

By: Bryant

H.B. No. 5494

Substitute the following for H.B. No. 5494:

By: Johnson

C.S.H.B. No. 5494

A BILL TO BE ENTITLED

AN ACT

relating to parentage resulting from assisted reproduction and gestational agreements.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections [160.102](#)(6) and (9), Family Code, are amended to read as follows:

(6) "Donor" means an individual who provides gametes ~~[eggs or sperm to a licensed physician]~~ to be used for assisted reproduction, regardless of whether the gametes ~~[eggs or sperm]~~ are provided for consideration. The term does not include:

(A) a spouse ~~[husband]~~ who provides gametes ~~[sperm or a wife who provides eggs]~~ to be used for assisted reproduction for the couple ~~[by the wife]~~;

(B) a woman who gives birth to a child by means of assisted reproduction, except as provided by Subchapter I; or

(C) a father or intended parent under Subchapter H or an intended parent under Subchapter I ~~[an unmarried man who, with the intent to be the father of the resulting child, provides sperm to be used for assisted reproduction by an unmarried woman, as provided by Section [160.7031](#)]~~.

(9) "Intended parent" ~~[parents]~~ means a married or unmarried individual ~~[individuals]~~ who manifests an intent to be the legal parent ~~[enter into an agreement providing that the individuals will be the parents]~~ of a child conceived ~~[born to a~~

1 ~~gestational mother]~~ by means of assisted reproduction[, ~~regardless~~
2 ~~of whether either individual has a genetic relationship with the~~
3 ~~child]~~.

4 SECTION 2. Section 160.7031, Family Code, is amended to
5 read as follows:

6 Sec. 160.7031. PARENTAGE ~~[UNMARRIED MAN'S PATERNITY]~~ OF
7 CHILD OF ASSISTED REPRODUCTION. ~~[(a)]~~ If an individual ~~[unmarried~~
8 ~~man]~~, with the intent to be the parent ~~[father]~~ of a resulting
9 child, ~~[provides sperm to a licensed physician and]~~ consents to
10 ~~[the use of that sperm for]~~ assisted reproduction under Section
11 160.704, the individual is the parent ~~[by an unmarried woman, he is~~
12 ~~the father]~~ of a resulting child, regardless of whether the
13 individual provided gametes for the assisted reproduction and
14 notwithstanding Section 160.201 or any other law.

15 ~~[(b) Consent by an unmarried man who intends to be the~~
16 ~~father of a resulting child in accordance with this section must be~~
17 ~~in a record signed by the man and the unmarried woman and kept by a~~
18 ~~licensed physician.]~~

19 SECTION 3. Section 160.704, Family Code, is amended to read
20 as follows:

21 Sec. 160.704. CONSENT TO ASSISTED REPRODUCTION. (a)
22 Except as otherwise provided by this section, consent ~~[Consent by a~~
23 ~~married woman]~~ to assisted reproduction under Section 160.703 or
24 160.7031 must be in a record signed by:

25 (1) the woman giving birth to a child by means of
26 assisted reproduction; and

27 (2) the father or intended parent of the resulting

1 child, as applicable [~~and her husband and kept by a licensed~~
2 ~~physician. This requirement does not apply to the donation of eggs~~
3 ~~by a married woman for assisted reproduction by another woman~~].

4 (b) Failure by the husband of a woman giving birth to a child
5 by means of assisted reproduction to sign a consent required by
6 Subsection (a) before or after the birth of the child does not
7 preclude a finding that the husband is the father of a child born to
8 his wife if the wife and husband openly treated the child as their
9 own.

10 (c) Failure to provide consent under Subsection (a) before
11 or after the birth of the child does not preclude the court from
12 finding that an individual gave consent to be an intended parent of
13 the child if:

14 (1) a party proves by clear and convincing evidence
15 the existence of an express agreement entered into before the
16 child's conception between the woman who gave birth to the child by
17 means of assisted reproduction and the individual that the
18 individual was an intended parent of the child; or

19 (2) during the first two years of the child's life, the
20 woman and the individual:

21 (A) resided together in the household in which
22 the child resided, including any periods of temporary absence; and

23 (B) represented to others that the child was the
24 child of the woman and the individual.

25 (d) If an intended parent dies or becomes incapacitated
26 before the child reaches two years of age or the child dies before
27 the child reaches two years of age, the court may find that the

1 individual gave consent to parentage of the child if it is proven by
2 clear and convincing evidence that the woman who gave birth to the
3 child by means of assisted reproduction and the individual
4 intended:

5 (1) to reside together in the same household with the
6 child; and

7 (2) to represent to others that the child was the child
8 of the woman and the individual.

9 SECTION 4. Sections 160.706 and 160.707, Family Code, are
10 amended to read as follows:

11 Sec. 160.706. EFFECT OF DISSOLUTION OF MARRIAGE. (a) If a
12 marriage is dissolved before the placement of eggs, sperm, or
13 embryos, the former spouse is not a parent of the resulting child
14 unless the former spouse consented [~~in a record kept by a licensed~~
15 ~~physician~~] that if assisted reproduction were to occur after a
16 divorce the former spouse would be a parent of the child.

17 (b) The consent of a former spouse to assisted reproduction
18 may be withdrawn by that individual [~~in a record kept by a licensed~~
19 ~~physician~~] at any time before the placement of eggs, sperm, or
20 embryos.

21 Sec. 160.707. PARENTAL STATUS OF DECEASED SPOUSE. If a
22 spouse dies before the placement of eggs, sperm, or embryos, the
23 deceased spouse is not a parent of the resulting child unless the
24 deceased spouse consented [~~in a record kept by a licensed~~
25 ~~physician~~] that if assisted reproduction were to occur after death
26 the deceased spouse would be a parent of the child.

27 SECTION 5. Section 160.753, Family Code, is amended to read

as follows:

Sec. 160.753. ESTABLISHMENT OF PARENT-CHILD RELATIONSHIP. ~~[(a)]~~ Notwithstanding any other provision of this chapter or another law, a parent-child ~~[the mother-child]~~ relationship exists between an intended parent ~~[a woman]~~ and a child by an adjudication confirming the intended parent ~~[woman]~~ as a parent of the child born to a gestational mother under a gestational agreement if the gestational agreement is validated under this subchapter or enforceable under other law~~[, regardless of the fact that the gestational mother gave birth to the child]~~.

~~[(b) The father-child relationship exists between a child and a man by an adjudication confirming the man as a parent of the child born to a gestational mother under a gestational agreement if the gestational agreement is validated under this subchapter or enforceable under other law.]~~

SECTION 6. Sections 160.754(a) and (b), Family Code, are amended to read as follows:

(a) A prospective gestational mother, her spouse ~~[husband]~~ if she is married, each donor, and each intended parent 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 spouse ~~[husband]~~ if she is married, and each donor other than the intended parents, if applicable, relinquish all parental rights and duties with respect to a child conceived through assisted reproduction;

(3) the intended parents will be the parents of the

1 child; and

2 (4) the gestational mother and each intended parent
3 agree to exchange throughout the period covered by the agreement
4 all relevant information regarding the health of the gestational
5 mother and each intended parent.

6 (b) ~~[The intended parents must be married to each other.]~~
7 Each intended parent must be a party to the gestational agreement.

8 SECTION 7. Section 160.755(b), Family Code, is amended to
9 read as follows:

10 (b) A person may maintain a proceeding to validate a
11 gestational agreement only if:

12 (1) the prospective gestational mother or the intended
13 parents have resided in this state for the 90 days preceding the
14 date the proceeding is commenced;

15 (2) the prospective gestational mother's spouse
16 ~~[husband]~~, if she is married, is joined as a party to the
17 proceeding; and

18 (3) a copy of the gestational agreement is attached to
19 the petition.

20 SECTION 8. Sections 160.759(a) and (d), Family Code, are
21 amended to read as follows:

22 (a) Before a prospective gestational mother becomes
23 pregnant by means of assisted reproduction, the prospective
24 gestational mother, her spouse ~~[husband]~~ if she is married, or
25 either intended parent may terminate a gestational agreement
26 validated under Section 160.756 by giving written notice of the
27 termination to each other party to the agreement.

1 (d) A prospective gestational mother and her spouse
2 [~~husband~~], if she is married, may not be liable to an intended
3 parent for terminating a gestational agreement if the termination
4 is in accordance with this section.

5 SECTION 9. Section 160.761, Family Code, is amended to read
6 as follows:

7 Sec. 160.761. EFFECT OF GESTATIONAL MOTHER'S MARRIAGE AFTER
8 VALIDATION OF AGREEMENT. If a gestational mother is married after
9 the court renders an order validating a gestational agreement under
10 this subchapter:

11 (1) the validity of the gestational agreement is not
12 affected;

13 (2) the gestational mother's spouse [~~husband~~] is not
14 required to consent to the agreement; and

15 (3) the gestational mother's husband is not a presumed
16 father of the child born under the terms of the agreement.

17 SECTION 10. (a) The changes in law made by this Act to
18 Subchapter H, Chapter 160, Family Code, apply only to a child
19 conceived using assisted reproduction on or after the effective
20 date of this Act. A child conceived using assisted reproduction
21 before the effective date of this Act is governed by the law in
22 effect on the date the child was conceived, and the former law is
23 continued in effect for that purpose.

24 (b) The changes in law made by this Act to Subchapter I,
25 Chapter 160, Family Code, apply only to a gestational agreement
26 entered into on or after the effective date of this Act. A
27 gestational agreement entered into before the effective date of

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1 this Act is governed by the law in effect on the date the
2 gestational agreement was entered into, and the former law is
3 continued in effect for that purpose.

4 SECTION 11. This Act takes effect September 1, 2025.