

1-1 By: Goodman, Dutton (Senate Sponsor - Shapiro) H.B. No. 729  
1-2 (In the Senate - Received from the House May 2, 2003;  
1-3 May 6, 2003, read first time and referred to Committee on  
1-4 Jurisprudence; May 19, 2003, reported favorably by the following  
1-5 vote: Yeas 5, Nays 1; May 19, 2003, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to the adoption of the Uniform Parentage Act regarding  
1-9 gestational agreements.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 160.602, Family Code, is amended to read  
1-12 as follows:

1-13 Sec. 160.602. STANDING TO MAINTAIN PROCEEDING. Subject to  
1-14 Subchapter D and Sections 160.607 and 160.609, a proceeding to  
1-15 adjudicate parentage may be maintained by:

1-16 (1) the child;

1-17 (2) the mother of the child;

1-18 (3) a man whose paternity of the child is to be  
1-19 adjudicated;

1-20 (4) the support enforcement agency or another  
1-21 government agency authorized by other law;

1-22 (5) an authorized adoption agency or licensed  
1-23 child-placing agency;

1-24 (6) a representative authorized by law to act for an  
1-25 individual who would otherwise be entitled to maintain a proceeding  
1-26 but who is deceased, is incapacitated, or is a minor; [~~or~~]

1-27 (7) a person related within the second degree by  
1-28 consanguinity to the mother of the child, if the mother is deceased;  
1-29 or

1-30 (8) a person who is an intended parent.

1-31 SECTION 2. Chapter 160, Family Code, is amended by adding  
1-32 Subchapter I to read as follows:

1-33 SUBCHAPTER I. GESTATIONAL AGREEMENTS

1-34 Sec. 160.751. DEFINITION. In this subchapter, "gestational  
1-35 mother" means a woman who gives birth to a child conceived under a  
1-36 gestational agreement.

1-37 Sec. 160.752. SCOPE OF SUBCHAPTER; CHOICE OF LAW. (a)  
1-38 Notwithstanding any other provision of this chapter or another law,  
1-39 this subchapter authorizes an agreement between a woman and the  
1-40 intended parents of a child in which the woman relinquishes all  
1-41 rights as a parent of a child conceived by means of assisted  
1-42 reproduction and that provides that the intended parents become the  
1-43 parents of the child.

1-44 (b) This subchapter controls over any other law with respect  
1-45 to a child conceived under a gestational agreement under this  
1-46 subchapter.

1-47 Sec. 160.753. ESTABLISHMENT OF PARENT-CHILD RELATIONSHIP.  
1-48 (a) Notwithstanding any other provision of this chapter or another  
1-49 law, the mother-child relationship exists between a woman and a  
1-50 child by an adjudication confirming the woman as a parent of the  
1-51 child born to a gestational mother under a gestational agreement if  
1-52 the gestational agreement is validated under this subchapter or  
1-53 enforceable under other law, regardless of the fact that the  
1-54 gestational mother gave birth to the child.

1-55 (b) The father-child relationship exists between a child  
1-56 and a man by an adjudication confirming the man as a parent of the  
1-57 child born to a gestational mother under a gestational agreement if  
1-58 the gestational agreement is validated under this subchapter or  
1-59 enforceable under other law.

1-60 Sec. 160.754. GESTATIONAL AGREEMENT AUTHORIZED. (a) A  
1-61 prospective gestational mother, her husband if she is married, each  
1-62 donor, and each intended parent may enter into a written agreement  
1-63 providing that:

1-64 (1) the prospective gestational mother agrees to

2-1 pregnancy by means of assisted reproduction;

2-2 (2) the prospective gestational mother, her husband if  
 2-3 she is married, and each donor other than the intended parents, if  
 2-4 applicable, relinquish all parental rights and duties with respect  
 2-5 to a child conceived through assisted reproduction;

2-6 (3) the intended parents will be the parents of the  
 2-7 child; and

2-8 (4) the gestational mother and each intended parent  
 2-9 agree to exchange throughout the period covered by the agreement  
 2-10 all relevant information regarding the health of the gestational  
 2-11 mother and each intended parent.

2-12 (b) The intended parents must be married to each other. Each  
 2-13 intended parent must be a party to the gestational agreement.

2-14 (c) The gestational agreement must require that the eggs  
 2-15 used in the assisted reproduction procedure be retrieved from an  
 2-16 intended parent or a donor. The gestational mother's eggs may not  
 2-17 be used in the assisted reproduction procedure.

2-18 (d) The gestational agreement must state that the physician  
 2-19 who will perform the assisted reproduction procedure as provided by  
 2-20 the agreement has informed the parties to the agreement of:

2-21 (1) the rate of successful conceptions and births  
 2-22 attributable to the procedure, including the most recent published  
 2-23 outcome statistics of the procedure at the facility at which it will  
 2-24 be performed;

2-25 (2) the potential for and risks associated with the  
 2-26 implantation of multiple embryos and consequent multiple births  
 2-27 resulting from the procedure;

2-28 (3) the nature of and expenses related to the  
 2-29 procedure;

2-30 (4) the health risks associated with, as applicable,  
 2-31 fertility drugs used in the procedure, egg retrieval procedures,  
 2-32 and egg or embryo transfer procedures; and

2-33 (5) reasonably foreseeable psychological effects  
 2-34 resulting from the procedure.

2-35 (e) The parties to a gestational agreement must enter into  
 2-36 the agreement before the 14th day preceding the date the transfer of  
 2-37 eggs, sperm, or embryos to the gestational mother occurs for the  
 2-38 purpose of conception or implantation.

2-39 (f) A gestational agreement does not apply to the birth of a  
 2-40 child conceived by means of sexual intercourse.

2-41 (g) A gestational agreement may not limit the right of the  
 2-42 gestational mother to make decisions to safeguard her health or the  
 2-43 health of an embryo.

2-44 Sec. 160.755. PETITION TO VALIDATE GESTATIONAL AGREEMENT.

2-45 (a) The intended parents and the prospective gestational mother  
 2-46 under a gestational agreement may commence a proceeding to validate  
 2-47 the agreement.

2-48 (b) A person may maintain a proceeding to validate a  
 2-49 gestational agreement only if:

2-50 (1) the prospective gestational mother or the intended  
 2-51 parents have resided in this state for the 90 days preceding the  
 2-52 date the proceeding is commenced;

2-53 (2) the prospective gestational mother's husband, if  
 2-54 she is married, is joined as a party to the proceeding; and

2-55 (3) a copy of the gestational agreement is attached to  
 2-56 the petition.

2-57 Sec. 160.756. HEARING TO VALIDATE GESTATIONAL AGREEMENT.

2-58 (a) A gestational agreement must be validated as provided by this  
 2-59 section.

2-60 (b) The court may validate a gestational agreement as  
 2-61 provided by Subsection (c) only if the court finds that:

2-62 (1) the parties have submitted to the jurisdiction of  
 2-63 the court under the jurisdictional standards of this chapter;

2-64 (2) the medical evidence provided shows that the  
 2-65 intended mother is unable to carry a pregnancy to term and give  
 2-66 birth to the child or is unable to carry the pregnancy to term and  
 2-67 give birth to the child without unreasonable risk to her physical or  
 2-68 mental health or to the health of the unborn child;

2-69 (3) unless waived by the court, an agency or other

3-1 person has conducted a home study of the intended parents and has  
 3-2 determined that the intended parents meet the standards of fitness  
 3-3 applicable to adoptive parents;

3-4 (4) each party to the agreement has voluntarily  
 3-5 entered into and understands the terms of the agreement;

3-6 (5) the prospective gestational mother has had at  
 3-7 least one previous pregnancy and delivery and carrying another  
 3-8 pregnancy to term and giving birth to another child would not pose  
 3-9 an unreasonable risk to the child's health or the physical or mental  
 3-10 health of the prospective gestational mother; and

3-11 (6) the parties have adequately provided for which  
 3-12 party is responsible for all reasonable health care expenses  
 3-13 associated with the pregnancy, including providing for who is  
 3-14 responsible for those expenses if the agreement is terminated.

3-15 (c) If the court finds that the requirements of Subsection  
 3-16 (b) are satisfied, the court may render an order validating the  
 3-17 gestational agreement and declaring that the intended parents will  
 3-18 be the parents of a child born under the agreement.

3-19 (d) The court may validate the gestational agreement at the  
 3-20 court's discretion. The court's determination of whether to  
 3-21 validate the agreement is subject to review only for abuse of  
 3-22 discretion.

3-23 Sec. 160.757. INSPECTION OF RECORDS. The proceedings,  
 3-24 records, and identities of the parties to a gestational agreement  
 3-25 under this subchapter are subject to inspection under the same  
 3-26 standards of confidentiality that apply to an adoption under the  
 3-27 laws of this state.

3-28 Sec. 160.758. CONTINUING, EXCLUSIVE JURISDICTION. Subject  
 3-29 to Section 152.201, a court that conducts a proceeding under this  
 3-30 subchapter has continuing, exclusive jurisdiction of all matters  
 3-31 arising out of the gestational agreement until the date a child born  
 3-32 to the gestational mother during the period covered by the  
 3-33 agreement reaches 180 days of age.

3-34 Sec. 160.759. TERMINATION OF GESTATIONAL AGREEMENT. (a)  
 3-35 Before a prospective gestational mother becomes pregnant by means  
 3-36 of assisted reproduction, the prospective gestational mother, her  
 3-37 husband if she is married, or either intended parent may terminate a  
 3-38 gestational agreement validated under Section 160.756 by giving  
 3-39 written notice of the termination to each other party to the  
 3-40 agreement.

3-41 (b) A person who terminates a gestational agreement under  
 3-42 Subsection (a) shall file notice of the termination with the court.  
 3-43 A person having the duty to notify the court who does not notify the  
 3-44 court of the termination of the agreement is subject to appropriate  
 3-45 sanctions.

3-46 (c) On receipt of the notice of termination, the court shall  
 3-47 vacate the order rendered under Section 160.756 validating the  
 3-48 gestational agreement.

3-49 (d) A prospective gestational mother and her husband, if she  
 3-50 is married, may not be liable to an intended parent for terminating  
 3-51 a gestational agreement if the termination is in accordance with  
 3-52 this section.

3-53 Sec. 160.760. PARENTAGE UNDER VALIDATED GESTATIONAL  
 3-54 AGREEMENT. (a) On the birth of a child to a gestational mother  
 3-55 under a validated gestational agreement, the intended parents shall  
 3-56 file a notice of the birth with the court not later than the 300th  
 3-57 day after the date assisted reproduction occurred.

3-58 (b) After receiving notice of the birth, the court shall  
 3-59 render an order that:

3-60 (1) confirms that the intended parents are the child's  
 3-61 parents;

3-62 (2) requires the gestational mother to surrender the  
 3-63 child to the intended parents, if necessary; and

3-64 (3) requires the bureau of vital statistics to issue a  
 3-65 birth certificate naming the intended parents as the child's  
 3-66 parents.

3-67 (c) If a person alleges that a child born to a gestational  
 3-68 mother did not result from assisted reproduction, the court shall  
 3-69 order that scientifically accepted parentage testing be conducted

4-1 to determine the child's parentage.

4-2 Sec. 160.761. EFFECT OF GESTATIONAL MOTHER'S MARRIAGE AFTER  
4-3 VALIDATION OF AGREEMENT. If a gestational mother is married after  
4-4 the court renders an order validating a gestational agreement under  
4-5 this subchapter:

4-6 (1) the validity of the gestational agreement is not  
4-7 affected;

4-8 (2) the gestational mother's husband is not required  
4-9 to consent to the agreement; and

4-10 (3) the gestational mother's husband is not a presumed  
4-11 father of the child born under the terms of the agreement.

4-12 Sec. 160.762. EFFECT OF GESTATIONAL AGREEMENT THAT IS NOT  
4-13 VALIDATED. (a) A gestational agreement that is not validated as  
4-14 provided by this subchapter is unenforceable, regardless of whether  
4-15 the agreement is in a record.

4-16 (b) The parent-child relationship of a child born under a  
4-17 gestational agreement that is not validated as provided by this  
4-18 subchapter is determined as otherwise provided by this chapter.

4-19 (c) A party to a gestational agreement that is not validated  
4-20 as provided by this subchapter who is an intended parent under the  
4-21 agreement may be held liable for the support of a child born under  
4-22 the agreement, even if the agreement is otherwise unenforceable.

4-23 (d) The court may assess filing fees, reasonable attorney's  
4-24 fees, fees for genetic testing, other costs, and necessary travel  
4-25 and other reasonable expenses incurred in a proceeding under this  
4-26 section. Attorney's fees awarded by the court may be paid directly  
4-27 to the attorney. An attorney who is awarded attorney's fees may  
4-28 enforce the order in the attorney's own name.

4-29 Sec. 160.763. HEALTH CARE FACILITY REPORTING REQUIREMENT.

4-30 (a) The Texas Department of Health by rule shall develop and  
4-31 implement a confidential reporting system that requires each health  
4-32 care facility in this state at which assisted reproduction  
4-33 procedures are performed under gestational agreements to report  
4-34 statistics related to those procedures.

4-35 (b) In developing the reporting system, the department  
4-36 shall require each health care facility described by Subsection (a)  
4-37 to annually report:

4-38 (1) the number of assisted reproduction procedures  
4-39 under a gestational agreement performed at the facility during the  
4-40 preceding year; and

4-41 (2) the number and current status of embryos created  
4-42 through assisted reproduction procedures described by Subdivision  
4-43 (1) that were not transferred for implantation.

4-44 SECTION 3. Section 160.103(d), Family Code, is repealed.

4-45 SECTION 4. Not later than December 1, 2003, the Texas  
4-46 Department of Health shall implement the reporting system required  
4-47 by Section 160.763, Family Code, as added by this Act.

4-48 SECTION 5. (a) This Act takes effect September 1, 2003.

4-49 (b) The change in law made by this Act applies to a motion or  
4-50 other request for relief made in a parentage or paternity  
4-51 proceeding that is commenced on or after the effective date of this  
4-52 Act. A motion or other request for relief made in a parentage or  
4-53 paternity proceeding commenced before the effective date of this  
4-54 Act is governed by the law in effect at the time the proceeding was  
4-55 commenced, and the former law is continued in effect for that  
4-56 purpose.

4-57 \* \* \* \* \*