of
32 P.L. , c. (C.)(pending before the Legislature as this
33 bill), unless otherwise determined by a court of competent
34 jurisdiction pursuant to a complaint challenging parentage filed by a
35 genetic parent within 120 days of birth.

36

37 5. (New section) Eligibility.

38 a. A gestational carrier shall be deemed to have satisfied the
39 requirements of P.L. , c. (C.)(pending before the
40 Legislature as this bill) if, at the time the gestational carrier
41 agreement is executed, she:

42 (1) Is at least 21 years of age;

43 (2) Has given birth to at least one child;

44 (3) Has completed a medical evaluation approving her
45 suitability to serve as a gestational carrier;

46 (4) Has completed a psychological evaluation approving her
47 suitability to serve as a gestational carrier;

1 (5) Has retained an attorney, independent of the intended parent,
2 but for whose services the intended parent may pay, who has
3 consulted with her about the terms of the gestational carrier
4 agreement and the potential legal consequences of being a
5 gestational carrier under the terms of this agreement.

6 b. The intended parent shall be deemed to have satisfied the
7 requirements of P.L. , c. (C.)(pending before the
8 Legislature as this bill) if, at the time the gestational carrier
9 agreement is executed, the intended parent:

10 (1) Has completed a psychological evaluation approving the
11 intended parent's suitability to participate in a gestational carrier
12 agreement; and

13 (2) Is represented by an attorney who consulted with the
14 intended parent about the terms of the gestational carrier agreement
15 and the potential legal consequences of the agreement.

16

17 6. (New section) Requirements for a Gestational Carrier
18 Agreement.

19 a. A gestational carrier agreement shall satisfy the following
20 requirements:

21 (1) It is in writing and executed by the gestational carrier, her
22 spouse or partner in a civil union or domestic partnership, if any,
23 and each intended parent. If the intended parent is married or in a
24 domestic partnership or civil union at the time the intended parent
25 enters the agreement, both spouses or partners shall meet the
26 requirements of subsection b. of section 5 of
27 P.L. , c. (C.)(pending before the Legislature as this bill) and
28 shall be required to enter into the agreement as intended parents. If
29 the intended parent is not married or in a civil union or domestic
30 partnership, no other person shall be deemed a legal parent of the
31 child unless that person meets the requirements of subsection b. of
32 section 5 of P.L. , c. (C.)(pending before the Legislature
33 as this bill) and duly executes the agreement;

34 (2) It is executed after the required medical and psychological
35 screenings of the gestational carrier and the psychological screening
36 of the intended parent, but prior to the commencement of any other
37 necessary medical procedures in furtherance of the implantation of
38 the pre-embryo; and

39 (3) The gestational carrier and her spouse or partner, if any, and
40 the intended parent shall have been represented by separate
41 attorneys in all matters relating to the gestational carrier agreement
42 and each attorney provides an affidavit of such representation.

43 b. A gestational carrier agreement shall provide:

44 (1) Express terms that the gestational carrier shall:

45 (a) Undergo pre-embryo transfer and attempt to carry and give
46 birth to the child;

47 (b) Surrender custody of the child to the intended parent
48 immediately upon the child's birth; and

1 (c) Have the right to medical care for the pregnancy, labor,
2 delivery, and postpartum recovery provided by a physician, advance
3 practice nurse, or certified nurse midwife of her choice, after she
4 notifies, in writing, the intended parent of her choice;

5 (2) An express term that, if the gestational carrier is married or
6 in a civil union or domestic partnership, the spouse or partner
7 agrees to the obligations imposed on the gestational carrier pursuant
8 to the terms of the gestational carrier agreement and to surrender
9 custody of the child to the intended parent immediately upon the
10 child's birth; and

11 (3) Express terms that the intended parent shall:

12 (a) Accept custody of the child immediately upon the child's
13 birth; and

14 (b) Assume sole responsibility for the support of the child
15 immediately upon the child's birth.

16 c. A gestational carrier agreement shall be presumed
17 enforceable if:

18 (1) It satisfies the contractual requirements set forth in
19 subsection a. of this section; and

20 (2) It contains at a minimum each of the terms set forth in
21 subsection b. of this section.

22 In addition, an enforceable gestational carrier agreement shall
23 include a provision setting forth the financial responsibilities of the
24 parties and shall include a provision that the intended parent shall
25 pay the gestational carrier's reasonable expenses, as defined herein,
26 unless expressly waived, in whole or in part, in writing by the
27 gestational carrier.

28 d. In the event that any of the requirements of this section are
29 not met, a court of competent jurisdiction shall determine parentage
30 based on the parties' intent.

31

32 7. (New section) Duty to Support.

33 a. The establishment of the parent and child relationship
34 pursuant to a valid gestational carrier agreement shall be the basis
35 upon which an action for child support may be brought against the
36 intended parent and acted upon by the court without further
37 evidentiary proceedings.

38 b. The breach of the gestational carrier agreement by the
39 intended parent shall not relieve the intended parent of the support
40 obligations imposed by the parent and child relationship created by
41 the provisions of P.L. , c. (C.)(pending before the
42 Legislature as this bill).

43 c. Unless a person who donates gametes for use in assisted
44 reproduction enters into a written contract to the contrary, the
45 gamete donor is treated in law as if the gamete donor were not the
46 legal parent of a child thereby conceived and shall have no rights or
47 duties stemming from the conception of the child.

- 1 8. (New section) Establishment of Parent-Child Relationship.
- 2 a. After the gestational carrier becomes pregnant in accordance
- 3 with the gestational carrier agreement provided for in
- 4 P.L. , c. (C.)(pending before the Legislature as this bill),
- 5 the intended parent shall file a complaint for an order of parentage
- 6 with the Superior Court, Chancery Division, Family Part of the
- 7 county of the child’s anticipated birth or the intended parent’s or
- 8 gestational carrier’s county of residence.
- 9 b. Attached to the complaint shall be:
- 10 (1) An affidavit by the gestational carrier and her spouse or
- 11 partner, if any, and the intended parent that they have entered into a
- 12 gestational carrier agreement in conformity with New Jersey law
- 13 and, after consultation with legal counsel, agreed to be bound by the
- 14 terms of the agreement;
- 15 (2) An affidavit of representation by the attorney for the
- 16 intended parent and the attorney for the gestational carrier and her
- 17 spouse or partner, if any; and
- 18 (3) A statement from the medical facility which performed the
- 19 assisted reproduction regarding the achievement of pregnancy in
- 20 accordance with the gestational carrier agreement.
- 21 c. The Superior Court shall, to the extent possible, schedule
- 22 and expedite a hearing on the matter, except that if the matter is
- 23 uncontested, the court may decide the matter without the need for
- 24 an appearance by the parties. Notice to all necessary parties shall
- 25 be made in accordance with the Rules of Court.
- 26 d. The attorney representing the intended parent shall appear at
- 27 the hearing unless the court waives an appearance.
- 28 e. Notwithstanding any other law concerning public hearings
- 29 and records, any action or proceeding held under P.L. , c. (C.)
- 30 (pending before the Legislature as this bill), shall be held in closed
- 31 court without admittance of any persons other than those necessary
- 32 to the action or proceeding.
- 33 f. If the court finds that the parties have complied with the
- 34 provisions of P.L. , c. (C.)(pending before the
- 35 Legislature as this bill), the court shall enter an order of parentage
- 36 naming the intended parent as the legal parent of the child.
- 37 g. After the birth of the child, the order of parentage and
- 38 application for the child’s birth certificate shall be filed with the
- 39 State Registrar of Vital Statistics pursuant to the requirements of
- 40 R.S:26:8-28. The State Registrar shall issue the child’s birth
- 41 certificate naming the intended parent as the parent of the child.
- 42 h. All records and filings in connection with a gestational
- 43 carrier agreement shall remain confidential and unavailable to the
- 44 public, except that such records and filings may be made available
- 45 to a child born as a result of a valid gestational carrier agreement
- 46 who has attained at least 18 years of age and who has submitted a
- 47 written, notarized request for the records or filings.

1 9. (New section) Certain Provisions of Law not Applicable to
2 Gestational Carrier Agreements.

- 3 a. A gestational carrier agreement shall not be considered:
4 (1) An adoption pursuant to Title 9 of the Revised Statutes; or
5 (2) A surrender of custody or termination of parental rights to
6 the child by the gestational carrier in violation of the requirements
7 of Title 9 of the Revised Statutes.
8 b. The payment of reasonable expenses in connection with a
9 valid gestational carrier agreement shall not constitute a violation of
10 section 18 of P.L.1993, c.345 (C.9:3-39.1).

11
12 10. Section 2 of P.L.1983, c.17 (C.9:17-39) is amended to read
13 as follows:

14 2. As used in this act, "parent and child relationship" means the
15 legal relationship existing between a child and the child's natural or
16 adoptive parents or between the child and the child's intended
17 parents pursuant to a gestational carrier agreement executed in
18 accordance with the provisions of P.L. , c. (C.)(pending
19 before the Legislature as this bill), incident to which the law confers
20 or imposes rights, privileges, duties, and obligations. It includes the
21 mother and child relationship and the father and child relationship.
22 (cf: P.L.1983, c.17, s.2)

23
24 11. Section 4 of P.L.1983, c.17 (C.9:17-41) is amended to read
25 as follows:

- 26 4. The parent and child relationship between a child and:
27 a. The natural mother, may be established by:
28 (1) proof of her having given birth to the child unless the child
29 is born in connection with a gestational carrier agreement executed
30 in accordance with the provisions of P.L. , c. (C.)(pending
31 before the Legislature as this bill), or
32 (2) under P.L.1983, c.17 (C.9:17-38 et seq.);
33 b. The natural father, may be established by proof that his
34 paternity has been adjudicated under prior law; under the laws
35 governing probate; by giving full faith and credit to a determination
36 of paternity made by any other state or jurisdiction, whether
37 established through voluntary acknowledgment or through judicial
38 or administrative processes; by a Certificate of Parentage as
39 provided in section 7 of P.L.1994, c.164 (C.26:8-28.1) that is
40 executed by the father, including an unemancipated minor, prior to
41 or after the birth of a child, and filed with the appropriate State
42 agency; by a default judgment or order of the court; or by an order
43 of the court based on a blood test or genetic test that meets or
44 exceeds the specific threshold probability as set by subsection i. of
45 section 11 of P.L.1983, c.17 (C.9:17-48) creating a rebuttable
46 presumption of paternity.

47 In accordance with **【section 331 of Pub.L.104-193】 42 U.S.C.**
48 **s.666(a)(5)**, a signed voluntary acknowledgment of paternity shall

1 be considered a legal finding of paternity subject to the right of the
2 signatory to rescind the acknowledgment within 60 days of the date
3 of signing, or by the date of establishment of a support order to
4 which the signatory is a party, whichever is earlier.

5 The adjudication of paternity shall only be voided upon a finding
6 that there exists clear and convincing evidence of: fraud, duress or a
7 material mistake of fact, with the burden of proof upon the
8 challenger;

9 c. (1) An adoptive parent, may be established by proof of
10 adoption;

11 (2) An intended parent, may be established by proof of an order
12 of parentage related to a gestational carrier agreement executed in
13 accordance with the provisions of P.L. _____, c. (C. _____)(pending
14 before the Legislature as this bill);

15 d. The natural mother or the natural father, may be terminated
16 by an order of a court of competent jurisdiction in granting a
17 judgment of adoption or as the result of an action to terminate
18 parental rights;

19 e. The establishment of the parent and child relationship
20 pursuant to subsections a., b., and c. of this section shall be the
21 basis upon which an action for child support may be brought by a
22 party and acted upon by the court without further evidentiary
23 proceedings;

24 f. In any case in which the parties execute a Certificate of
25 Parentage or a rebuttable presumption of paternity is created
26 through genetic testing, the presumption of paternity under section
27 6 of P.L.1983, c.17 (C.9:17-43) shall not apply;

28 g. Pursuant to the provisions of [section 331 of Pub.L.104-
29 193] 42 U.S.C. s.666(a)(5), the child and other parties in a
30 contested paternity case shall submit to a genetic test upon the
31 request of one of the parties, unless that person has good cause for
32 refusal, if the request is supported by a sworn statement by the
33 requesting party:

34 (1) alleging paternity and setting forth the facts establishing a
35 reasonable possibility of the requisite sexual contact between the
36 parties; or

37 (2) denying paternity and setting forth the facts establishing a
38 reasonable possibility of the nonexistence of sexual contact between
39 the parties;

40 h. In a contested paternity case in which the State IV-D agency
41 requires or the court orders genetic testing, the State IV-D agency
42 shall:

43 (1) pay the costs of the genetic test and may recoup payment
44 from the alleged father whose paternity is established; and

45 (2) obtain additional testing if the initial test results are
46 contested, and upon the request and advance payment for the
47 additional test by the contestant.

48 (cf: P.L.1998, c.1, s.38)

1 12. Section 6 of P.L.1983, c.17 (C.9:17-43) is amended to read
2 as follows:

3 6. a. A man is presumed to be the biological father of a child
4 if:

5 (1) He and the child's biological mother are or have been
6 married to each other and the child is born during the marriage, or
7 within 300 days after the marriage is terminated by death,
8 annulment or divorce;

9 (2) Before the child's birth, he and the child's biological mother
10 have attempted to marry each other by a marriage solemnized in
11 apparent compliance with law, although the attempted marriage is
12 or could be declared invalid, and:

13 (a) if the attempted marriage could be declared invalid only by a
14 court, the child is born during the attempted marriage, or within 300
15 days after its termination by death, annulment or divorce; or

16 (b) if the attempted marriage is invalid without a court order, the
17 child is born within 300 days after the termination of cohabitation;

18 (3) After the child's birth, he and the child's biological mother
19 have married, or attempted to marry, each other by a marriage
20 solemnized in apparent compliance with law, although the
21 attempted marriage is or could be declared invalid, and:

22 (a) he has acknowledged his paternity of the child in writing
23 filed with the local registrar of vital statistics;

24 (b) he has sought to have his name placed on the child's birth
25 certificate as the child's father, pursuant to R.S.26:8-40; or

26 (c) he openly holds out the child as his natural child; or

27 (d) he is obligated to support the child under a written voluntary
28 agreement or court order;

29 (4) While the child is under the age of majority, he receives the
30 child into his home and openly holds out the child as his natural
31 child;

32 (5) While the child is under the age of majority, he provides
33 support for the child and openly holds out the child as his natural
34 child; or

35 (6) He acknowledges his paternity of the child in a writing filed
36 with the local registrar of vital statistics, which shall promptly
37 inform the mother of the filing of the acknowledgment, and she
38 does not dispute the acknowledgment within a reasonable time after
39 being informed thereof, in a writing filed with the local registrar. If
40 another man is presumed under this section to be the child's father,
41 acknowledgment may be effected only with the written consent of
42 the presumed father. Each attempted acknowledgment, whether or
43 not effective, shall be kept on file by the local registrar of vital
44 statistics and shall entitle the person who filed it to notice of all
45 proceedings concerning parentage and adoption of the child, as
46 provided in section 10 of P.L.1983, c.17 (C.9:17-47) and pursuant
47 to section 9 of P.L.1977, c.367 (C.9:3-45).

1 b. A presumption under this section may be rebutted in an
2 appropriate action only by clear and convincing evidence. If two or
3 more presumptions arise which conflict with each other, the
4 presumption which on the facts is founded on the weightier
5 considerations of policy and logic controls. The presumption is
6 rebutted by a court order terminating the presumed father's paternal
7 rights or by establishing that another man is the child's biological or
8 adoptive father.

9 c. Notwithstanding the provisions of this section to the
10 contrary, in an action brought under this act against the legal
11 representative or the estate of a deceased alleged father, the criteria
12 in paragraphs (4) and (5) of subsection a. of this section shall not
13 constitute presumptions but shall be considered by the court
14 together with all of the evidence submitted. The decision of the
15 court shall be based on a preponderance of the evidence.

16 d. In the absence of a presumption, the court shall decide
17 whether the parent and child relationship exists, based upon a
18 preponderance of the evidence.

19 e. There is a rebuttable presumption that a man has knowledge
20 of his paternity and the birth of a child if he had sexual intercourse
21 with the biological mother within 300 days of the child's birth. This
22 presumption may be rebutted only by clear and convincing evidence
23 in an appropriate action based on fraud, duress, or
24 misrepresentation by the biological mother concerning the paternity
25 or birth of the child. This claim of fraud, duress, or
26 misrepresentation must be asserted prior to the finalization of the
27 adoption.

28 f. This section shall not apply to a child born in connection
29 with a gestational carrier agreement executed in accordance with
30 the provisions of P.L. , c. (C.)(pending before the
31 Legislature as this bill).

32 (cf: P.L.1998, c.20, s.4)

33
34 13. Section 7 of P.L.1983, c.17 (C.9:17-44) is amended to read
35 as follows:

36 7. a. If, under the supervision of a licensed physician and with
37 the consent of her husband or partner in a civil union, a **【wife】**
38 woman is inseminated artificially with semen donated by a man not
39 her husband or partner, the husband or partner is treated in law as if
40 **【he were the natural father】** the husband or partner were the natural
41 parent of a child thereby conceived. The **【husband's】** consent of
42 the husband or partner shall be in writing and signed by **【him and**
43 **his wife】** both parties to the marriage or civil union. The physician
44 shall certify their signatures and the date of the insemination, upon
45 forms provided by the Department of Health, and file the
46 **【husband's】** consent with the State Department of Health, where it
47 shall be kept confidential and in a sealed file. However, the

1 physician's failure to do so shall not affect the **【father】** parent and
2 child relationship of the husband or partner. All papers and records
3 pertaining to the insemination, whether part of the permanent record
4 of a court or of a file held by the supervising physician or
5 elsewhere, are subject to inspection only upon an order of the court
6 for compelling reasons clearly and convincingly shown.

7 b. Unless the donor of semen and the woman have entered into
8 a written contract to the contrary, the donor of semen provided to a
9 licensed physician for use in artificial insemination of a woman
10 other than the donor's wife or partner in a civil union is treated in
11 law as if he were not the father of a child thereby conceived and
12 shall have no rights or duties stemming from the conception of a
13 child.

14 c. This section shall not apply in a proceeding to determine
15 parentage of a child born in connection with a gestational carrier
16 agreement executed in accordance with the provisions of P.L. _____,

17 c. (C. _____)(pending before the Legislature as this bill).
18 (cf: P.L.1983, c.17, s.7)

19
20 14. Section 15 of P.L.1983, c.17 (C.9:17-52) is amended to read
21 as follows:

22 15. Evidence relating to paternity may include:

23 a. Evidence of sexual intercourse between the mother and
24 alleged father at any possible time of conception;

25 b. An expert's opinion concerning the statistical probability of
26 the alleged father's paternity, based upon the duration of the
27 mother's pregnancy;

28 c. Genetic or blood tests, weighted in accordance with
29 evidence, if available, of the statistical probability of the alleged
30 father's paternity;

31 d. Medical or anthropological evidence relating to the alleged
32 father's paternity of the child, based on tests performed by experts.
33 If a man has been identified as a possible father of the child, the
34 court may, and upon request of a party shall, require the child, the
35 mother, and the man to submit to appropriate tests; **【and】**

36 e. All other evidence on behalf of any party, relevant to the
37 issue of paternity of the child; and

38 f. A gestational carrier agreement executed in accordance with
39 the provisions of P.L. _____, c. _____ (C. _____)(pending before the
40 Legislature as this bill).

41 (cf: P.L.1983, c.17, s.15)

42
43 15. R.S.26:8-28 is amended to read as follows:

44 26:8-28. a. (1) Except as provided by subsection e. of this
45 section, within five days after each birth, there shall be filed with
46 the local registrar of the district in which the birth occurred a
47 certificate of the birth filled out with durable black or blue ink in a
48 legible manner.

1 (2) The name of the father shall be included on the record of
2 birth of the child of unmarried parents only if the father and mother
3 have signed a voluntary acknowledgment of paternity; or a court or
4 an administrative agency of competent jurisdiction has issued an
5 adjudication of paternity.

6 (3) In the case of a child born in connection with a gestational
7 carrier agreement executed in accordance with the provisions of
8 P.L. , c. (C.) (pending before the Legislature as this bill),
9 the name of the intended parent shall be included on the record of
10 birth as the child's parent.

11 (4) Nothing in this section shall preclude the State IV-D agency
12 from obtaining an admission of paternity from the father for
13 submission in a judicial or administrative proceeding, or prohibit
14 the issuance of an order in a judicial or administrative proceeding
15 which bases a legal finding of paternity on an admission of
16 paternity by the father and any other additional showing required by
17 State law.

18 b. As part of the birth record, all information required by the
19 State IV-D agency pursuant to section 7 of P.L.1994, c.164 (C.26:8-
20 28.1) shall be recorded on a separate form provided or approved by
21 the State registrar pursuant to subsection c. of R.S.26:8-24, and
22 filed with the State IV-D agency pursuant to R.S.26:8-30 and
23 R.S.26:8-31 for the establishment and enforcement of child support
24 matters in the State. For the purposes of this subsection, "State IV-
25 D agency" means the agency in the Department of Human Services
26 designated to administer the Title IV-D Child Support Program.

27 c. The State registrar shall require each parent to provide his
28 Social Security number in accordance with procedures established
29 by the State registrar. The Social Security numbers furnished
30 pursuant to this section shall be used exclusively for child support
31 enforcement purposes.

32 d. The certificate of birth shall include the blood type of the
33 child.

34 e. Notwithstanding the provisions of subsection a. of this
35 section to the contrary, the filing of a child's birth certificate may be
36 delayed, based on the parent's religious beliefs, until such time as
37 the child is named; however, no such delay shall result in the filing
38 of the birth certificate more than 15 days after the child's date of
39 birth. Any parent whose religious beliefs necessitate a delay in the
40 filing of a birth certificate pursuant to this subsection, shall: (1)
41 provide notice of the religious need for a filing delay, within five
42 days after the child's date of birth, to the person who is responsible
43 for filing the birth certificate, as provided by R.S.26:8-30 or
44 R.S.26:8-31, except that, if the parent is responsible for such filing,
45 no such notice shall be required; and (2) file the child's birth
46 certificate, or authorize such filing by the person responsible
47 therefor, as soon as possible after the child is named, but in no case
48 more than 15 days after the child's birth. If a child is not named

1 within the 15-day extended timeframe provided by this subsection,
2 the child's birth certificate shall be filed, and the naming procedure
3 outlined in R.S.26:8-34 shall be applied.
4 (cf: P.L.2017, c.4, s.1)

5
6 16. This act shall take effect immediately and shall apply only to
7 gestational carrier agreements entered into on or after the effective
8 date.

9

10

11

STATEMENT

12

13 This bill, entitled the "New Jersey Gestational Carrier Agreement
14 Act," would authorize gestational carrier agreements. A gestational
15 carrier agreement is a written contract pursuant to which a woman
16 agrees to carry and give birth to a child with whom she has no genetic
17 relationship and who is created using assisted reproduction on behalf
18 of an intended parent. Upon the birth of the child, the intended parent
19 becomes the legal parent of the child and the woman, who is called a
20 "gestational carrier," has no parental rights or obligations.

21 Unlike what is now regarded as traditional surrogacy, where a
22 woman is artificially inseminated with the semen of the intended father
23 and gives birth to a child through the use of her own egg, gestational
24 surrogacy is the result of developments in reproductive technology and
25 involves a woman who does not make use of her own egg. She,
26 therefore, is not genetically related to the child. This bill would take
27 into account this advance in reproductive technology and would permit
28 gestational carrier agreements that satisfy certain requirements.

29 Pursuant to the bill, a gestational carrier is required to be at least 21
30 years of age, have given birth to at least one child, have completed
31 medical and psychological evaluations conducted by licensed
32 professionals, and have retained an attorney independent of the
33 intended parent but for whose services the intended parent would be
34 permitted to pay. The bill requires that an intended parent have
35 completed a psychological evaluation conducted by a licensed
36 professional approving the intended parent's suitability to participate
37 in a gestational carrier agreement, and to have retained an attorney to
38 advise the intended parent about the terms and potential legal
39 consequences of entering into the agreement. Under the bill, single
40 people, as well as those who are married or in a civil union or
41 domestic partnership, are permitted to enter into gestational carrier
42 agreements as either intended parents or as gestational carriers.

43 This bill requires that the agreement be in writing and executed by
44 the gestational carrier, her spouse or partner in a civil union or
45 domestic partnership, if any, and the intended parent. If the intended
46 parent is married or in a domestic partnership or civil union at the time
47 the intended parent enters the agreement, both spouses or partners are
48 required to enter into the agreement as intended parents. If the

1 intended parent is not married or in a civil union or domestic
2 partnership, any other person who wishes to be an intended parent
3 must duly execute the agreement as an intended parent.

4 The agreement may only be executed after the parties have
5 undergone the required medical and psychological screenings and the
6 attorneys who consulted with the parties have submitted the required
7 affidavits of representation in any actions filed with the court.

8 The agreement is required to include express terms providing that
9 the gestational carrier agrees to undergo pre-embryo transfer, attempt
10 to carry and give birth to the child, and surrender custody of the child
11 to the intended parent immediately upon the birth of the child.
12 Additionally, the agreement is to expressly state that the gestational
13 carrier has the right to have medical care for the pregnancy, labor,
14 delivery, and postpartum care provided by a physician, advanced
15 practice nurse, or certified nurse midwife of her choice after notifying
16 the intended parents of her choice. The agreement is required to
17 include a provision that the gestational carrier's spouse or partner in a
18 civil union or domestic partnership, if any, agrees to the obligations
19 imposed on the gestational carrier and to surrender custody of the child
20 immediately upon the birth of the child. With regard to the intended
21 parent, the agreement is required to include express terms that the
22 intended parent agrees to accept custody of the child immediately upon
23 the birth of the child and assume sole responsibility for the support of
24 the child. An agreement including these terms would be presumed
25 enforceable.

26 Additionally, an enforceable gestational carrier agreement must
27 include a provision setting forth the financial responsibilities of the
28 parties and include a provision that the intended parent must pay the
29 gestational carrier's reasonable expenses. "Reasonable expenses"
30 means payment, provision of, or reimbursement for, medical, hospital,
31 counseling, or other similar expenses incurred in connection with the
32 gestational carrier agreement, reasonable attorney fees and costs for
33 legal services in connection with the gestational carrier agreement, and
34 the reasonable living expenses of the gestational carrier during her
35 pregnancy, including payments for reasonable food, clothing, medical
36 expenses, shelter, and religious, psychological, vocational, or similar
37 counseling services during the period of the pregnancy and during the
38 period of post-partum recovery. These payments may be made
39 directly to the gestational carrier or on the gestational carrier's behalf
40 to the supplier of the goods or services.

41 A parent and child relationship established by a valid gestational
42 carrier agreement is the basis for a child support order and an intended
43 parent would be legally obligated to support the child even in the event
44 that the intended parent breaches the agreement. A person who only
45 donates gametes for use in assisted reproduction would have no rights
46 or duties with respect to a child born of a gestational carrier agreement
47 unless the donor enters into a written contract to the contrary.

1 In the event of a medical or laboratory error resulting in the child
2 not being genetically related to an intended parent whose gametes
3 were intended to be used in the assisted reproduction procedure, the
4 intended parent would be the legal parent of the resulting child
5 provided the parties had executed a valid gestational carrier agreement,
6 unless otherwise determined by a court of competent jurisdiction
7 pursuant to a complaint challenging parentage filed by a genetic parent
8 within 120 days of birth.

9 In the event the parties fail to enter into a valid agreement, custody
10 of the resulting child would be determined by a court of competent
11 jurisdiction based on the intent of the parties.

12 After a gestational carrier becomes pregnant in connection with a
13 valid gestational carrier agreement, the intended parent must file a
14 complaint for an order of parentage with the Superior Court, Chancery
15 Division, Family Part of the county in which the intended parent or the
16 gestational carrier resides, or in the county of the child's anticipated
17 birth. The complaint is to include an affidavit by the gestational
18 carrier and her spouse or partner in a civil union or domestic
19 partnership, if any, that they have entered into and agree to be bound
20 by a gestational carrier agreement, affidavits of representation by the
21 attorneys for both the gestational carrier and the intended parent, and a
22 statement by the medical facility that performed the assisted
23 reproduction regarding the achievement of pregnancy.

24 The bill provides that the court, to the extent possible, is to
25 schedule and expedite the hearing. All records and filings in
26 connection with a gestational carrier agreement are to remain
27 confidential and unavailable to the public, except that such records and
28 filings may be made available to a child born of a valid gestational
29 carrier agreement who has attained at least 18 years of age and who
30 submits a written, notarized request for the records or filings. The
31 attorney representing the intended parent is to be present at the hearing
32 unless the court waives an appearance. The court is to enter an order
33 of parentage upon finding the parties complied with the statutory
34 requirements to enter into a gestational carrier agreement.

35 The order of parentage and application for the child's birth
36 certificate are to be filed with the State Registrar of Vital Statistics,
37 who then is to issue a birth certificate naming the intended parent as
38 the sole legal parent of the child.

39 Under the bill, a valid gestational carrier agreement is not to be
40 considered an adoption pursuant to Title 9 of the Revised Statutes, or a
41 surrender of custody or a termination of parental rights in violation of
42 Title 9 of the Revised Statutes. Additionally, the payment of
43 reasonable expenses in connection with a valid gestational carrier
44 agreement would not constitute a violation of section 18 of P.L.1993,
45 c.345 (C.9:3-39.1).

46 This bill would amend sections 2 and 4 of P.L.1983, c.17 (C.9:17-
47 39 and C.9:17-41), which concern the definition and establishment of
48 the parent and child relationship, to include intended parents pursuant

S482 VITALE

17

1 to a valid gestational carrier agreement. It would also amend section
2 15 of P.L.1983, c.17 (C.9:17-52) to provide that a valid gestational
3 carrier agreement may serve as evidence of paternity. This bill would
4 provide that the ordinary presumptions of paternity set forth in section
5 6 of P.L.1983, c.17 (C.9:17-43) and the provisions of section 7 of
6 P.L.1983, c.17 (C.9:17-44), which pertains to artificial insemination,
7 do not apply to a child born pursuant to a valid gestational carrier
8 agreement. Finally, the bill would amend R.S.26:8-28 to provide that
9 the intended parent's name appear on the birth certificate as the parent
10 of a child born pursuant to a valid gestational carrier agreement.

11 This bill would take effect immediately and apply to any
12 gestational carrier agreements entered into on or after the effective
13 date.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 482

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 13, 2018

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 482 (1R), with committee amendments.

As amended, this bill, entitled the “New Jersey Gestational Carrier Agreement Act,” and authorizes gestational carrier agreements. A gestational carrier agreement is a written contract pursuant to which a woman agrees to carry and give birth to a child with whom she has no genetic relationship and who is created using assisted reproduction on behalf of an intended parent. Upon the birth of the child, the intended parent becomes the legal parent of the child and the woman, who is called a “gestational carrier,” has no parental rights or obligations.

Pursuant to the bill, a gestational carrier is required to be at least 21 years of age, have given birth to at least one child, have completed medical and psychological evaluations conducted by licensed professionals, and have retained an attorney independent of the intended parent but for whose services the intended parent is permitted to pay. The bill requires that an intended parent have completed a psychological evaluation conducted by a licensed professional approving the intended parent’s suitability to participate in a gestational carrier agreement, and to have retained an attorney to advise the intended parent about the terms and potential legal consequences of entering into the agreement. Under the bill, single people, as well as those who are married or in a civil union or domestic partnership, are permitted to enter into gestational carrier agreements as either intended parents or as gestational carriers.

The bill requires that the agreement be in writing and executed by the gestational carrier, her spouse or partner in a civil union or domestic partnership, if any, and the intended parent. If the intended parent is married or in a domestic partnership or civil union at the time the intended parent enters the agreement, both spouses or partners are required to enter into the agreement as intended parents. If the intended parent is not married or in a civil union or domestic partnership, any other person who wishes to be an intended parent must duly execute the agreement as an intended parent.

The agreement may only be executed after the parties have undergone the required medical and psychological screenings and the attorneys who consulted with the parties have submitted the required affidavits of representation in any actions filed with the court.

The agreement is required to include express terms providing that the gestational carrier agrees to undergo pre-embryo transfer, attempt to carry and give birth to the child, and surrender custody of the child to the intended parent immediately upon the birth of the child. Additionally, the agreement is to expressly state that the gestational carrier has the right to have medical care for the pregnancy, labor, delivery, and postpartum care provided by a physician, a physician assistant, advanced practice nurse, or certified nurse midwife of her choice after notifying the intended parents of her choice. The agreement is required to include a provision that the gestational carrier's spouse or partner in a civil union or domestic partnership, if any, agrees to the obligations imposed on the gestational carrier and to surrender custody of the child immediately upon the birth of the child. With regard to the intended parent, the agreement is required to include express terms that the intended parent agrees to accept custody of the child immediately upon the birth of the child and assume sole responsibility for the support of the child. An agreement including these terms would be presumed enforceable.

Additionally, an enforceable gestational carrier agreement must include a provision setting forth the financial responsibilities of the parties and include a provision that the intended parent must pay the gestational carrier's reasonable expenses. "Reasonable expenses" means payment, provision of, or reimbursement for, medical, hospital, counseling, or other similar expenses incurred in connection with the gestational carrier agreement, reasonable attorney fees and costs for legal services in connection with the gestational carrier agreement, and the reasonable living expenses of the gestational carrier during her pregnancy, including payments for reasonable food, clothing, medical expenses, shelter, and religious, psychological, vocational, or similar counseling services during the period of the pregnancy and during the period of post-partum recovery. These payments may be made directly to the gestational carrier or on the gestational carrier's behalf to the supplier of the goods or services.

A parent and child relationship established by a valid gestational carrier agreement is the basis for a child support order and an intended parent is legally obligated to support the child even in the event that the intended parent breaches the agreement. A person who only donates gametes for use in assisted reproduction would have no rights or duties with respect to a child born of a gestational carrier agreement unless the donor enters into a written contract to the contrary.

In the event of a medical or laboratory error resulting in the child not being genetically related to an intended parent whose gametes were intended to be used in the assisted reproduction procedure, the

intended parent is the legal parent of the resulting child provided the parties had executed a valid gestational carrier agreement, unless otherwise determined by a court of competent jurisdiction pursuant to a complaint challenging parentage filed by a genetic parent within 120 days of birth.

In the event the parties fail to enter into a valid agreement, custody of the resulting child is determined by a court of competent jurisdiction based on the intent of the parties.

After a gestational carrier becomes pregnant in connection with a valid gestational carrier agreement, the intended parent must file a complaint for an order of parentage with the Superior Court, Chancery Division, Family Part of the county in which the intended parent or the gestational carrier resides, or in the county of the child's anticipated birth. The complaint is to include an affidavit by the gestational carrier and her spouse or partner in a civil union or domestic partnership, if any, that they have entered into and agree to be bound by a gestational carrier agreement, affidavits of representation by the attorneys for both the gestational carrier and the intended parent, and a statement by the medical facility that performed the assisted reproduction regarding the achievement of pregnancy.

The bill provides that the court, to the extent possible, is to schedule and expedite the hearing. All records and filings in connection with a gestational carrier agreement are to remain confidential and unavailable to the public, except that such records and filings may be made available to a child born of a valid gestational carrier agreement who has attained at least 18 years of age and who submits a written, notarized request for the records or filings. The attorney representing the intended parent is to be present at the hearing unless the court waives an appearance. The court is to enter an order of parentage upon finding the parties complied with the statutory requirements to enter into a gestational carrier agreement.

The order of parentage and application for the child's birth certificate are to be filed with the State Registrar of Vital Statistics, who then is to issue a birth certificate naming the intended parent as the sole legal parent of the child.

Under the bill, a valid gestational carrier agreement is not to be considered an adoption pursuant to Title 9 of the Revised Statutes, or a surrender of custody or a termination of parental rights in violation of Title 9 of the Revised Statutes. Additionally, the payment of reasonable expenses in connection with a valid gestational carrier agreement would not constitute a violation of section 18 of P.L.1993, c.345 (C.9:3-39.1).

This bill amends sections 2 and 4 of P.L.1983, c.17 (C.9:17-39 and C.9:17-41), which concern the definition and establishment of the parent and child relationship, to include intended parents pursuant to a valid gestational carrier agreement. The bill also amends section 15 of P.L.1983, c.17 (C.9:17-52) to provide that a valid gestational carrier

agreement may serve as evidence of paternity. The bill provides that the ordinary presumptions of paternity set forth in section 6 of P.L.1983, c.17 (C.9:17-43) and the provisions of section 7 of P.L.1983, c.17 (C.9:17-44), which pertains to artificial insemination, do not apply to a child born pursuant to a valid gestational carrier agreement. Finally, the bill amends R.S.26:8-28 to provide that the intended parent's name appear on the birth certificate as the parent of a child born pursuant to a valid gestational carrier agreement.

This bill takes effect immediately and applies to any gestational carrier agreements entered into on or after the effective date.

COMMITTEE AMENDMENTS:

The amendments revise the provisions of section 7 of P.L.1983, c.17, which pertain to a husband's or partner's consent for artificial insemination, to apply to a spouse or partner instead of a husband or partner. The amendments further clarify that the provisions of this section, which apply to licensed physicians or physician assistants, also apply to advance practice nurses.

FISCAL IMPACT:

This bill has not been certified as requiring a fiscal note.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

SENATE, No. 482

STATE OF NEW JERSEY

DATED: FEBRUARY 5, 2018

The Senate Health, Human Services and Senior Citizens Committee reports favorably Senate Bill No. 482.

This bill, entitled the “New Jersey Gestational Carrier Agreement Act,” would authorize gestational carrier agreements. A gestational carrier agreement is a written contract pursuant to which a woman agrees to carry and give birth to a child with whom she has no genetic relationship and who is created using assisted reproduction on behalf of an intended parent. Upon the birth of the child, the intended parent becomes the legal parent of the child and the woman, who is called a “gestational carrier,” has no parental rights or obligations.

Unlike what is now regarded as traditional surrogacy, where a woman is artificially inseminated with the semen of the intended father and gives birth to a child through the use of her own egg, gestational surrogacy is the result of developments in reproductive technology and involves a woman who does not make use of her own egg. She, therefore, is not genetically related to the child. This bill would take into account this advance in reproductive technology and would permit gestational carrier agreements that satisfy certain requirements.

Pursuant to the bill, a gestational carrier is required to be at least 21 years of age, have given birth to at least one child, have completed medical and psychological evaluations conducted by licensed professionals, and have retained an attorney independent of the intended parent but for whose services the intended parent would be permitted to pay. The bill requires that an intended parent have completed a psychological evaluation conducted by a licensed professional approving the intended parent’s suitability to participate in a gestational carrier agreement, and to have retained an attorney to advise the intended parent about the terms and potential legal consequences of entering into the agreement. Under the bill, single people, as well as those who are married or in a civil union or domestic partnership, are permitted to enter into gestational carrier agreements as either intended parents or as gestational carriers.

This bill requires that the agreement be in writing and executed by the gestational carrier, her spouse or partner in a civil union or domestic partnership, if any, and the intended parent. If the intended parent is married or in a domestic partnership or civil union at the time

the intended parent enters the agreement, both spouses or partners are required to enter into the agreement as intended parents. If the intended parent is not married or in a civil union or domestic partnership, any other person who wishes to be an intended parent must duly execute the agreement as an intended parent.

The agreement may only be executed after the parties have undergone the required medical and psychological screenings and the attorneys who consulted with the parties have submitted the required affidavits of representation in any actions filed with the court.

The agreement is required to include express terms providing that the gestational carrier agrees to undergo pre-embryo transfer, attempt to carry and give birth to the child, and surrender custody of the child to the intended parent immediately upon the birth of the child. Additionally, the agreement is to expressly state that the gestational carrier has the right to have medical care for the pregnancy, labor, delivery, and postpartum care provided by a physician, advanced practice nurse, or certified nurse midwife of her choice after notifying the intended parents of her choice. The agreement is required to include a provision that the gestational carrier's spouse or partner in a civil union or domestic partnership, if any, agrees to the obligations imposed on the gestational carrier and to surrender custody of the child immediately upon the birth of the child. With regard to the intended parent, the agreement is required to include express terms that the intended parent agrees to accept custody of the child immediately upon the birth of the child and assume sole responsibility for the support of the child. An agreement including these terms would be presumed enforceable.

Additionally, an enforceable gestational carrier agreement must include a provision setting forth the financial responsibilities of the parties and include a provision that the intended parent must pay the gestational carrier's reasonable expenses. "Reasonable expenses" means payment, provision of, or reimbursement for, medical, hospital, counseling, or other similar expenses incurred in connection with the gestational carrier agreement, reasonable attorney fees and costs for legal services in connection with the gestational carrier agreement, and the reasonable living expenses of the gestational carrier during her pregnancy, including payments for reasonable food, clothing, medical expenses, shelter, and religious, psychological, vocational, or similar counseling services during the period of the pregnancy and during the period of post-partum recovery. These payments may be made directly to the gestational carrier or on the gestational carrier's behalf to the supplier of the goods or services.

A parent and child relationship established by a valid gestational carrier agreement is the basis for a child support order and an intended parent would be legally obligated to support the child even in the event that the intended parent breaches the agreement. A person who only donates gametes for use in assisted reproduction would have no rights

or duties with respect to a child born of a gestational carrier agreement unless the donor enters into a written contract to the contrary.

In the event of a medical or laboratory error resulting in the child not being genetically related to an intended parent whose gametes were intended to be used in the assisted reproduction procedure, the intended parent would be the legal parent of the resulting child provided the parties had executed a valid gestational carrier agreement, unless otherwise determined by a court of competent jurisdiction pursuant to a complaint challenging parentage filed by a genetic parent within 120 days of birth.

In the event the parties fail to enter into a valid agreement, custody of the resulting child would be determined by a court of competent jurisdiction based on the intent of the parties.

After a gestational carrier becomes pregnant in connection with a valid gestational carrier agreement, the intended parent must file a complaint for an order of parentage with the Superior Court, Chancery Division, Family Part of the county in which the intended parent or the gestational carrier resides, or in the county of the child's anticipated birth. The complaint is to include an affidavit by the gestational carrier and her spouse or partner in a civil union or domestic partnership, if any, that they have entered into and agree to be bound by a gestational carrier agreement, affidavits of representation by the attorneys for both the gestational carrier and the intended parent, and a statement by the medical facility that performed the assisted reproduction regarding the achievement of pregnancy.

The bill provides that the court, to the extent possible, is to schedule and expedite the hearing. All records and filings in connection with a gestational carrier agreement are to remain confidential and unavailable to the public, except that such records and filings may be made available to a child born of a valid gestational carrier agreement who has attained at least 18 years of age and who submits a written, notarized request for the records or filings. The attorney representing the intended parent is to be present at the hearing unless the court waives an appearance. The court is to enter an order of parentage upon finding the parties complied with the statutory requirements to enter into a gestational carrier agreement.

The order of parentage and application for the child's birth certificate are to be filed with the State Registrar of Vital Statistics, who then is to issue a birth certificate naming the intended parent as the sole legal parent of the child.

Under the bill, a valid gestational carrier agreement is not to be considered an adoption pursuant to Title 9 of the Revised Statutes, or a surrender of custody or a termination of parental rights in violation of Title 9 of the Revised Statutes. Additionally, the payment of reasonable expenses in connection with a valid gestational carrier agreement would not constitute a violation of section 18 of P.L.1993, c.345 (C.9:3-39.1).

This bill would amend sections 2 and 4 of P.L.1983, c.17 (C.9:17-39 and C.9:17-41), which concern the definition and establishment of the parent and child relationship, to include intended parents pursuant to a valid gestational carrier agreement. It would also amend section 15 of P.L.1983, c.17 (C.9:17-52) to provide that a valid gestational carrier agreement may serve as evidence of paternity. This bill would provide that the ordinary presumptions of paternity set forth in section 6 of P.L.1983, c.17 (C.9:17-43) and the provisions of section 7 of P.L.1983, c.17 (C.9:17-44), which pertains to artificial insemination, do not apply to a child born pursuant to a valid gestational carrier agreement. Finally, the bill would amend R.S.26:8-28 to provide that the intended parent's name appear on the birth certificate as the parent of a child born pursuant to a valid gestational carrier agreement.

This bill would take effect immediately and apply to any gestational carrier agreements entered into on or after the effective date.

This bill was pre-filed for introduction in the 2018-2019 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

STATEMENT TO

SENATE No. 482

with Senate Floor Amendments
(Proposed by Senator VITALE)

ADOPTED: FEBRUARY 26, 2018

This floor amendment defines a “physician assistant” as a health professional who meets the qualifications under P.L.1991, c.378 (C.45:9-27.10 et seq.) and holds a current, valid license issued pursuant to section 4 of P.L.1991, c.378 (C.45:9-27.13).

The amendment also mandates that a gestational carrier has the right to receive medical care for pregnancy, labor, delivery, and postpartum recovery from a physician assistant as well as the other health care professionals defined in the bill.

The amendment also clarifies that the provisions of section 7 of P.L.1983, c.17 (C.9:17-44), which pertain to artificial insemination and apply to licensed physicians, also apply to physician assistants.

ASSEMBLY, No. 1704

STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Assemblywoman MILA M. JASEY

District 27 (Essex and Morris)

Co-Sponsored by:

Assemblyman Eustace

SYNOPSIS

Authorizes certain gestational carrier agreements.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning gestational carrier agreements, revising various
2 parts of the statutory law and supplementing Title 9 of the Revised
3 Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) Title.

9 This act shall be known as the “New Jersey Gestational Carrier
10 Agreement Act.”

11
12 2. (New section) Purpose.

13 a. The Legislature finds and declares that gestational carrier
14 agreements executed pursuant to this act are in accord with the
15 public policy of this State.

16 b. It is the intent and purpose of the Legislature to:

17 (1) Establish consistent standards and procedural safeguards to
18 promote the best interests of the children who will be born as a
19 result of gestational carrier agreements executed pursuant to
20 P.L. , c. (C.)(pending before the Legislature as this bill);

21 (2) Protect all parties involved in gestational carrier agreements
22 executed pursuant to P.L. , c. (C.)(pending before the
23 Legislature as this bill); and

24 (3) Recognize the technological advances in assisted
25 reproductive medicine in ways that allow the use of these advances
26 by intended parents and gestational carriers according to the public
27 policy of New Jersey.

28
29 3. (New section) Definitions.

30 As used in this act:

31 “Advanced practice nurse” means a person certified in
32 accordance with the provisions of section 8 or 9 of P.L.1991, c.377
33 (C.45:11-47 or 45:11-48).

34 “Assisted reproductive technology” means procreative laboratory
35 procedures involving human eggs or pre-embryos, including, but
36 not limited to: in vitro fertilization; embryo transfer; gamete
37 transfer; pronuclear stage transfer; and zygote transfer.

38 “Attorney” means a person licensed to practice law in New
39 Jersey or another state or the District of Columbia.

40 “Certified nurse midwife” means a midwife licensed by the State
41 Board of Medical Examiners as a certified nurse midwife pursuant
42 to the provisions of P.L.1991, c.97 (C.45:10-17 et seq.).

43 “Donor” means a person who contributes gametes for use in
44 assisted reproduction. The term does not include an intended parent

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 who contributes gametes to be used in assisted reproduction
2 pursuant to a valid gestational carrier agreement.

3 “Fertilization” means the initial union of the sperm and the egg.

4 “Gamete” means sperm or egg.

5 “Gestational carrier” means a woman 21 years of age or older
6 who agrees to become pregnant for an intended parent by assisted
7 reproductive technology without the use of her own egg.

8 “Gestational carrier agreement” means the written contract
9 between the gestational carrier and the intended parent, pursuant to
10 which the intended parent agrees to become the legal parent of a
11 child created through assisted reproductive technology and carried
12 by the gestational carrier.

13 “Implantation” means when the fertilized egg adheres to the
14 gestational carrier’s uterine wall.

15 “Intended parent” means a person who enters into a gestational
16 carrier agreement with a gestational carrier pursuant to section 6 of
17 P.L. , c. (C.) (pending before the Legislature as this bill),
18 pursuant to which the person shall be the legal parent of the
19 resulting child. The term shall include persons who are single,
20 married, partners in a civil union or domestic partnership, and
21 couples who are not married or in a civil union or domestic
22 partnership. Any reference to an intended parent shall include both
23 spouses or partners in a civil union or domestic partnership. This
24 term shall include the intended mother, the intended father, the
25 intended mother and intended father, the intended mother and
26 intended mother, or the intended father and intended father.

27 “In vitro fertilization” means all medical and laboratory
28 procedures that are required to effectuate the formation of a human
29 embryo outside the human body.

30 “Medical evaluation” means an evaluation and consultation by a
31 physician, a certified nurse midwife, or an advanced practice nurse.

32 “Order of parentage” means a judgment determining parentage
33 pursuant to the provisions of a gestational carrier agreement that
34 satisfies P.L. , c. (C.) (pending before the Legislature as
35 this bill).

36 “Physician” means a person licensed to practice medicine in New
37 Jersey pursuant to R.S.45:9-1 et seq. or licensed to practice in any
38 one of the United States or its territories, or the District of
39 Columbia.

40 “Pre-embryo” is a fertilized egg prior to 14 days of development.

41 “Pre-embryo transfer” means all medical and laboratory
42 procedures that are necessary to effectuate the transfer of a pre-
43 embryo into the uterine cavity.

44 “Psychological evaluation” means an evaluation and consultation
45 by a clinical social worker, psychotherapist, or psychiatrist licensed
46 by the State of New Jersey or licensed to practice in any one of the
47 United States or its territories, or the District of Columbia.

1 “Reasonable expenses” means medical, hospital, counseling or
2 other similar expenses incurred in connection with the gestational
3 carrier agreement, reasonable attorney fees and costs for legal
4 services in connection with the gestational carrier agreement, and
5 the reasonable living expenses of the gestational carrier during her
6 pregnancy including payments for reasonable food, clothing,
7 medical expenses, shelter, and religious, psychological, vocational,
8 or similar counseling services during the period of the pregnancy
9 and during the period of postpartum recovery. These payments may
10 be made directly to the gestational carrier or on the gestational
11 carrier’s behalf to the supplier of the goods or services pursuant to
12 the gestational carrier agreement.

13

14 4. (New section) Rights of Parentage.

15 a. Provided that the gestational carrier and the intended parent
16 satisfy the eligibility requirements set forth in section 5 of P.L. ,
17 c. (C.) (pending before the Legislature as this bill) and the
18 gestational carrier agreement satisfies the requirements set forth in
19 section 6 of P.L. , c. (C.) (pending before the
20 Legislature as this bill), immediately upon the birth of the child:

21 (1) The intended parent shall be the legal parent of the child;

22 (2) In the case of an intended parent who is a spouse or partner
23 in a civil union or domestic partnership, both spouses or partners
24 shall be the parents of the child; and

25 (3) Neither the gestational carrier nor her spouse or partner, if
26 any, shall be the legal parent of the child.

27 b. In the event of a medical or laboratory error in which the
28 resulting child is not genetically related to an intended parent whose
29 gamete was intended to be used under the agreement, the intended
30 parent shall be the parent of the child where the gestational carrier
31 agreement satisfies the requirements set forth in section 6 of
32 P.L. , c. (C.) (pending before the Legislature as this
33 bill), unless otherwise determined by a court of competent
34 jurisdiction pursuant to a complaint challenging parentage filed by a
35 genetic parent within 120 days of birth.

36

37 5. (New section) Eligibility.

38 a. A gestational carrier shall be deemed to have satisfied the
39 requirements of P.L. , c. (C.) (pending before the
40 Legislature as this bill) if, at the time the gestational carrier
41 agreement is executed, she:

42 (1) Is at least 21 years of age;

43 (2) Has given birth to at least one child;

44 (3) Has completed a medical evaluation approving her
45 suitability to serve as a gestational carrier;

46 (4) Has completed a psychological evaluation approving her
47 suitability to serve as a gestational carrier;

1 (5) Has retained an attorney, independent of the intended parent,
2 but for whose services the intended parent may pay, who has
3 consulted with her about the terms of the gestational carrier
4 agreement and the potential legal consequences of being a
5 gestational carrier under the terms of this agreement.

6 b. The intended parent shall be deemed to have satisfied the
7 requirements of P.L. , c. (C.) (pending before the
8 Legislature as this bill) if, at the time the gestational carrier
9 agreement is executed, the intended parent:

10 (1) Has completed a psychological evaluation approving the
11 intended parent's suitability to participate in a gestational carrier
12 agreement; and

13 (2) Is represented by an attorney who consulted with the
14 intended parent about the terms of the gestational carrier agreement
15 and the potential legal consequences of the agreement.

16

17 6. (New section) Requirements for a Gestational Carrier
18 Agreement.

19 a. A gestational carrier agreement shall satisfy the following
20 requirements:

21 (1) It is in writing and executed by the gestational carrier, her
22 spouse or partner in a civil union or domestic partnership, if any,
23 and each intended parent. If the intended parent is married or in a
24 domestic partnership or civil union at the time the intended parent
25 enters the agreement, both spouses or partners shall meet the
26 requirements of subsection b. of section 5 of P.L. , c. (C.)
27 (pending before the Legislature as this bill) and shall be required to
28 enter into the agreement as intended parents. If the intended parent
29 is not married or in a civil union or domestic partnership, no other
30 person shall be deemed a legal parent of the child unless that person
31 meets the requirements of subsection b. of section 5 of P.L. ,
32 c. (C.) (pending before the Legislature as this bill) and duly
33 executes the agreement;

34 (2) It is executed after the required medical and psychological
35 screenings of the gestational carrier and the psychological screening
36 of the intended parent, but prior to the commencement of any other
37 necessary medical procedures in furtherance of the implantation of
38 the pre-embryo; and

39 (3) The gestational carrier and her spouse or partner, if any, and
40 the intended parent shall have been represented by separate
41 attorneys in all matters relating to the gestational carrier agreement
42 and each attorney provides an affidavit of such representation.

43 b. A gestational carrier agreement shall provide:

44 (1) Express terms that the gestational carrier shall:

45 (a) Undergo pre-embryo transfer and attempt to carry and give
46 birth to the child;

47 (b) Surrender custody of the child to the intended parent
48 immediately upon the child's birth; and

1 (c) Have the right to medical care for the pregnancy, labor,
2 delivery, and postpartum recovery provided by a physician, advance
3 practice nurse, or certified nurse midwife of her choice, after she
4 notifies, in writing, the intended parent of her choice;

5 (2) An express term that, if the gestational carrier is married or
6 in a civil union or domestic partnership, the spouse or partner
7 agrees to the obligations imposed on the gestational carrier pursuant
8 to the terms of the gestational carrier agreement and to surrender
9 custody of the child to the intended parent immediately upon the
10 child's birth; and

11 (3) Express terms that the intended parent shall:

12 (a) Accept custody of the child immediately upon the child's
13 birth; and

14 (b) Assume sole responsibility for the support of the child
15 immediately upon the child's birth.

16 c. A gestational carrier agreement shall be presumed
17 enforceable if:

18 (1) It satisfies the contractual requirements set forth in
19 subsection a. of this section; and

20 (2) It contains at a minimum each of the terms set forth in
21 subsection b. of this section.

22 In addition, an enforceable gestational carrier agreement shall
23 include a provision setting forth the financial responsibilities of the
24 parties and shall include a provision that the intended parent shall
25 pay the gestational carrier's reasonable expenses, as defined herein,
26 unless expressly waived, in whole or in part, in writing by the
27 gestational carrier.

28 d. In the event that any of the requirements of this section are
29 not met, a court of competent jurisdiction shall determine parentage
30 based on the parties' intent.

31

32 7. (New section) Duty to Support.

33 a. The establishment of the parent and child relationship
34 pursuant to a valid gestational carrier agreement shall be the basis
35 upon which an action for child support may be brought against the
36 intended parent and acted upon by the court without further
37 evidentiary proceedings.

38 b. The breach of the gestational carrier agreement by the
39 intended parent shall not relieve the intended parent of the support
40 obligations imposed by the parent and child relationship created by
41 the provisions of P.L. , c. (C.) (pending before the
42 Legislature as this bill).

43 c. Unless a person who donates gametes for use in assisted
44 reproduction enters into a written contract to the contrary, the
45 gamete donor is treated in law as if the gamete donor were not the
46 legal parent of a child thereby conceived and shall have no rights or
47 duties stemming from the conception of the child.

- 1 8. (New section) Establishment of Parent-Child Relationship.
- 2 a. After the gestational carrier becomes pregnant in accordance
- 3 with the gestational carrier agreement provided for in
- 4 P.L. , c. (C.) (pending before the Legislature as this bill),
- 5 the intended parent shall file a complaint for an order of parentage
- 6 with the Superior Court, Chancery Division, Family Part of the
- 7 county of the child's anticipated birth or the intended parent's or
- 8 gestational carrier's county of residence.
- 9 b. Attached to the complaint shall be:
- 10 (1) An affidavit by the gestational carrier and her spouse or
- 11 partner, if any, and the intended parent that they have entered into a
- 12 gestational carrier agreement in conformity with New Jersey law
- 13 and, after consultation with legal counsel, agreed to be bound by the
- 14 terms of the agreement;
- 15 (2) An affidavit of representation by the attorney for the
- 16 intended parent and the attorney for the gestational carrier and her
- 17 spouse or partner, if any; and
- 18 (3) A statement from the medical facility which performed the
- 19 assisted reproduction regarding the achievement of pregnancy in
- 20 accordance with the gestational carrier agreement.
- 21 c. The Superior Court shall, to the extent possible, schedule
- 22 and expedite a hearing on the matter, except that if the matter is
- 23 uncontested, the court may decide the matter without the need for
- 24 an appearance by the parties. Notice to all necessary parties shall
- 25 be made in accordance with the Rules of Court.
- 26 d. The attorney representing the intended parent shall appear at
- 27 the hearing unless the court waives an appearance.
- 28 e. Notwithstanding any other law concerning public hearings
- 29 and records, any action or proceeding held under P.L. , c. (C.)
- 30 (pending before the Legislature as this bill), shall be held in closed
- 31 court without admittance of any persons other than those necessary
- 32 to the action or proceeding.
- 33 f. If the court finds that the parties have complied with the
- 34 provisions of P.L. , c. (C.) (pending before the
- 35 Legislature as this bill), the court shall enter an order of parentage
- 36 naming the intended parent as the legal parent of the child.
- 37 g. After the birth of the child, the order of parentage and
- 38 application for the child's birth certificate shall be filed with the
- 39 State Registrar of Vital Statistics pursuant to the requirements of
- 40 R.S:26:8-28. The State Registrar shall issue the child's birth
- 41 certificate naming the intended parent as the parent of the child.
- 42 h. All records and filings in connection with a gestational
- 43 carrier agreement shall remain confidential and unavailable to the
- 44 public, except that such records and filings may be made available
- 45 to a child born as a result of a valid gestational carrier agreement
- 46 who has attained at least 18 years of age and who has submitted a
- 47 written, notarized request for the records or filings.

1 9. (New section) Certain Provisions of Law not Applicable to
2 Gestational Carrier Agreements.

3 a. A gestational carrier agreement shall not be considered:

4 (1) An adoption pursuant to Title 9 of the Revised Statutes; or

5 (2) A surrender of custody or termination of parental rights to
6 the child by the gestational carrier in violation of the requirements
7 of Title 9 of the Revised Statutes.

8 b. The payment of reasonable expenses in connection with a
9 valid gestational carrier agreement shall not constitute a violation of
10 section 18 of P.L.1993, c.345 (C.9:3-39.1).

11
12 10. Section 2 of P.L.1983, c.17 (C.9:17-39) is amended to read
13 as follows:

14 2. As used in this act, "parent and child relationship" means the
15 legal relationship existing between a child and the child's natural or
16 adoptive parents or between the child and the child's intended
17 parents pursuant to a gestational carrier agreement executed in
18 accordance with the provisions of P.L. , c. (C.) (pending
19 before the Legislature as this bill), incident to which the law confers
20 or imposes rights, privileges, duties, and obligations. It includes the
21 mother and child relationship and the father and child relationship.
22 (cf: P.L.1983, c.17, s.2)

23
24 11. Section 4 of P.L.1983, c.17 (C.9:17-41) is amended to read
25 as follows:

26 4. The parent and child relationship between a child and:

27 a. The natural mother, may be established by:

28 (1) proof of her having given birth to the child unless the child
29 is born in connection with a gestational carrier agreement executed
30 in accordance with the provisions of P.L. , c. (C.)
31 (pending before the Legislature as this bill), or

32 (2) under P.L.1983, c.17 (C.9:17-38 et seq.);

33 b. The natural father, may be established by proof that his
34 paternity has been adjudicated under prior law; under the laws
35 governing probate; by giving full faith and credit to a determination
36 of paternity made by any other state or jurisdiction, whether
37 established through voluntary acknowledgment or through judicial
38 or administrative processes; by a Certificate of Parentage as
39 provided in section 7 of P.L.1994, c.164 (C.26:8-28.1) that is
40 executed by the father, including an unemancipated minor, prior to
41 or after the birth of a child, and filed with the appropriate State
42 agency; by a default judgment or order of the court; or by an order
43 of the court based on a blood test or genetic test that satisfies or
44 exceeds the specific threshold probability as set by subsection i. of
45 section 11 of P.L.1983, c.17 (C.9:17-48) creating a rebuttable
46 presumption of paternity.

47 In accordance with **【section 331 of Pub.L.104-193】** 42 U.S.C.
48 s.666(a)(5), a signed voluntary acknowledgment of paternity shall

1 be considered a legal finding of paternity subject to the right of the
2 signatory to rescind the acknowledgment within 60 days of the date
3 of signing, or by the date of establishment of a support order to
4 which the signatory is a party, whichever is earlier.

5 The adjudication of paternity shall only be voided upon a finding
6 that there exists clear and convincing evidence of: fraud, duress or a
7 material mistake of fact, with the burden of proof upon the
8 challenger;

9 c. (1) An adoptive parent, may be established by proof of
10 adoption;

11 (2) An intended parent, may be established by proof of an order
12 of parentage related to a gestational carrier agreement executed in
13 accordance with the provisions of P.L. , c. (C.) (pending
14 before the Legislature as this bill);

15 d. The natural mother or the natural father, may be terminated
16 by an order of a court of competent jurisdiction in granting a
17 judgment of adoption or as the result of an action to terminate
18 parental rights;

19 e. The establishment of the parent and child relationship
20 pursuant to subsections a., b., and c. of this section shall be the
21 basis upon which an action for child support may be brought by a
22 party and acted upon by the court without further evidentiary
23 proceedings;

24 f. In any case in which the parties execute a Certificate of
25 Parentage or a rebuttable presumption of paternity is created
26 through genetic testing, the presumption of paternity under section
27 6 of P.L.1983, c.17 (C.9:17-43) shall not apply;

28 g. Pursuant to the provisions of [section 331 of Pub.L.104-
29 193] 42 U.S.C. s.666(a)(5), the child and other parties in a
30 contested paternity case shall submit to a genetic test upon the
31 request of one of the parties, unless that person has good cause for
32 refusal, if the request is supported by a sworn statement by the
33 requesting party:

34 (1) alleging paternity and setting forth the facts establishing a
35 reasonable possibility of the requisite sexual contact between the
36 parties; or

37 (2) denying paternity and setting forth the facts establishing a
38 reasonable possibility of the nonexistence of sexual contact between
39 the parties;

40 h. In a contested paternity case in which the State IV-D agency
41 requires or the court orders genetic testing, the State IV-D agency
42 shall:

43 (1) pay the costs of the genetic test and may recoup payment
44 from the alleged father whose paternity is established; and

45 (2) obtain additional testing if the initial test results are
46 contested, and upon the request and advance payment for the
47 additional test by the contestant.

48 (cf: P.L.1998, c.1, s.38)

1 12. Section 6 of P.L.1983, c.17 (C.9:17-43) is amended to read
2 as follows:

3 6. a. A man is presumed to be the biological father of a child
4 if:

5 (1) He and the child's biological mother are or have been
6 married to each other and the child is born during the marriage, or
7 within 300 days after the marriage is terminated by death,
8 annulment or divorce;

9 (2) Before the child's birth, he and the child's biological mother
10 have attempted to marry each other by a marriage solemnized in
11 apparent compliance with law, although the attempted marriage is
12 or could be declared invalid, and:

13 (a) if the attempted marriage could be declared invalid only by a
14 court, the child is born during the attempted marriage, or within 300
15 days after its termination by death, annulment or divorce; or

16 (b) if the attempted marriage is invalid without a court order, the
17 child is born within 300 days after the termination of cohabitation;

18 (3) After the child's birth, he and the child's biological mother
19 have married, or attempted to marry, each other by a marriage
20 solemnized in apparent compliance with law, although the
21 attempted marriage is or could be declared invalid, and:

22 (a) he has acknowledged his paternity of the child in writing
23 filed with the local registrar of vital statistics;

24 (b) he has sought to have his name placed on the child's birth
25 certificate as the child's father, pursuant to R.S.26:8-40; or

26 (c) he openly holds out the child as his natural child; or

27 (d) he is obligated to support the child under a written voluntary
28 agreement or court order;

29 (4) While the child is under the age of majority, he receives the
30 child into his home and openly holds out the child as his natural
31 child;

32 (5) While the child is under the age of majority, he provides
33 support for the child and openly holds out the child as his natural
34 child; or

35 (6) He acknowledges his paternity of the child in a writing filed
36 with the local registrar of vital statistics, which shall promptly
37 inform the mother of the filing of the acknowledgment, and she
38 does not dispute the acknowledgment within a reasonable time after
39 being informed thereof, in a writing filed with the local registrar. If
40 another man is presumed under this section to be the child's father,
41 acknowledgment may be effected only with the written consent of
42 the presumed father. Each attempted acknowledgment, whether or
43 not effective, shall be kept on file by the local registrar of vital
44 statistics and shall entitle the person who filed it to notice of all
45 proceedings concerning parentage and adoption of the child, as
46 provided in section 10 of P.L.1983, c.17 (C.9:17-47) and pursuant
47 to section 9 of P.L.1977, c.367 (C.9:3-45).

1 b. A presumption under this section may be rebutted in an
2 appropriate action only by clear and convincing evidence. If two or
3 more presumptions arise which conflict with each other, the
4 presumption which on the facts is founded on the weightier
5 considerations of policy and logic controls. The presumption is
6 rebutted by a court order terminating the presumed father's paternal
7 rights or by establishing that another man is the child's biological or
8 adoptive father.

9 c. Notwithstanding the provisions of this section to the
10 contrary, in an action brought under this act against the legal
11 representative or the estate of a deceased alleged father, the criteria
12 in paragraphs (4) and (5) of subsection a. of this section shall not
13 constitute presumptions but shall be considered by the court
14 together with all of the evidence submitted. The decision of the
15 court shall be based on a preponderance of the evidence.

16 d. In the absence of a presumption, the court shall decide
17 whether the parent and child relationship exists, based upon a
18 preponderance of the evidence.

19 e. There is a rebuttable presumption that a man has knowledge
20 of his paternity and the birth of a child if he had sexual intercourse
21 with the biological mother within 300 days of the child's birth. This
22 presumption may be rebutted only by clear and convincing evidence
23 in an appropriate action based on fraud, duress, or
24 misrepresentation by the biological mother concerning the paternity
25 or birth of the child. This claim of fraud, duress, or
26 misrepresentation must be asserted prior to the finalization of the
27 adoption.

28 f. This section shall not apply to a child born in connection
29 with a gestational carrier agreement executed in accordance with
30 the provisions of P.L. , c. (C.) (pending before the
31 Legislature as this bill).

32 (cf: P.L.1998, c.20, s.4)

33
34 13. Section 7 of P.L.1983, c.17 (C.9:17-44) is amended to read
35 as follows:

36 7. a. If, under the supervision of a licensed physician and with
37 the consent of her husband or partner in a civil union, a **【wife】**
38 woman is inseminated artificially with semen donated by a man not
39 her husband or partner, the husband or partner is treated in law as if
40 **【he】** the husband or partner were the natural **【father】** parent of a
41 child thereby conceived. The **【husband's】** consent of the husband
42 or partner shall be in writing and signed by **【him and his wife】** both
43 parties to the marriage or civil union. The physician shall certify
44 their signatures and the date of the insemination, upon forms
45 provided by the Department of Health, and file the **【husband's】**
46 consent with the State Department of Health, where it shall be kept
47 confidential and in a sealed file. However, the physician's failure to

1 do so shall not affect the **【father】** parent and child relationship of
 2 the husband or partner. All papers and records pertaining to the
 3 insemination, whether part of the permanent record of a court or of
 4 a file held by the supervising physician or elsewhere, are subject to
 5 inspection only upon an order of the court for compelling reasons
 6 clearly and convincingly shown.

7 b. Unless the donor of semen and the woman have entered into
 8 a written contract to the contrary, the donor of semen provided to a
 9 licensed physician for use in artificial insemination of a woman
 10 other than the donor's wife or partner in a civil union is treated in
 11 law as if he were not the father of a child thereby conceived and
 12 shall have no rights or duties stemming from the conception of a
 13 child.

14 c. This section shall not apply in a proceeding to determine
 15 parentage of a child born in connection with a gestational carrier
 16 agreement executed in accordance with the provisions of P.L. _____,
 17 c. (C. _____) (pending before the Legislature as this bill).
 18 (cf: P.L.1983, c.17, s.7)

19
 20 14. Section 15 of P.L.1983, c.17 (C.9:17-52) is amended to read
 21 as follows:

22 15. Evidence relating to paternity may include:

23 a. Evidence of sexual intercourse between the mother and
 24 alleged father at any possible time of conception;

25 b. An expert's opinion concerning the statistical probability of
 26 the alleged father's paternity, based upon the duration of the
 27 mother's pregnancy;

28 c. Genetic or blood tests, weighted in accordance with
 29 evidence, if available, of the statistical probability of the alleged
 30 father's paternity;

31 d. Medical or anthropological evidence relating to the alleged
 32 father's paternity of the child, based on tests performed by experts.
 33 If a man has been identified as a possible father of the child, the
 34 court may, and upon request of a party shall, require the child, the
 35 mother, and the man to submit to appropriate tests; **【and】**

36 e. All other evidence on behalf of any party, relevant to the
 37 issue of paternity of the child; and

38 f. A gestational carrier agreement executed in accordance with
 39 the provisions of P.L. _____, c. _____ (C. _____) (pending before the
 40 Legislature as this bill).
 41 (cf: P.L.1983, c.17, s.15)

42
 43 15. R.S.26:8-28 is amended to read as follows:

44 26:8-28. a. (1) Within five days after each birth, there shall be
 45 filed with the local registrar of the district in which the birth
 46 occurred a certificate of the birth filled out with durable black or
 47 blue ink in a legible manner.

1 pursuant to which a woman agrees to carry and give birth to a child
2 with whom she has no genetic relationship and who is created using
3 assisted reproduction on behalf of an intended parent. Upon the birth
4 of the child, the intended parent becomes the legal parent of the child
5 and the woman, who is called a “gestational carrier,” has no parental
6 rights or obligations.

7 Unlike what is now regarded as traditional surrogacy, where a
8 woman is artificially inseminated with the semen of the intended father
9 and gives birth to a child through the use of her own egg, gestational
10 surrogacy is the result of developments in reproductive technology and
11 involves a woman who does not make use of her own egg. She,
12 therefore, is not genetically related to the child. This bill would take
13 into account this advance in reproductive technology and would permit
14 gestational carrier agreements that satisfy certain requirements.

15 Pursuant to the bill, a gestational carrier is required to be at least 21
16 years of age, have given birth to at least one child, have completed
17 medical and psychological evaluations conducted by licensed
18 professionals, and have retained an attorney independent of the
19 intended parent but for whose services the intended parent would be
20 permitted to pay. The bill requires that an intended parent have
21 completed a psychological evaluation conducted by a licensed
22 professional approving the intended parent’s suitability to participate
23 in a gestational carrier agreement, and to have retained an attorney to
24 advise the intended parent about the terms and potential legal
25 consequences of entering into the agreement. Under the bill, single
26 people, as well as those who are married or in a civil union or
27 domestic partnership, are permitted to enter into gestational carrier
28 agreements as either intended parents or as gestational carriers.

29 This bill requires that the agreement be in writing and executed by
30 the gestational carrier, her spouse or partner in a civil union or
31 domestic partnership, if any, and the intended parent. If the intended
32 parent is married or in a domestic partnership or civil union at the time
33 the intended parent enters the agreement, both spouses or partners are
34 required to enter into the agreement as intended parents. If the
35 intended parent is not married or in a civil union or domestic
36 partnership, any other person who wishes to be an intended parent
37 must duly execute the agreement as an intended parent.

38 The agreement may only be executed after the parties have
39 undergone the required medical and psychological screenings and the
40 attorneys who consulted with the parties have submitted the required
41 affidavits of representation in any actions filed with the court.

42 The agreement is required to include express terms providing that
43 the gestational carrier agrees to undergo pre-embryo transfer, attempt
44 to carry and give birth to the child, and surrender custody of the child
45 to the intended parent immediately upon the birth of the child.
46 Additionally, the agreement is to expressly state that the gestational
47 carrier has the right to have medical care for the pregnancy, labor,
48 delivery, and postpartum care provided by a physician, advanced

1 practice nurse, or certified nurse midwife of her choice after notifying
2 the intended parents of her choice. The agreement is required to
3 include a provision that the gestational carrier's spouse or partner in a
4 civil union or domestic partnership, if any, agrees to the obligations
5 imposed on the gestational carrier and to surrender custody of the child
6 immediately upon the birth of the child. With regard to the intended
7 parent, the agreement is required to include express terms that the
8 intended parent agrees to accept custody of the child immediately upon
9 the birth of the child and assume sole responsibility for the support of
10 the child. An agreement including these terms would be presumed
11 enforceable.

12 Additionally, an enforceable gestational carrier agreement must
13 include a provision setting forth the financial responsibilities of the
14 parties and include a provision that the intended parent must pay the
15 gestational carrier's reasonable expenses. "Reasonable expenses"
16 means payment, provision of, or reimbursement for, medical, hospital,
17 counseling, or other similar expenses incurred in connection with the
18 gestational carrier agreement, reasonable attorney fees and costs for
19 legal services in connection with the gestational carrier agreement, and
20 the reasonable living expenses of the gestational carrier during her
21 pregnancy, including payments for reasonable food, clothing, medical
22 expenses, shelter, and religious, psychological, vocational, or similar
23 counseling services during the period of the pregnancy and during the
24 period of post-partum recovery. These payments may be made
25 directly to the gestational carrier or on the gestational carrier's behalf
26 to the supplier of the goods or services.

27 A parent and child relationship established by a valid gestational
28 carrier agreement is the basis for a child support order and an intended
29 parent would be legally obligated to support the child even in the event
30 that the intended parent breaches the agreement. A person who only
31 donates gametes for use in assisted reproduction would have no rights
32 or duties with respect to a child born of a gestational carrier agreement
33 unless the donor enters into a written contract to the contrary.

34 In the event of a medical or laboratory error resulting in the child
35 not being genetically related to an intended parent whose gametes
36 were intended to be used in the assisted reproduction procedure, the
37 intended parent would be the legal parent of the resulting child
38 provided the parties had executed a valid gestational carrier agreement,
39 unless otherwise determined by a court of competent jurisdiction
40 pursuant to a complaint challenging parentage filed by a genetic parent
41 within 120 days of birth.

42 In the event the parties fail to enter into a valid agreement, custody
43 of the resulting child would be determined by a court of competent
44 jurisdiction based on the intent of the parties.

45 After a gestational carrier becomes pregnant in connection with a
46 valid gestational carrier agreement, the intended parent must file a
47 complaint for an order of parentage with the Superior Court, Chancery
48 Division, Family Part of the county in which the intended parent or the

1 gestational carrier resides, or in the county of the child's anticipated
2 birth. The complaint is to include an affidavit by the gestational
3 carrier and her spouse or partner in a civil union or domestic
4 partnership, if any, that they have entered into and agree to be bound
5 by a gestational carrier agreement, affidavits of representation by the
6 attorneys for both the gestational carrier and the intended parent, and a
7 statement by the medical facility that performed the assisted
8 reproduction regarding the achievement of pregnancy.

9 The bill provides that the court, to the extent possible, is to
10 schedule and expedite the hearing. All records and filings in
11 connection with a gestational carrier agreement are to remain
12 confidential and unavailable to the public, except that such records and
13 filings may be made available to a child born of a valid gestational
14 carrier agreement who has attained at least 18 years of age and who
15 submits a written, notarized request for the records or filings. The
16 attorney representing the intended parent is to be present at the hearing
17 unless the court waives an appearance. The court is to enter an order
18 of parentage upon finding the parties complied with the statutory
19 requirements to enter into a gestational carrier agreement.

20 The order of parentage and application for the child's birth
21 certificate are to be filed with the State Registrar of Vital Statistics,
22 who then is to issue a birth certificate naming the intended parent as
23 the sole legal parent of the child.

24 Under the bill, a valid gestational carrier agreement is not to be
25 considered an adoption pursuant to Title 9 of the Revised Statutes, or a
26 surrender of custody or a termination of parental rights in violation of
27 Title 9 of the Revised Statutes. Additionally, the payment of
28 reasonable expenses in connection with a valid gestational carrier
29 agreement would not constitute a violation of section 18 of P.L.1993,
30 c.345 (C.9:3-39.1).

31 This bill would amend sections 2 and 4 of P.L.1983, c.17 (C.9:17-
32 39 and 9:17-41), which concern the definition and establishment of the
33 parent and child relationship, to include intended parents pursuant to a
34 valid gestational carrier agreement. It would also amend section 15 of
35 P.L.1983, c.17 (C.9:17-52) to provide that a valid gestational carrier
36 agreement may serve as evidence of paternity. This bill would provide
37 that the ordinary presumptions of paternity set forth in section 6 of
38 P.L.1983, c.17 (C.9:17-43) and the provisions of section 7 of
39 P.L.1983, c.17 (C.9:17-44), which pertains to artificial insemination,
40 do not apply to a child born pursuant to a valid gestational carrier
41 agreement. This bill would also amend R.S.26:8-28 to provide that the
42 intended parent's name appear on the birth certificate as the parent of a
43 child born pursuant to a valid gestational carrier agreement.

44 This bill would take effect immediately and apply to any
45 gestational carrier agreements entered into on or after the effective
46 date.

ASSEMBLY WOMEN AND CHILDREN COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1704

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 12, 2018

The Assembly Women and Children Committee reports favorably and with committee amendments Assembly Bill No. 1704.

As amended by committee, this bill, entitled the “New Jersey Gestational Carrier Agreement Act,” would authorize gestational carrier agreements. A gestational carrier agreement is a written contract pursuant to which a woman agrees to carry and give birth to a child with whom she has no genetic relationship and who is created using assisted reproduction on behalf of an intended parent. Upon the birth of the child, the intended parent becomes the legal parent of the child and the woman, who is called a “gestational carrier,” has no parental rights or obligations.

Unlike what is now regarded as traditional surrogacy, where a woman is artificially inseminated with the semen of the intended father and gives birth to a child through the use of her own egg, gestational surrogacy is the result of developments in reproductive technology and involves a woman who does not make use of her own egg. She, therefore, is not genetically related to the child. This bill would take into account this advance in reproductive technology and would permit gestational carrier agreements that satisfy certain requirements.

Pursuant to the bill, a gestational carrier is required to be at least 21 years of age, have given birth to at least one child, have completed medical and psychological evaluations conducted by licensed professionals, and have retained an attorney independent of the intended parent but for whose services the intended parent would be permitted to pay. The bill requires that an intended parent have completed a psychological evaluation conducted by a licensed professional approving the intended parent’s suitability to participate in a gestational carrier agreement, and to have retained an attorney to advise the intended parent about the terms and potential legal consequences of entering into the agreement. Under the bill, single people, as well as those who are married or in a civil union or domestic partnership, are permitted to enter into gestational carrier agreements as either intended parents or as gestational carriers.

This bill requires that the agreement be in writing and executed by the gestational carrier, her spouse or partner in a civil union or domestic partnership, if any, and the intended parent. If the intended

parent is married or in a domestic partnership or civil union at the time the intended parent enters the agreement, both spouses or partners are required to enter into the agreement as intended parents. If the intended parent is not married or in a civil union or domestic partnership, any other person who wishes to be an intended parent must duly execute the agreement as an intended parent.

The agreement may only be executed after the parties have undergone the required medical and psychological screenings and the attorneys who consulted with the parties have submitted the required affidavits of representation in any actions filed with the court.

The agreement is required to include express terms providing that the gestational carrier agrees to undergo pre-embryo transfer, attempt to carry and give birth to the child, and surrender custody of the child to the intended parent immediately upon the birth of the child. Additionally, the agreement is to expressly state that the gestational carrier has the right to have medical care for the pregnancy, labor, delivery, and postpartum care provided by a physician, advanced practice nurse, or certified nurse midwife of her choice after notifying the intended parents of her choice. The agreement is required to include a provision that the gestational carrier's spouse or partner in a civil union or domestic partnership, if any, agrees to the obligations imposed on the gestational carrier and to surrender custody of the child immediately upon the birth of the child. With regard to the intended parent, the agreement is required to include express terms that the intended parent agrees to accept custody of the child immediately upon the birth of the child and assume sole responsibility for the support of the child. An agreement including these terms would be presumed enforceable.

Additionally, an enforceable gestational carrier agreement must include a provision setting forth the financial responsibilities of the parties and include a provision that the intended parent must pay the gestational carrier's reasonable expenses. "Reasonable expenses" means payment, provision of, or reimbursement for, medical, hospital, counseling, or other similar expenses incurred in connection with the gestational carrier agreement, reasonable attorney fees and costs for legal services in connection with the gestational carrier agreement, and the reasonable living expenses of the gestational carrier during her pregnancy, including payments for reasonable food, clothing, medical expenses, shelter, and religious, psychological, vocational, or similar counseling services during the period of the pregnancy and during the period of post-partum recovery. These payments may be made directly to the gestational carrier or on the gestational carrier's behalf to the supplier of the goods or services.

A parent and child relationship established by a valid gestational carrier agreement is the basis for a child support order and an intended parent would be legally obligated to support the child even in the event that the intended parent breaches the agreement. A person who only

donates gametes for use in assisted reproduction would have no rights or duties with respect to a child born of a gestational carrier agreement unless the donor enters into a written contract to the contrary.

In the event of a medical or laboratory error resulting in the child not being genetically related to an intended parent whose gametes were intended to be used in the assisted reproduction procedure, the intended parent would be the legal parent of the resulting child provided the parties had executed a valid gestational carrier agreement, unless otherwise determined by a court of competent jurisdiction pursuant to a complaint challenging parentage filed by a genetic parent within 120 days of birth.

In the event the parties fail to enter into a valid agreement, custody of the resulting child would be determined by a court of competent jurisdiction based on the intent of the parties.

After a gestational carrier becomes pregnant in connection with a valid gestational carrier agreement, the intended parent must file a complaint for an order of parentage with the Superior Court, Chancery Division, Family Part of the county in which the intended parent or the gestational carrier resides, or in the county of the child's anticipated birth. The complaint is to include an affidavit by the gestational carrier and her spouse or partner in a civil union or domestic partnership, if any, that they have entered into and agree to be bound by a gestational carrier agreement, affidavits of representation by the attorneys for both the gestational carrier and the intended parent, and a statement by the medical facility that performed the assisted reproduction regarding the achievement of pregnancy.

The bill provides that the court, to the extent possible, is to schedule and expedite the hearing. All records and filings in connection with a gestational carrier agreement are to remain confidential and unavailable to the public, except that such records and filings may be made available to a child born of a valid gestational carrier agreement who has attained at least 18 years of age and who submits a written, notarized request for the records or filings. The attorney representing the intended parent is to be present at the hearing unless the court waives an appearance. The court is to enter an order of parentage upon finding the parties complied with the statutory requirements to enter into a gestational carrier agreement.

The order of parentage and application for the child's birth certificate are to be filed with the State Registrar of Vital Statistics, who then is to issue a birth certificate naming the intended parent as the sole legal parent of the child.

Under the bill, a valid gestational carrier agreement is not to be considered an adoption pursuant to Title 9 of the Revised Statutes, or a surrender of custody or a termination of parental rights in violation of Title 9 of the Revised Statutes. Additionally, the payment of reasonable expenses in connection with a valid gestational carrier

agreement would not constitute a violation of section 18 of P.L.1993, c.345 (C.9:3-39.1).

This bill would amend sections 2 and 4 of P.L.1983, c.17 (C.9:17-39 and C.9:17-41), which concern the definition and establishment of the parent and child relationship, to include intended parents pursuant to a valid gestational carrier agreement. It would also amend section 15 of P.L.1983, c.17 (C.9:17-52) to provide that a valid gestational carrier agreement may serve as evidence of paternity. This bill would provide that the ordinary presumptions of paternity set forth in section 6 of P.L.1983, c.17 (C.9:17-43) and the provisions of section 7 of P.L.1983, c.17 (C.9:17-44), which pertains to artificial insemination, do not apply to a child born pursuant to a valid gestational carrier agreement. Finally, the bill would amend R.S.26:8-28 to provide that the intended parent's name appear on the birth certificate as the parent of a child born pursuant to a valid gestational carrier agreement.

This bill would take effect immediately and apply to any gestational carrier agreements entered into on or after the effective date.

As amended by committee, this bill is identical to Senate Bill No.482 (Vitale) which was released by the Senate Health, Human Services, and Senior Services Committee on February 5, 2018.

This bill was pre-filed for introduction in the 2018-2019 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

COMMITTEE AMENDMENTS

The committee amended the bill to make various technical changes to the bill.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 1704

with Assembly Floor Amendments
(Proposed by Assemblywoman VAINIERI HUTTLE)

ADOPTED: FEBRUARY 15, 2018

This floor amendment defines a “physician assistant” as a health professional who meets the qualifications under P.L.1991, c.378 (C.45:9-27.10 et seq.) and holds a current, valid license issued pursuant to section 4 of P.L.1991, c.378 (C.45:9-27.13).

The amendment also mandates that a gestational carrier has the right to receive medical care for pregnancy, labor, delivery, and postpartum recovery from a physician assistant as well as the other health care professionals defined in the bill.

The amendment also clarifies that the provisions of section 7 of P.L.1983, c.17 (C.9:17-44), which pertain to artificial insemination and apply to licensed physicians, also apply to physician assistants.

STATEMENT TO
[Second Reprint]
ASSEMBLY, No. 1704

with Assembly Floor Amendments
(Proposed by Assemblywoman VAINIERI HUTTLE)

ADOPTED: MARCH 26, 2018

These Assembly amendments revise the provisions of the bill amending the artificial insemination law, section 7 of P.L.1983, c.17 (C.9:17-44), which concerns a husband's or partner's consent for artificial insemination, to apply to a spouse or partner instead of the husband or partner. The amendments further clarify that the provisions of the section, which would apply to physicians and physician assistants, will apply to advance practice nurses as well.

These Assembly amendments also make certain technical corrections to the bill.



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Newark, N.J.

Governor Murphy Takes Action on Legislation

05/30/2018

TRENTON – Today, Governor Phil Murphy announced that he has signed the following bills into law:

A2787 (Dancer, Andrzejczak, Houghtaling, Rooney/Cruz-Perez, Singer) – Extends pilot program authorizing special occasion events at wineries on preserved farmland; implements reporting requirement.

A3380 (McKeon, Murphy, Lampitt, Conaway/Vitale, Singleton) – “New Jersey Health Insurance Market Preservation Act.”

S482 (Vitale/Vainieri Huttle, Quijano, Jasey) – Authorizes certain gestational carrier agreements.

S846 (Turner, Cruz-Perez/Pintor Marin, Mukherji, Gusciora, Jones, Sumter) – Reinstates and extends duration of certain UEZs; requires DCA to study UEZ program and report recommendations to the Legislature.

S868 (Sweeney, Vitale/Coughlin, Jasey, Schaer)– Permits candidates for school board to circulate petitions jointly and be bracketed together on ballot; permits short nonpolitical designation of principles on petitions and ballots.

S1217 (Sweeney, Smith/Mazzeo, Armato, DeAngelo) – Requires BPU consideration and approval of amended application for qualified wind energy project offshore in certain NJ territorial waters.

S1870 (Vitale, Ruiz/Speight, Quijano, McKnight) – Requires Child Fatality and Near Fatality Review Board to study racial and ethnic disparities that contribute to infant mortality.

S1876 (Ruiz, Corrado/Vainieri Huttle, Caputo, Jasey) – Requires Commissioner of Education to include data on chronic absenteeism and disciplinary suspensions on School Report Card and requires public schools to make certain efforts to combat chronic absenteeism.

S1878 (Vitale, Singleton/McKeon, Lampitt, Murphy) – "New Jersey Health Insurance Premium Security Act;" establishes health insurance reinsurance plan.

S1894 (Ruiz, Turner/Lampitt, Sumter, Barclay) – Requires "breakfast after the bell" program in all schools with 70% or more of students eligible for free or reduced price meals.

S1895 (Ruiz, Turner/Lampitt, Jones, Wimberly) – Requires certain school districts to submit report on nonparticipation in "Community Eligibility Provision" of National School Lunch and School Breakfast Programs.

S1896 (Ruiz, Turner/Lampitt, Wimberly, Jones) – Requires school district to report at least biannually to Department of Agriculture number of students who are denied school breakfast or school lunch.

S1897 (Ruiz, Turner/Lampitt, Pintor Marin, Barclay) – Expands summer meal program to all school districts with 50 percent or more of students eligible for free or reduced price meals.

S2247 (Sweeney/Burzichelli, Mukherji, Murphy) – Allows charitable assets set aside from the sale of nonprofit hospital to for-profit entity to be allocated to successor nonprofit charitable entity that is establishing and operating

equivalent nonprofit hospital.

Governor Murphy also announced that he has conditionally vetoed the following bills:

S879 (Sweeney/Burzichelli, Taliaferro, Murphy) – Amends definition of "existing major hazardous waste facility" in "Major Hazardous Waste Facilities Siting Act."

[Copy of message on S879](#)

S976 (Vitale, Bateman/Vainieri Huttie, Lagana, Mukherji) – "Revised State Medical Examiner Act"; establishes Office of the Chief State Medical Examiner in DOH.

[Copy of message on S976](#)

S1968 (Pou/Wimberly, Mukherji, Sumter) – Extends document submission deadline for certain residential and mixed use parking projects under Economic Redevelopment and Growth Grant program; increases maximum credit amounts awarded for certain residential and mixed use parking projects.

[Copy of message on S1968](#)

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