

MEMORANDUM

TO: Drafting Committee, UPA Revisions
FROM: Courtney Joslin, Reporter
DATE: February 8, 2016
RE: Surrogacy Provisions

I. Issue

Beyond making the surrogacy provisions gender neutral, should any other changes be made to Article 8 (the surrogacy provisions) of the Uniform Parentage Act?

In the event that we decide not to make any substantive changes to the surrogacy provisions, suggested edits to the existing Article 8 to make it gender neutral are included in Part VI below.

II. Status of the Surrogacy Provisions of the UPA

The 2002 UPA includes provisions authorizing both gestational and traditional surrogacy agreements.¹ These provisions are included in Article 8, which is bracketed.

States have been particularly reluctant to enact the surrogacy provisions of the 2000/2002 UPA. There is some reason to believe that this reluctance is based at least in part on the substance of the provisions themselves.

- 19 states enacted the 1973 UPA.² Additional states enacted portions of the 1973 UPA.
- 11 states adopted versions of the 2000/2002 UPA.³
- Of these 11 states, only 2 – Texas and Utah – enacted the surrogacy provisions based on Article 8 of the 2000/2002 UPA.⁴
- At least 5 of the 11 states that enacted the 2000/2002 UPA enacted surrogacy provisions that are not premised on the 2000/2002 UPA. These states include: Delaware (permitting) (enacted 2013); Illinois (permitting) (enacted 2004); Maine (permitting) (enacted 2015);

¹ Gestational surrogacy typically refers to a situation where the ova are provided by a woman other than the gestational carrier. A gestational carrier is connected to the resulting child through gestation but not genetics. Traditionally surrogacy typically refers to a situation where the ova are provided by the surrogacy carrier. A traditional surrogacy is therefore connected to the resulting child through both gestation and genetics.

² 2002 UPA, Prefatory Note, available at http://www.uniformlaws.org/shared/docs/parentage/upa_final_2002.pdf (“As of December, 2000, UPA (1973) was in effect in 19 states stretching from Delaware to California; in addition, many other states have enacted significant portions of it.”).

³ The eleven states are: Alabama, Delaware, Illinois, Maine, New Mexico, North Dakota, Oklahoma, Texas, Utah, Washington, Wyoming. *See* Uniform Law Commission, *Legislative Fact Sheet – Parentage Act*.

⁴ In addition, both states made amendments to the provision. While the 2000/2002 UPA permits both gestational and traditional surrogacy, Texas and Utah amended the provisions so that they permit only gestational surrogacy.

North Dakota (banning) (enacted 2005);⁵ and Washington (banning compensated) (enacted 1989).⁶

III. Status of Surrogacy Generally

The states have staked out varied positions regarding surrogacy. A few states explicitly ban surrogacy.⁷ Some of these states even authorize the imposition of civil and/or criminal penalties on parties involved in surrogacy agreements.⁸

On the other side of the spectrum, approximately 10 states have comprehensive statutes authorizing some types of compensated surrogacy agreements. These states include: California (enacted 2012);⁹ Delaware (enacted 2013);¹⁰ Florida (enacted 1993);¹¹ Illinois (enacted 2004);¹² Maine (enacted 2015);¹³ Nevada (enacted 2013);¹⁴ New Hampshire (original surrogacy provisions enacted earlier; these

⁵ North Dakota enacted Option B of USCACA, which bans surrogacy. CHARLES P. KINDREGAN & MAUREEN MCBRIEN, ASSISTED REPRODUCTIVE TECHNOLOGY: A LAWYER'S GUIDE TO EMERGING LAW AND SCIENCE 209 (2006). The North Dakota surrogacy provisions were enacted in 2005. 2005 North Dakota Laws Ch. 135 (H.B. 1121).

⁶ WASH. REV. CODE ANN. § 26.26.230 (“No person, organization, or agency shall enter into, induce, arrange, procure, or otherwise assist in the formation of a surrogate parentage contract, written or unwritten, for compensation.”). The Washington state surrogacy provisions were enacted and became effective in 1989. 1989 Wash. Legis. Serv. 404 (West).

⁷ Approximately six jurisdictions expressly prohibit surrogacy agreements. *See, e.g.*, COURTNEY G. JOSLIN, SHANNON P. MINTER & CATHERINE SAKIMURA, LESBIAN, GAY, BISEXUAL, AND TRANSGENDER FAMILY LAW § 4:2 (West 2015).

⁸ *See, e.g.*, D.C. CODE § 16-402 (providing that “any person or entity who or which is involved in ... the formation of a surrogacy parenting contract for a fee ... shall be subject to a civil penalty not to exceed \$10,000 or imprisonment for not more than 1 year, or both”); MICH. COMP. LAWS § 722.859 (“(2) A participating party ... who knowingly enters into a surrogate parentage contract for compensation is guilty of a misdemeanor punishable by a fine of not more than \$10,000.00 or imprisonment for not more than 1 year, or both. (3) A person other than a participating party who induces, arranges, procures, or otherwise assists in the formation of a surrogate parentage contract for compensation is guilty of a felony punishable by a fine of not more than \$50,000.00 or imprisonment for not more than 5 years, or both.”); N.Y. DOM. REL. LAW § 123(2)(b) (providing that “[a]ny other person or entity who or which ... assists in the formatting of a surrogate parenting contract for a fee ... shall be subject to a civil penalty not to exceed ten thousands dollars ...”).

⁹ CAL. FAM. CODE § 7962, added by Stats. 2012, c. 466 (A.B. 1217), § 3, amended by Stats. 2014, c. 636 (A.B. 2344), § 2, eff. Jan. 1, 2015).

¹⁰ DEL. STAT., TIT. 13 §§ 8-801 to 8-809, added by 2013 Delaware Laws ch. 88 (H.B. 131).

¹¹ FLA. STAT. ANN. §§ 742.11 to 742.18, added by 1993 Fla. Sess. Law Serv. Ch. 93-237 (C.S.H.B. 703).

¹² 750 ILCS 47/1 to 47/75, added by 2004 Ill. Legis. Serv. P.A. 93-921 (H.B. 4962), *eff. Jan. 1, 2005*.

¹³ ME. STAT. TIT. 19-A §§ 1931 to 1938, added by 2015 Me. Legis. Serv. Ch. 296 (S.P. 358) (L.D. 1017). In this same legislation, Maine enacted a gender-neutral version of Articles 1 – 7 of the 2002 UPA; it did not, however, adopt Article 8. Instead it enacted surrogacy provisions modeled largely on the provision previously enacted in Delaware and Nevada.

¹⁴ NEV. REV. STAT. §§ 126.500 to 126.810, added by Laws 2013, c. 213, § 2.

provisions were replaced in 2015); Texas (enacted 2003);¹⁵ Utah (enacted 2008);¹⁶ and Virginia (enacted 1991).¹⁷

About a third of the states have no statutes explicitly regulating surrogacy.¹⁸

So that you can see some of the more recently enacted schemes, I have included the California and the Maine provisions in the Appendix.

IV. Unusual Provisions/Requirements in the 2000/2002 UPA

The fact that very few states have enacted Article 8 is likely the result of a confluence of factors. One likely factor is the controversial nature of surrogacy itself. But another factor may be a lack of enthusiasm for the provisions themselves. There is little we can do about the former issue. With regard to the later, we may want to reconsider some of the provisions in Article 8, especially those that seem unusual or out-of-step with current practice.

(A) Discretionary nature of the action

Under the 2002 UPA, even when the parties have complied with all of the statutory requirements, the statutory provision appears to give the court unfettered discretion to refuse to validate the agreement. Specifically, the provisions state that if the statutory requirements are satisfied, the court “may issue an order validating the gestational agreement.”¹⁹

Other than provisions based on the 2000/2002 UPA, I am not aware of any other statutes that give courts discretion to deny enforcement of the agreement when there has been full statutory compliance. In other jurisdictions, if the statutory requirements have been satisfied, either the intended parents are legal parents as a matter of law, or the court is required to issue the order declaring that the intended parents are legal parents.²⁰

Maine falls into the former category. The Maine provisions state:

If a gestational carrier agreement satisfies the requirements of this chapter: The intended parent or parents are by operation of law the parent or parents of the resulting child immediately upon the birth of the child, and the resulting child is considered the child of the intended parent or parents upon the birth of the child.²¹

¹⁵ TEX. CODE ANN., Fam. Code §§ 160.751 to 160.763, added by Acts 2003, 78th Leg., ch. 457, § 2, eff. Sept. 1, 2003.

¹⁶ UTAH CODE ANN., 1953 §§ 78B-15-801 to 78B-15-809, added by Laws 2008, c. 3, § 1451, eff. Feb. 7, 2008.

¹⁷ 1991 Virginia Laws Ch. 600 (H.B. 1973) (enacting USCACA, Option A).

¹⁸ See, e.g., COURTNEY G. JOSLIN, SHANNON P. MINTER & CATHERINE SAKIMURA, LESBIAN, GAY, BISEXUAL, AND TRANSGENDER FAMILY LAW § 4:2 (West 2015).

¹⁹ 2002 UPA § 803(a) (“If the requirements of subsection (b) are satisfied, a court may issue an order validating the gestational agreement and declaring that the intended parents will be the parents of a child born during the term of the of the [sic] agreement.” (emphasis added)). See also 2002 UPA § 803(b) (“The court may issue an order under subsection (a) only on finding that ...” (emphasis added)).

²⁰ What the order is varies by state. In some states, the order validates the agreement. In other jurisdictions the order is a judgment declaring that the intended parents are the legal parents.

²¹ ME. STAT., 19-A, § 1933(1). See also NEV. REV. STAT. § 126.720(1)(a) (same).

California falls into the latter. The California provision states:

Upon petition of any party to a properly executed assisted reproduction agreement for gestational carriers, the court shall issue a judgment or order establishing a parent-child relationship, whether pursuant to Section 7630 or otherwise.²²

(B) Home study requirement

Unless waived by a court, the 2000/2002 UPA requires the relevant child-welfare agency to complete a “home study” of the intended parents and requires a finding that “the intended parents meet the standards of suitability applicable to adoptive parents.”²³

Other than provisions based on the 2000/2002 UPA, no other statutes impose such a requirement. Some states do, however, require the intended parents to undergo a “mental health consultation.”²⁴ See Part V(B) below.

(C) Requirement of two court actions

The 2000/2002 UPA requires two separate court actions. Prior to pregnancy, the parties must obtain an order “validating the gestational agreement and declaring that the intended parents will be the parents of a child born during the term of the of the [sic] agreement.”²⁵ Then, after the child is born, the parents “shall file notice with the court that a child has been born to the gestational mother within 300 days after assisted reproduction. Thereupon, the court shall issue an order: (1) confirming that the intended parents are the parents of the child.”²⁶

This is unusual. Most other statutory schemes require only one court order, if any. Indeed, a number of the more recently enacted provisions provide that the intended parents are legal parents as a matter of law so long as the statutory requirements were complied with, without any need for a court order. For example, the recently enacted Maine provisions state: “If a gestational carrier agreement satisfies the requirements of this chapter: The intended parent or parents are by operation of law the parent or parents of the resulting child immediately upon the birth of the child, and the resulting child is considered the child of the intended parent or parents upon the birth of the child.”²⁷ In Illinois, no court order is necessary, although the attorneys representing the parties must “certify that the parties entered into a gestational surrogacy contract intended to satisfy the

²² CAL. FAM. CODE § 7962(f)(2) (emphasis added). *See also* DEL. STAT., Tit. 13 § 8-807(a)(1) (“A gestational carrier agreement shall be enforceable if (1) it meets the requirements set forth [in the statute]”); NH REV. STAT. § 168-B:12(I) (providing that an party may petition the circuit court “for a parentage order declaring that the intended parent or parents are the sole parents of a child resulting from assisted reproduction and a gestational carrier arrangement” and that “[t]he court shall, within 30 days, grant the petition upon a finding that the parties have substantially complied with the requirements of this chapter pertaining to the execution of a gestational carrier agreement.” (emphasis added)).

²³ 2002 UPA § 803(b)(2).

²⁴ N.H. REV. STAT. § 168-B:8(I). *See also* ME. REV. STAT., 19-A § 1931 (requiring the intended parent(s) to “[c]omplete a medical evaluation and mental health consultation”).

²⁵ 2000/2002 UPA § 803(a).

²⁶ 2000/2002 UPA § 807(a).

²⁷ ME. REV. STAT., 19-A, § 1933(1). *See also* NEV. REV. STAT. § 126.720(1)(a) (same).

[statutory] requirements.”²⁸ These certifications must “be filed on forms prescribed by the Illinois Department of Public Health.”²⁹

California requires the parties to obtain one court order.³⁰

(D) Post-birth order of parentage only

Under the 2000/2002 UPA, a court cannot issue an order “confirming that the intended parents are the parents of the child” until after the birth of a child.³¹

Many of the more recently enacted statutes permit the court to issue an order declaring the legal parentage of the intended parents prior to the birth of the child. For example, the newly enacted Maine provisions state that “before or after the birth of the resulting child a party to the gestational carrier agreement may commence a proceeding in District Court to obtain an order . . . [d]eclaring that the intended parent or parents are the parent or parents of the resulting child and ordering that parental rights and responsibilities vest exclusively in the intended parent or parents immediately upon the birth of the child.”³²

In some of the states, the provisions provide that pre-birth orders do not become effective until after the birth of the child.³³

Having a pre-birth order may not only reduce some of the anxiety and stress, but it may also facilitate things like getting the child onto the intended parent’s health insurance and obtaining a birth certificate that includes the names of the intended parents.

(E) Term “surrogate mother”

The 2000/2002 UPA uses the term “surrogate mother.” Some experts in the field consider the phrase to be outdated. It may also be confusing, as it could be read to suggest that the surrogate is the legal mother.

²⁸ 750 ILCS 47/35(a).

²⁹ 750 ILCS 47/35(b).

³⁰ CAL. FAM. CODE § 7962.

³¹ 2002 UPA § 807(a)(1).

³² ME. STAT., 19-A, § 1934(1)(B). *See also* NEV. REV. STAT. § 126.720(1)(a) (same); CAL. FAM. CODE § 7962(f)(2) (“Upon petition of any party to a properly executed assisted reproduction agreement for gestational carriers, the court shall issue a judgment or order establishing a parent-child relationship, whether pursuant to Section 7630 or otherwise. The judgment or order may be issued before or after the child’s or children’s birth subject to the limitations of Section 7633.” (emphasis added)); NH STAT. REV. § 168-B:12(I) (stating that the petition seeking a declaration of legal parentage “may be brought either before, during, or subsequent to the pregnancy” (emphasis added)).

³³ *See, e.g.*, DEL. CODE, Tit. 13 § 8-611(b) (“[I]f a child was conceived through assisted reproduction, an order or judgment may be entered before the birth of the resulting child to establish a parent child relationship, as long as enforcement of the order or judgment shall be stayed until the birth of the child.”).

The term that is more commonly used today is “surrogate carrier” or “gestational carrier.” The term “gestational carrier” is used in the following states’ statutes: California,³⁴ Delaware,³⁵ Maine,³⁶ Nevada,³⁷ and New Hampshire.³⁸ Illinois uses the phrase “gestational surrogate.”³⁹

V. Common Requirements that Are Not Included in the 2002 UPA

There are a number of requirements that are common in the more recently enacted surrogacy statutes that are not included in the 2002 UPA.

(A) Independent counsel

A requirement that has been imposed in many of the more recently adopted provisions that is not required under the 2002 UPA is the requirement that all parties be represented by independent counsel. States that have such a requirement include: California,⁴⁰ Delaware,⁴¹ Illinois,⁴² Maine,⁴³ Nevada,⁴⁴ and New Hampshire.⁴⁵

(B) Mental health consultation for the gestational carrier

³⁴ CAL. FAM. CODE § 7962.

³⁵ DEL. CODE, Tit. 13 § 8-102(14) (defining “gestational carrier”).

³⁶ ME. STAT., 19-A § 1832(10) (defining “gestational carrier”).

³⁷ NEV. REV. STAT. ANN. § 126.580 (defining “gestational carrier”).

³⁸ N.H. REV. STAT. § 168-B:1(IX) (defining “gestational carrier”).

³⁹ 750 ILCS 47/10 (defining “gestational surrogate”).

⁴⁰ CAL. FAM. CODE § 7962(b) (“Prior to executing the written assisted reproduction agreement for gestational carriers, a surrogate and the intended parent or intended parents shall be represented by separate independent licensed attorneys of their choosing.”).

⁴¹ DEL. STAT., Tit. 13 § 8-807(b)(3) (providing that “the gestational carrier shall be represented by independent legal counsel and the intended parent or parents shall have been represented by independent counsel in all matters concerning the gestational carrier arrangement and the gestational carrier agreement.”). *See also* DEL. STAT., Tit. 13 § 8-806(a)(5); DEL. STAT., Tit. 13 § 8-806(b)(2).

⁴² 750 ILCS 47/25(3) (“[E]ach of the gestational surrogate and the intended parent or parents shall have been represented by separate counsel in all matters concerning the gestational surrogacy and the gestational surrogacy contract.”).

⁴³ ME. STAT., 19-A § 1932(3)(G) (“The gestational carrier and the intended parent or parents must be represented by independent legal counsel in all matters concerning the agreement and each counsel shall affirmatively so state in a written declaration attached to the agreement.”).

⁴⁴ NEV. REV. STAT. § 126.750(2) (“The gestational carrier and the intended parent or parents must be represented by separate, independent counsel in all matters concerning the gestational carrier arrangement and gestational agreement.”).

⁴⁵ N.H. REV. STAT. § 168-B:11(III) (“All parties shall be represented by legal counsel regarding the gestational carrier agreement and the gestational carrier and her spouse or partner, if any, shall have legal counsel that is separate and independent from the legal counsel for the intended parents.”).

Many recently enacted statutes require the gestational carrier to complete a mental health consultation prior to the execution of the agreement. States that have such a requirement include: Delaware,⁴⁶ Illinois,⁴⁷ Maine,⁴⁸ and New Hampshire.⁴⁹

Some states require the gestational carrier to complete a medical evaluation prior to the execution of the agreement. States that have such a requirement include: Delaware,⁵⁰ Illinois,⁵¹ Maine,⁵² Nevada,⁵³ and New Hampshire.⁵⁴

The California provisions do not include either requirement.

VI. Making the Existing Provisions Gender Neutral

In the event we decide not to make any substantive changes to Article 8, I have included below suggested amendments to the 2002 UPA to make them gender neutral.

2002 UPA – Surrogacy Provisions

SECTION 102. DEFINITIONS. In this [Act]:

(1) “Acknowledged father” means a man who has established a father-child relationship under [Article] 3.

(2) “Adjudicated ~~father~~parent” means a man who has been adjudicated by a court of competent jurisdiction to be the ~~father~~parent of a child.

(3) “Alleged father” means a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined. The term does not include:

(A) a presumed father;

(B) a man whose parental rights have been terminated or declared not to exist; or

(C) a male donor.

(4) “Assisted reproduction” means a method of causing pregnancy other than sexual intercourse. The term includes:

(A) intrauterine insemination;

(B) donation of eggs;

(C) donation of embryos;

(D) in-vitro fertilization and transfer of embryos; and

⁴⁶ DEL. STAT., Tit. 13 § 8-806(a)(4) (requiring a “mental health evaluation”).

⁴⁷ 750 ILCS 47/20(4) (requiring a “mental health evaluation”).

⁴⁸ ME. STAT., 19-A § 1932(3)(G) (requiring a “medical evaluation that includes a mental health consultation”).

⁴⁹ N.H. REV. STAT. § 168-B:9(IV) (requiring a “mental health consultation”).

⁵⁰ DEL. STAT., Tit. 13 § 8-807(b)(3) (providing that “the gestational carrier shall be represented by independent legal counsel and the intended parent or parents shall have been represented by independent counsel in all matters concerning the gestational carrier arrangement and the gestational carrier agreement.”). *See also* DEL. STAT., Tit. 13 § 8-806(a)(5); DEL. STAT., Tit. 13 § 8-806(b)(2).

⁵¹ 750 ILCS 47/20(a)(3) (requiring a “medical evaluation”).

⁵² ME. STAT., 19-A § 1931(1)(C) (requiring a “medical evaluation that includes a mental health consultation”).

⁵³ NEV. REV. STAT. § 126.740(1)(a) (requiring a “medical evaluation”).

⁵⁴ N.H. REV. STAT. § 168-B:9(III) (requiring a “physical medical evaluation”).

- (E) intracytoplasmic sperm injection.
- (5) “Child” means an individual of any age whose parentage may be determined under this [Act].
- (6) “Commence” means to file the initial pleading seeking an adjudication of parentage in [the appropriate court] of this State.
- (7) “Determination of parentage” means the establishment of the parent-child relationship by the signing of a valid acknowledgment of paternity under [Article] 3 or adjudication by the court.
- (8) “Donor” means an individual who produces eggs or sperm used for assisted reproduction, whether or not for consideration. The term does not include:
- (A) a husband who provides sperm, or a wife who provides eggs, to be used for assisted reproduction by the wife;
 - (B) a woman who gives birth to a child by means of assisted reproduction [, except as otherwise provided in [Article] 8]; or
 - (C) a parent under Article 7 [or an intended parent under Article 8].
- (9) “Ethnic or racial group” means, for purposes of genetic testing, a recognized group that an individual identifies as all or part of the individual’s ancestry or that is so identified by other information.
- (10) “Genetic testing” means an analysis of genetic markers to exclude or identify a man as the father or a woman as the mother of a child. The term includes an analysis of one or a combination of the following:
- (A) deoxyribonucleic acid; and
 - (B) blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins, or red-cell enzymes.
- [(11) “Gestational mother” means an adult woman who gives birth to a child under a gestational agreement.]
- (12) “Man” means a male individual of any age.
- (13) “Parent” means an individual who has established a parent-child relationship under Section 201.
- (14) “Parent-child relationship” means the legal relationship between a child and a parent of the child. The term includes the mother-child relationship and the father-child relationship.
- (15) “Paternity index” means the likelihood of paternity calculated by computing the ratio between:
- (A) the likelihood that the tested man is the father, based on the genetic markers of the tested man, mother, and child, conditioned on the hypothesis that the tested man is the father of the child; and
 - (B) the likelihood that the tested man is not the father, based on the genetic markers of the tested man, mother, and child, conditioned on the hypothesis that the tested man is not the father of the child and that the father is of the same ethnic or racial group as the tested man.
- (16) “Presumed ~~father~~parent” means a ~~man~~person who, by operation of law under Section 204, is recognized as the ~~father~~parent of a child until that status is rebutted or confirmed in a judicial proceeding.
- (17) “Probability of paternity” means the measure, for the ethnic or racial group to which the alleged father belongs, of the probability that the man in question is the father of the child, compared with a random, unrelated man of the same ethnic or racial group, expressed as a percentage incorporating the paternity index and a prior probability.

(18) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(19) "Signatory" means an individual who authenticates a record and is bound by its terms.

(20) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(21) "Support-enforcement agency" means a public official or agency authorized to seek:

- (A) enforcement of support orders or laws relating to the duty of support;
- (B) establishment or modification of child support;
- (C) determination of parentage; or
- (D) location of child-support obligors and their income and assets.

ARTICLE 8 GESTATIONAL AGREEMENT

SECTION 801. GESTATIONAL AGREEMENT AUTHORIZED.

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

- (1) the prospective gestational mother agrees to pregnancy by means of assisted reproduction;
- (2) the prospective gestational mother, her ~~husband~~spouse if she is married, and the donors relinquish all rights and duties as the parents of a child conceived through assisted reproduction; and
- (3) the intended parents become the parents of the child.

(b) The ~~man and the woman~~persons [or individuals] who are the intended parents must both be parties to the gestational agreement.

(c) A gestational agreement is enforceable only if validated as provided in Section 803.

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

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

(f) A gestational agreement may not limit the right of the gestational mother to make decisions to safeguard her health or that of the embryos or fetus.

SECTION 802. REQUIREMENTS OF PETITION.

(a) The intended parents and the prospective gestational mother may commence a proceeding in the [appropriate court] to validate a gestational agreement.

(b) A proceeding to validate a gestational agreement may not be maintained unless:

- (1) the gestational mother or the intended parents have been residents of this State for at least 90 days;

- (2) the prospective gestational mother's ~~husband~~spouse, if she is married, is joined in the proceeding; and

- (3) a copy of the gestational agreement is attached to the [petition].

SECTION 803. HEARING TO VALIDATE GESTATIONAL AGREEMENT.

(a) If the requirements of subsection (b) are satisfied, a court may issue an order validating the gestational agreement and declaring that the intended parents will be the parents of a child born during the term of the of the agreement.

(b) The court may issue an order under subsection (a) only on finding that:

(1) the residence requirements of Section 802 have been satisfied and the parties have submitted to the jurisdiction of the court under the jurisdictional standards of this [Act];

(2) unless waived by the court, the [relevant child-welfare agency] has made a home study of the intended parents and the intended parents meet the standards of suitability applicable to adoptive parents;

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

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

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

SECTION 804. INSPECTION OF RECORDS. The proceedings, records, and identities of the individual parties to a gestational agreement under this [article] are subject to inspection under the standards of confidentiality applicable to adoptions as provided under other law of this State.

SECTION 805. EXCLUSIVE, CONTINUING JURISDICTION. Subject to the jurisdictional standards of [Section 201 of the Uniform Child Custody Jurisdiction and Enforcement Act], the court conducting a proceeding under this [article] has exclusive, continuing jurisdiction of all matters arising out of the gestational agreement until a child born to the gestational mother during the period governed by the agreement attains the age of 180 days.

SECTION 806. TERMINATION OF GESTATIONAL AGREEMENT.

(a) After issuance of an order under this [article], but before the prospective gestational mother becomes pregnant by means of assisted reproduction, the prospective gestational mother, her ~~husband~~ ~~spouse, if any~~, or either of the intended parents may terminate the gestational agreement by giving written notice of termination to all other parties.

(b) The court for good cause shown may terminate the gestational agreement.

(c) An individual who terminates a gestational agreement shall file notice of the termination with the court. On receipt of the notice, the court shall vacate the order issued under this [article]. An individual who does not notify the court of the termination of the agreement is subject to appropriate sanctions.

(d) Neither a prospective gestational mother nor her ~~husband~~ ~~spouse, if any~~, is liable to the intended parents for terminating a gestational agreement pursuant to this section.

SECTION 807. PARENTAGE UNDER VALIDATED GESTATIONAL AGREEMENT.

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

(1) confirming that the intended parents are the parents of the child;

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

(3) directing the [agency maintaining birth records] to issue a birth certificate naming the intended parents as parents of the child.

(b) If the parentage of a child born to a gestational mother is alleged not to be the result of assisted reproduction, the court shall order genetic testing to determine the parentage of the child.

(c) If the intended parents fail to file notice required under subsection (a), the gestational mother or the appropriate State agency may file notice with the court that a child has been born to the gestational mother within 300 days after assisted reproduction. Upon proof of a court order issued pursuant to Section 803 validating the gestational agreement, the court shall order the intended parents are the parents of the child and are financially responsible for the child.

SECTION 808. GESTATIONAL AGREEMENT: EFFECT OF SUBSEQUENT MARRIAGE.

After the issuance of an order under this [article], subsequent marriage of the gestational mother does not affect the validity of a gestational agreement, her ~~husband~~spouse's consent to the agreement is not required, and her ~~husband~~spouse is not a presumed father of the resulting child.

SECTION 809. EFFECT OF NONVALIDATED GESTATIONAL AGREEMENT.

(a) A gestational agreement, whether in a record or not, that is not judicially validated is not enforceable.

(b) If a birth results under a gestational agreement that is not judicially validated as provided in this [article], the parent-child relationship is determined as provided in [Article] 2.

(c) Individuals who are parties to a nonvalidated gestational agreement as intended parents may be held liable for support of the resulting child, even if the agreement is otherwise unenforceable. The liability under this subsection includes assessing all expenses and fees as provided in Section 636.]

APPENDIX

CALIFORNIA PROVISIONS

Cal. Fam. Code § 7960. Definitions

For purposes of this part, the following terms have the following meanings:

- (a) “Assisted reproduction agreement” has the same meaning as defined in [subdivision \(b\) of Section 7606](#).
- (b) “Fund management agreement” means the agreement between the intended parents and the surrogacy or donor facilitator relating to the fee or other valuable consideration for services rendered or that will be rendered by the surrogacy or donor facilitator.
- (c) “Intended parent” means an individual, married or unmarried, who manifests the intent to be legally bound as the parent of a child resulting from assisted reproduction.
- (d) “Nonattorney surrogacy or donor facilitator” means a surrogacy or donor practitioner who is not an attorney in good standing licensed to practice law in this state.
- (e) “Surrogacy or donor facilitator” means a person or organization that engages in either of the following activities:
 - (1) Advertising for the purpose of soliciting parties to an assisted reproduction agreement or for the donation of oocytes for use by a person other than the provider of the oocytes, or acting as an intermediary between the parties to an assisted reproduction agreement or oocyte donation.
 - (2) Charging a fee or other valuable consideration for services rendered relating to an assisted reproduction agreement or oocyte donation.
- (f) “Surrogate” means a woman who bears and carries a child for another through medically assisted reproduction and pursuant to a written agreement, as set forth in [Sections 7606 and 7962](#). Within the definition of surrogate are two different and distinct types:
 - (1) “Traditional surrogate” means a woman who agrees to gestate an embryo, in which the woman is the gamete donor and the embryo was created using the sperm of the intended father or a donor arranged by the intended parent or parents.
 - (2) “Gestational carrier” means a woman who is not an intended parent and who agrees to gestate an embryo that is genetically unrelated to her pursuant to an assisted reproduction agreement.
- (g) “Donor” means a woman who provides her oocytes for use by another for the purpose of assisting the recipient of the oocytes in having a child or children of her own.

Cal. Fam. Code § 7961. Nonattorney surrogacy or donor facilitators; directing clients to deposit funds; financial interest or agency prohibited; disbursement; applicability

- (a) A nonattorney surrogacy or donor facilitator shall direct the client to deposit all client funds into either of the following:
 - (1) An independent, bonded escrow depository maintained by a licensed, independent, bonded escrow company.
 - (2) A trust account maintained by an attorney.
- (b) For purposes of this section, a nonattorney surrogacy or donor facilitator may not have a financial interest

in any escrow company holding client funds. A nonattorney surrogacy or donor facilitator and any of its directors or employees shall not be an agent of any escrow company holding client funds.

(c) Client funds may only be disbursed by the attorney or escrow agent as set forth in the assisted reproduction agreement and fund management agreement.

(d) This section shall not apply to funds that are both of the following:

- (1) Not provided for in the fund management agreement.
- (2) Paid directly to a medical doctor for medical services or a psychologist for psychological services.

Cal. Fam. Code § 7962. Assisted reproduction agreements for gestational carriers; requirements; actions to establish parent-child relationship; rebuttal of presumptions; judgment or order; confidentiality; presumption of validity

(a) An assisted reproduction agreement for gestational carriers shall contain, but shall not be limited to, all of the following information:

- (1) The date on which the assisted reproduction agreement for gestational carriers was executed.
- (2) The persons from which the gametes originated, unless anonymously donated.
- (3) The identity of the intended parent or parents.
- (4) Disclosure of how the intended parents will cover the medical expenses of the gestational carrier and of the newborn or newborns. If health care coverage is used to cover those medical expenses, the disclosure shall include a review of the health care policy provisions related to coverage for surrogate pregnancy, including any possible liability of the gestational carrier, third-party liability liens or other insurance coverage, and any notice requirements that could affect coverage or liability of the gestational carrier. The review and disclosure do not constitute legal advice. If coverage of liability is uncertain, a statement of that fact shall be sufficient to meet the requirements of this section.

(b) Prior to executing the written assisted reproduction agreement for gestational carriers, a surrogate and the intended parent or intended parents shall be represented by separate independent licensed attorneys of their choosing.

(c) The assisted reproduction agreement for gestational carriers shall be executed by the parties and the signatures on the assisted reproduction agreement for gestational carriers shall be notarized or witnessed by an equivalent method of affirmation as required in the jurisdiction where the assisted reproduction agreement for gestational carriers is executed.

(d) The parties to an assisted reproduction agreement for gestational carriers shall not undergo an embryo transfer procedure, or commence injectable medication in preparation for an embryo transfer for assisted reproduction purposes, until the assisted reproduction agreement for gestational carriers has been fully executed as required by subdivisions (b) and (c) of this section.

(e) An action to establish the parent-child relationship between the intended parent or parents and the child as to a child conceived pursuant to an assisted reproduction agreement for gestational carriers may be filed before the child's birth and may be filed in the county where the child is anticipated to be born, the county where the intended parent or intended parents reside, the county where the surrogate resides, the county where the assisted reproduction agreement for gestational carriers is executed, or the county where medical procedures pursuant to the agreement are to be performed. A copy of the assisted reproduction agreement for gestational carriers shall be lodged in the court action filed for the purpose of establishing the parent-child relationship. The parties to the assisted reproduction agreement for gestational carriers shall attest, under penalty of perjury, and to the best of their knowledge and belief, as to the parties' compliance with this

section in entering into the assisted reproduction agreement for gestational carriers. Submitting those declarations shall not constitute a waiver, under [Section 912 of the Evidence Code](#), of the lawyer-client privilege described in Article 3 (commencing with [Section 950](#)) of Chapter 4 of Division 8 of the Evidence Code.

(f)(1) A notarized assisted reproduction agreement for gestational carriers signed by all the parties, with the attached declarations of independent attorneys, and lodged with the superior court in accordance with this section, shall rebut any presumptions contained within Part 2 (commencing with [Section 7540](#)), [subdivision \(b\) of Section 7610](#), and [Sections 7611 and 7613](#), as to the gestational carrier surrogate, her spouse, or partner being a parent of the child or children.

(2) Upon petition of any party to a properly executed assisted reproduction agreement for gestational carriers, the court shall issue a judgment or order establishing a parent-child relationship, whether pursuant to [Section 7630](#) or otherwise. The judgment or order may be issued before or after the child's or children's birth subject to the limitations of [Section 7633](#). Subject to proof of compliance with this section, the judgment or order shall establish the parent-child relationship of the intended parent or intended parents identified in the surrogacy agreement and shall establish that the surrogate, her spouse, or partner is not a parent of, and has no parental rights or duties with respect to, the child or children. The judgment or order shall terminate any parental rights of the surrogate and her spouse or partner without further hearing or evidence, unless the court or a party to the assisted reproduction agreement for gestational carriers has a good faith, reasonable belief that the assisted reproduction agreement for gestational carriers or attorney declarations were not executed in accordance with this section. Upon motion by a party to the assisted reproduction agreement for gestational carriers, the matter shall be scheduled for hearing before a judgment or order is issued. Nothing in this section shall be construed to prevent a court from finding and declaring that the intended parent is or intended parents are the parent or parents of the child where compliance with this section has not been met; however, the court shall require sufficient proof entitling the parties to the relief sought.

(g) The petition, relinquishment or consent, agreement, order, report to the court from any investigating agency, and any power of attorney and deposition filed in the office of the clerk of the court pursuant to this part shall not be open to inspection by any person other than the parties to the proceeding and their attorneys and the State Department of Social Services, except upon the written authority of a judge of the superior court. A judge of the superior court shall not authorize anyone to inspect the petition, relinquishment or consent, agreement, order, report to the court from any investigating agency, or power of attorney or deposition, or any portion of those documents, except in exceptional circumstances and where necessary. The petitioner may be required to pay the expense of preparing the copies of the documents to be inspected.

(h) Upon the written request of any party to the proceeding and the order of any judge of the superior court, the clerk of the court shall not provide any documents referred to in subdivision (g) for inspection or copying to any other person, unless the name of the gestational carrier or any information tending to identify the gestational carrier is deleted from the documents or copies thereof.

(i) An assisted reproduction agreement for gestational carriers executed in accordance with this section is presumptively valid and shall not be rescinded or revoked without a court order. For purposes of this part, any failure to comply with the requirements of this section shall rebut the presumption of the validity of the assisted reproduction agreement for gestational carriers.

MAINE PROVISIONS

<< ME ST T. § 1832 >>

§ 1832 Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Acknowledged father. “Acknowledged father” means a man who has established parentage under subchapter 3.
2. Adjudicated parent. “Adjudicated parent” means a person who has been adjudicated by a court of competent jurisdiction to be the parent of a child.
3. Assisted reproduction. “Assisted reproduction” means a method of causing pregnancy other than sexual intercourse and includes but is not limited to:
 - A. Intrauterine or vaginal insemination;
 - B. Donation of gametes;
 - C. Donation of embryos;
 - D. In vitro fertilization and transfer of embryos; and
 - E. Intracytoplasmic sperm injection.
4. Child. “Child” means an individual of any age whose parentage may be determined under this chapter.
5. Donor. “Donor” means a person who contributes a gamete or gametes or an embryo or embryos to another person for assisted reproduction or gestation, whether or not for consideration.
6. Embryo. “Embryo” means a cell or group of cells containing a diploid complement of chromosomes or a group of such cells, not including a gamete, that has the potential to develop into a live born human being if transferred into the body of a woman under conditions in which gestation may be reasonably expected to occur.
7. Gamete. “Gamete” means a cell containing a haploid complement of deoxyribonucleic acid that has the potential to form an embryo when combined with another gamete. “Gamete” includes:
 - A. Sperm;
 - B. Eggs; and
 - C. Deoxyribonucleic acid from one human being combined with the cytoplasm, including without limitation cytoplasmic deoxyribonucleic acid, of another human being.
8. Genetic population group. “Genetic population group” means, for purposes of genetic testing, a recognized group that an individual identifies as all or part of the individual’s ancestry or that is so identified by other information.
9. Genetic testing. “Genetic testing” means an analysis of genetic markers to exclude or identify a man as the genetic father or a woman as the genetic mother of a child. “Genetic testing” includes an analysis of one or a combination of the following:
 - A. Deoxyribonucleic acid;
 - B. Blood group antigens, red cell antigens, human leukocyte antigens, serum enzymes, serum proteins or red cell enzymes; or
 - C. Genetic markers other than those in paragraphs A and B.
10. Gestational carrier. “Gestational carrier” means an adult woman who is not an intended parent and who enters into a gestational carrier agreement to bear a child conceived using the gametes of other persons and not her own,

except that a woman who carries a child for a family member using her own gametes and who fulfills the requirements of subchapter 8 is a gestational carrier.

11. Gestational carrier agreement. “Gestational carrier agreement” means a contract between an intended parent or parents and a gestational carrier intended to result in a live birth.

12. Intended parent. “Intended parent” means a person, married or unmarried, who manifests the intent to be legally bound as the parent of a child resulting from assisted reproduction or a gestational carrier agreement. In the case of a married couple, any reference to an intended parent includes both spouses for all purposes of this chapter.

13. Parent. “Parent” means an individual who has established parentage that meets the requirements of this chapter.

14. Parentage. “Parentage” means the legal relationship between a child and a parent as established in this chapter.

15. Paternity or maternity index. “Paternity or maternity index” means, with respect to a person who has undergone genetic testing, the likelihood of genetic paternity or maternity calculated by computing the ratio between:

A. The likelihood that the tested person is the genetic father or genetic mother based on the genetic markers of the tested person, birth mother and child and conditioned on the hypothesis that the tested person is the father or mother of the child; and

B. The likelihood that the tested person is not the genetic father or genetic mother based on the genetic markers of the tested person, birth mother and child and conditioned on the hypothesis that the tested person is not the genetic father or genetic mother of the child.

16. Presumed parent. “Presumed parent” means a person who pursuant to section 1881 is recognized as the parent of a child.

17. Probability of paternity; probability of maternity. “Probability of paternity” and “probability of maternity” mean the measure, for the genetic population group to which the alleged genetic father or genetic mother belongs, of the probability that the person in question is the genetic father or genetic mother of the child compared with a random, unrelated person of the same genetic population group and expressed as a percentage incorporating the paternity or maternity index and a prior probability.

18. Record. “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

19. Sign. “Sign” means, with the intent to authenticate or adopt a record, to:

A. Execute or adopt a tangible symbol; or

B. Attach to or logically associate with the record an electronic symbol, sound or process.

20. Signatory. “Signatory” means an individual who signs a record and is bound by its terms.

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SUBCHAPTER 8

GESTATIONAL CARRIER AGREEMENT

<< ME ST T. § 1931 >>

§ 1931 Eligibility to enter gestational carrier agreement

1. Eligibility of gestational carrier. In order to execute an agreement to act as a gestational carrier, a woman must:

A. Be at least 21 years of age;

B. Have previously given birth to at least one child;

C. Have completed a medical evaluation that includes a mental health consultation;

D. Have had independent legal representation of her own choosing and paid for by the intended parent or parents

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

E. Not have contributed gametes that will ultimately result in an embryo that she will attempt to carry to term, unless the gestational carrier is entering into an agreement with a family member.

2. Eligibility of intended parent or parents. Prior to executing a gestational carrier agreement, a person or persons intending to become a parent or parents, whether genetically related to the child or not, must:

A. Complete a medical evaluation and mental health consultation; and

B. Retain independent legal representation regarding the terms of the gestational carrier agreement and have been advised of the potential legal consequences of the gestational carrier agreement.

<< ME ST T. § 1932 >>

§ 1932 Gestational carrier agreement authorized

1. Written agreement. A prospective gestational carrier who is eligible pursuant to section 1931, her spouse if she is married and the intended parent or parents may enter into a written agreement that:

A. The prospective gestational carrier agrees to pregnancy by means of assisted reproduction;

B. The prospective gestational carrier and her spouse, if she is married, have no rights and duties as the parents of a child conceived through assisted reproduction; and

C. The intended parent or parents will be the parents of any resulting child.

2. Intended parents. The intended parent or parents must be parties to a gestational carrier agreement.

3. Enforceable. A gestational carrier agreement is enforceable only if it meets the following requirements.

A. The agreement must be in writing and signed by all parties.

B. The agreement must require no more than a one-year term to achieve pregnancy.

C. At least one of the parties must be a legal resident of the State.

D. The agreement must be executed before the commencement of any medical procedures other than the medical evaluations required by section 1931 and, in every instance, before transfer of embryos.

E. The gestational carrier and the intended parent or parents must meet the eligibility requirements of section 1931.

F. If any party is married, the party's spouse also must be required to execute the agreement.

G. The gestational carrier and the intended parent or parents must be represented by independent legal counsel in all matters concerning the agreement and each counsel shall affirmatively so state in a written declaration attached to the agreement. The declarations must state that the agreement meets the requirements of this chapter and must be solely relied upon by health care providers and staff at the time of birth and by the Office of Data, Research and Vital Statistics for birth registration and certification purposes.

H. The gestational carrier and each intended parent must sign a written acknowledgment of having received a copy of the agreement.

I. The signature of each party to the agreement must be notarized, acknowledged or attested by a person authorized to take oaths in accordance with the laws of the jurisdiction where it is executed.

J. The agreement must expressly provide that:

(1) The gestational carrier:

- (a) Must undergo assisted reproduction and attempt to carry and give birth to any resulting child;
 - (b) Has no claim to parentage of all resulting children to the intended parent or parents immediately upon the birth of the child or children regardless of whether a court order has been issued at the time of birth; and
 - (c) Must acknowledge the exclusive parentage of the intended parent or parents of all resulting children;
- (2) If the gestational carrier is married, her spouse:
- (a) Must acknowledge and agree to abide by the obligations imposed on the gestational carrier by the terms of the gestational carrier agreement;
 - (b) Has no claim to parentage of any resulting children to the intended parent or parents immediately upon the birth of the children regardless of whether a court order has been issued at the time of birth; and
 - (c) Must acknowledge the exclusive parentage of the intended parent or parents of all resulting children;
- (3) The gestational carrier has the right to use the services of a health care provider of her choosing to provide her care during her pregnancy;
- (4) The intended parent or parents must:
- (a) Be the exclusive parent or parents and accept parental rights and responsibilities of all resulting children immediately upon birth regardless of the number, gender or mental or physical condition of the child or children; and
 - (b) Assume responsibility for the financial support of all resulting children immediately upon the birth of the children; and
- (5) All parties must provide records related to the medical evaluations conducted pursuant to section 1931, subsection 2, paragraph A.

4. Reasonable expenses. A gestational carrier agreement may provide for payment of reasonable expenses, which, if paid to a prospective gestational carrier, must be negotiated in good faith between the parties.

5. Decision of gestational carrier. A gestational carrier agreement may not limit the right of the gestational carrier to make decisions to safeguard her health.

<< ME ST T. § 1923 >>

§ 1933 Parentage; parental rights and responsibilities

If a gestational carrier agreement satisfies the requirements of this chapter:

1. Parentage. The intended parent or parents are by operation of law the parent or parents of the resulting child immediately upon the birth of the child, and the resulting child is considered the child of the intended parent or parents immediately upon the birth of the child.

A. Neither the gestational carrier nor her spouse, if any, is the parent of the resulting child.

B. A person who is determined to be a parent of the resulting child is obligated to support the child. The breach of the gestational carrier agreement by the intended parent or parents does not relieve the intended parent or parents of the obligation to support the resulting child;

2. Parental rights and responsibilities. Parental rights and responsibilities vest exclusively in the intended parent or parents immediately upon the birth of the resulting child; and

3. Laboratory error. If due to a laboratory error the resulting child is not genetically related to either the intended parent or parents or any donor who donated to the intended parent or parents, the intended parent or parents are considered the parent or parents of the child.

<< ME ST T. § 1934 >>

§ 1934 Birth orders

1. Action for birth order. Pursuant to a valid gestational carrier agreement under this subchapter, before or after the birth of the resulting child a party to the gestational carrier agreement may commence a proceeding in District Court to obtain an order:

A. Designating the contents of the birth certificate in accordance with Title 22, section 2761 and directing the Office of Data, Research and Vital Statistics to designate the intended parent or parents as the parent or parents of the child. The State Registrar of Vital Statistics may charge a reasonable fee for the issuance of a birth certificate;

B. Declaring that the intended parent or parents are the parent or parents of the resulting child and ordering that parental rights and responsibilities vest exclusively in the intended parent or parents immediately upon the birth of the child;

C. Sealing the record from the public to protect the privacy of the child and the parties; or

D. For any relief that the court determines necessary and proper.

2. State not a necessary party. Neither this State nor the State Registrar of Vital Statistics is a necessary party to a proceeding under subsection 1.

<< ME ST T. § 1935 >>

§ 1935 Exclusive, continuing jurisdiction

Subject to the jurisdictional standards of section 1745, the court conducting a proceeding under this subchapter has exclusive, continuing jurisdiction of all matters arising out of the gestational carrier agreement until a child born to the gestational carrier during the period governed by the agreement attains the age of 180 days.

<< ME ST T. § 1936 >>

§ 1936 Termination of gestational carrier agreement

1. Termination of agreement; parties. A party to a gestational carrier agreement may withdraw consent to any medical procedure and may terminate the gestational carrier agreement at any time prior to any embryo transfer or implantation by giving written notice of termination to all other parties.

2. Obligations upon termination; no liability to gestational carrier. Upon termination of the gestational carrier agreement under subsection 1, the parties are released from all obligations recited in the agreement except that the intended parent or parents remain responsible for all expenses that are reimbursable under the agreement incurred by the gestational carrier through the date of termination. The gestational carrier is entitled to keep all payments she has received and obtain all payments to which she is entitled. Neither a prospective gestational carrier nor her spouse, if any, is liable to the intended parent or parents for terminating a gestational carrier agreement.

<< ME ST T. § >>

§ 1937 Effect of subsequent marriage

1. Agreement valid. The subsequent marriage of the gestational carrier does not affect the validity of a gestational carrier agreement.
2. Subsequent consent not required. The consent of the subsequent spouse of the gestational carrier to the agreement is not required.
3. No marital presumption. The subsequent spouse of the gestational carrier is not presumed to be a parent of the resulting child.

<< ME ST T. § 1938 >>

§ 1938. Effect of noncompliance; standard of review; remedies

1. Not enforceable. Except as otherwise provided, a gestational carrier agreement that does not meet the requirements of this subchapter is not enforceable.
2. Standard of review. In the event of noncompliance with the requirements of this subchapter or with a gestational carrier agreement, a court shall determine the respective rights and obligations of the parties to the gestational carrier agreement, including evidence of the intent of the parties at the time of execution.
3. Remedies. Except as expressly provided in a gestational carrier agreement and in subsection 4, in the event of a breach of the gestational carrier agreement by the gestational carrier or the intended parent or parents, the gestational carrier or the intended parent or parents are entitled to all remedies available at law or in equity.
4. Genetic testing. If the parentage of a child born to a gestational carrier is alleged to not be the result of assisted reproduction, and this question is relevant to the determination of parentage, the court may order genetic testing.
5. Specific performance. Specific performance is not an available remedy for a breach by the gestational carrier of any term in a gestational carrier agreement that requires the gestational carrier to be impregnated or to terminate a pregnancy. Specific performance is an available remedy for a breach by the gestational carrier of any term that prevents the intended parent or parents from exercising the full rights of parentage immediately upon birth of the child.