

SENATE, No. 866

STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator LORETTA WEINBERG

District 37 (Bergen)

Co-Sponsored by:

Senators Allen and Stack

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
3 Revised 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 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;

- 1 (b) Surrender custody of the child to the intended parent
2 immediately upon the child's birth; and
- 3 (c) Have the right to medical care for the pregnancy, labor,
4 delivery, and postpartum recovery provided by a physician, advance
5 practice nurse, or certified nurse midwife of her choice, after she
6 notifies, in writing, the intended parent of her choice;
- 7 (2) An express term that, if the gestational carrier is married or
8 in a civil union or domestic partnership, the spouse or partner
9 agrees to the obligations imposed on the gestational carrier pursuant
10 to the terms of the gestational carrier agreement and to surrender
11 custody of the child to the intended parent immediately upon the
12 child's birth; and
- 13 (3) Express terms that the intended parent shall:
- 14 (a) Accept custody of the child immediately upon the child's
15 birth; and
- 16 (b) Assume sole responsibility for the support of the child
17 immediately upon the child's birth.
- 18 c. A gestational carrier agreement shall be presumed
19 enforceable if:
- 20 (1) It satisfies the contractual requirements set forth in
21 subsection a. of this section; and
- 22 (2) It contains at a minimum each of the terms set forth in
23 subsection b. of this section.
- 24 In addition, an enforceable gestational carrier agreement shall
25 include a provision setting forth the financial responsibilities of the
26 parties and shall include a provision that the intended parent shall
27 pay the gestational carrier's reasonable expenses, as defined herein,
28 unless expressly waived, in whole or in part, in writing by the
29 gestational carrier.
- 30 d. In the event that any of the requirements of this section are
31 not met, a court of competent jurisdiction shall determine parentage
32 based on the parties' intent.
- 33
- 34 7. (New section) Duty to Support.
- 35 a. The establishment of the parent and child relationship
36 pursuant to a valid gestational carrier agreement shall be the basis
37 upon which an action for child support may be brought against the
38 intended parent and acted upon by the court without further
39 evidentiary proceedings.
- 40 b. The breach of the gestational carrier agreement by the
41 intended parent shall not relieve the intended parent of the support
42 obligations imposed by the parent and child relationship created by
43 the provisions of P.L. , c. (C.)(pending before the
44 Legislature as this bill).
- 45 c. Unless a person who donates gametes for use in assisted
46 reproduction enters into a written contract to the contrary, the
47 gamete donor is treated in law as if the gamete donor were not the

1 legal parent of a child thereby conceived and shall have no rights or
2 duties stemming from the conception of the child.

3

4 8. (New section) Establishment of Parent-Child Relationship.

5 a. After the gestational carrier becomes pregnant in accordance
6 with the gestational carrier agreement provided for in
7 P.L. , c. (C.)(pending before the Legislature as this bill),
8 the intended parent shall file a complaint for an order of parentage
9 with the Superior Court, Chancery Division, Family Part of the
10 county of the child's anticipated birth or the intended parent's or
11 gestational carrier's county of residence.

12 b. Attached to the complaint shall be:

13 (1) An affidavit by the gestational carrier and her spouse or
14 partner, if any, and the intended parent that they have entered into a
15 gestational carrier agreement in conformity with New Jersey law
16 and, after consultation with legal counsel, agreed to be bound by the
17 terms of the agreement;

18 (2) An affidavit of representation by the attorney for the
19 intended parent and the attorney for the gestational carrier and her
20 spouse or partner, if any; and

21 (3) A statement from the medical facility which performed the
22 assisted reproduction regarding the achievement of pregnancy in
23 accordance with the gestational carrier agreement.

24 c. The Superior Court shall, to the extent possible, schedule
25 and expedite a hearing on the matter, except that if the matter is
26 uncontested, the court may decide the matter without the need for
27 an appearance by the parties. Notice to all necessary parties shall
28 be made in accordance with the Rules of Court.

29 d. The attorney representing the intended parent shall appear at
30 the hearing unless the court waives an appearance.

31 e. Notwithstanding any other law concerning public hearings
32 and records, any action or proceeding held under P.L. , c. (C.)
33 (pending before the Legislature as this bill), shall be held in closed
34 court without admittance of any persons other than those necessary
35 to the action or proceeding.

36 f. If the court finds that the parties have complied with the
37 provisions of P.L. , c. (C.)(pending before the
38 Legislature as this bill), the court shall enter an order of parentage
39 naming the intended parent as the legal parent of the child.

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

45 h. All records and filings in connection with a gestational
46 carrier agreement shall remain confidential and unavailable to the
47 public, except that such records and filings may be made available

1 to a child born as a result of a valid gestational carrier agreement
2 who has attained at least 18 years of age and who has submitted a
3 written, notarized request for the records or filings.
4

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

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

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

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

12 b. The payment of reasonable expenses in connection with a
13 valid gestational carrier agreement shall not constitute a violation of
14 section 18 of P.L.1993, c.345 (C.9:3-39.1).
15

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

18 2. As used in this act, "parent and child relationship" means the
19 legal relationship existing between a child and the child's natural or
20 adoptive parents or between the child and the child's intended
21 parents pursuant to a gestational carrier agreement executed in
22 accordance with the provisions of P.L. , c. (C.)(pending
23 before the Legislature as this bill), incident to which the law confers
24 or imposes rights, privileges, duties, and obligations. It includes the
25 mother and child relationship and the father and child relationship.
26 (cf: P.L.1983, c.17, s.2)
27

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

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

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

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

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

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

1 exceeds the specific threshold probability as set by subsection i. of
2 section 11 of P.L.1983, c.17 (C.9:17-48) creating a rebuttable
3 presumption of paternity.

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

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

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

16 (2) An intended parent, may be established by proof of an order
17 of parentage related 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);

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

24 e. The establishment of the parent and child relationship
25 pursuant to subsections a., b., and c. of this section shall be the
26 basis upon which an action for child support may be brought by a
27 party and acted upon by the court without further evidentiary
28 proceedings;

29 f. In any case in which the parties execute a Certificate of
30 Parentage or a rebuttable presumption of paternity is created
31 through genetic testing, the presumption of paternity under section
32 6 of P.L.1983, c.17 (C.9:17-43) shall not apply;

33 g. Pursuant to the provisions of [section 331 of Pub.L.104-
34 193] 42U.S.C. s.666(a)(5), the child and other parties in a contested
35 paternity case shall submit to a genetic test upon the request of one
36 of the parties, unless that person has good cause for refusal, if the
37 request is supported by a sworn statement by the requesting party:

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

41 (2) denying paternity and setting forth the facts establishing a
42 reasonable possibility of the nonexistence of sexual contact between
43 the parties;

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

- 1 (1) pay the costs of the genetic test and may recoup payment
2 from the alleged father whose paternity is established; and
3 (2) obtain additional testing if the initial test results are
4 contested, and upon the request and advance payment for the
5 additional test by the contestant.
6 (cf: P.L.1998, c.1, s.38)
7
- 8 12. Section 6 of P.L.1983, c.17 (C.9:17-43) is amended to read
9 as follows:
- 10 6. a. A man is presumed to be the biological father of a child
11 if:
- 12 (1) He and the child's biological mother are or have been
13 married to each other and the child is born during the marriage, or
14 within 300 days after the marriage is terminated by death,
15 annulment or divorce;
- 16 (2) Before the child's birth, he and the child's biological mother
17 have attempted to marry each other by a marriage solemnized in
18 apparent compliance with law, although the attempted marriage is
19 or could be declared invalid, and:
- 20 (a) if the attempted marriage could be declared invalid only by a
21 court, the child is born during the attempted marriage, or within 300
22 days after its termination by death, annulment or divorce; or
23 (b) if the attempted marriage is invalid without a court order, the
24 child is born within 300 days after the termination of cohabitation;
- 25 (3) After the child's birth, he and the child's biological mother
26 have married, or attempted to marry, each other by a marriage
27 solemnized in apparent compliance with law, although the
28 attempted marriage is or could be declared invalid, and:
- 29 (a) he has acknowledged his paternity of the child in writing
30 filed with the local registrar of vital statistics;
- 31 (b) he has sought to have his name placed on the child's birth
32 certificate as the child's father, pursuant to R.S.26:8-40; or
33 (c) he openly holds out the child as his natural child; or
34 (d) he is obligated to support the child under a written voluntary
35 agreement or court order;
- 36 (4) While the child is under the age of majority, he receives the
37 child into his home and openly holds out the child as his natural
38 child;
- 39 (5) While the child is under the age of majority, he provides
40 support for the child and openly holds out the child as his natural
41 child; or
42 (6) He acknowledges his paternity of the child in a writing filed
43 with the local registrar of vital statistics, which shall promptly
44 inform the mother of the filing of the acknowledgment, and she
45 does not dispute the acknowledgment within a reasonable time after
46 being informed thereof, in a writing filed with the local registrar. If
47 another man is presumed under this section to be the child's father,

1 acknowledgment may be effected only with the written consent of
2 the presumed father. Each attempted acknowledgment, whether or
3 not effective, shall be kept on file by the local registrar of vital
4 statistics and shall entitle the person who filed it to notice of all
5 proceedings concerning parentage and adoption of the child, as
6 provided in section 10 of P.L.1983, c.17 (C.9:17-47) and pursuant
7 to section 9 of P.L.1977, c.367 (C.9:3-45).

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

16 c. Notwithstanding the provisions of this section to the
17 contrary, in an action brought under this act against the legal
18 representative or the estate of a deceased alleged father, the criteria
19 in paragraphs (4) and (5) of subsection a. of this section shall not
20 constitute presumptions but shall be considered by the court
21 together with all of the evidence submitted. The decision of the
22 court shall be based on a preponderance of the evidence.

23 d. In the absence of a presumption, the court shall decide
24 whether the parent and child relationship exists, based upon a
25 preponderance of the evidence.

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

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

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

40
41 13. Section 7 of P.L.1983, c.17 (C.9:17-44) is amended to read
42 as follows:

43 7. a. If, under the supervision of a licensed physician and with
44 the consent of her husband or partner in a civil union, a **【wife】**
45 woman is inseminated artificially with semen donated by a man not
46 her husband or partner, the husband or partner is treated in law as if
47 **【he were the natural father】** the husband or partner were the natural

1 parent of a child thereby conceived. The **【husband's】** consent of
2 the husband or partner shall be in writing and signed by **【him and**
3 **his wife】** both parties to the marriage or civil union. The physician
4 shall certify their signatures and the date of the insemination, upon
5 forms provided by the Department of Health and Senior Services,
6 and file the **【husband's】** consent with the State Department of
7 Health and Senior Services, where it shall be kept confidential and
8 in a sealed file. However, the physician's failure to do so shall not
9 affect the **【father】** parent and child relationship of the husband or
10 partner. All papers and records pertaining to the insemination,
11 whether part of the permanent record of a court or of a file held by
12 the supervising physician or elsewhere, are subject to inspection
13 only upon an order of the court for compelling reasons clearly and
14 convincingly shown.

15 b. Unless the donor of semen and the woman have entered into
16 a written contract to the contrary, the donor of semen provided to a
17 licensed physician for use in artificial insemination of a woman
18 other than the donor's wife or partner in a civil union is treated in
19 law as if he were not the father of a child thereby conceived and
20 shall have no rights or duties stemming from the conception of a
21 child.

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

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

27

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

30 15. Evidence relating to paternity may include:

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

33 b. An expert's opinion concerning the statistical probability of
34 the alleged father's paternity, based upon the duration of the
35 mother's pregnancy;

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

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

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

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

5
6 15. R.S.26:8-28 is amended to read as follows:

7 26:8-28. a. (1) Within five days after each birth, there shall be
8 filed with the local registrar of the district in which the birth
9 occurred a certificate of the birth filled out with durable black or
10 blue ink in a legible manner.

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

16 (3) In the case of a child born in connection with a gestational
17 carrier agreement executed in accordance with the provisions of
18 P.L. _____, c. _____ (C. _____)(pending before the Legislature as this bill),
19 the name of the intended parent shall be included on the record of
20 birth as the child's parent.

21 (4) Nothing in this section shall preclude the State IV-D agency
22 from obtaining an admission of paternity from the father for
23 submission in a judicial or administrative proceeding, or prohibit
24 the issuance of an order in a judicial or administrative proceeding
25 which bases a legal finding of paternity on an admission of
26 paternity by the father and any other additional showing required by
27 State law.

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

37 c. The State registrar shall require each parent to provide his
38 Social Security number in accordance with procedures established
39 by the State registrar. The Social Security numbers furnished
40 pursuant to this section shall be used exclusively for child support
41 enforcement purposes.

42 d. The certificate of birth shall include the blood type of the
43 child.

44 (cf: P.L.1998, c.1, s.42)

1 16. This act shall take effect immediately and shall apply only to
2 gestational carrier agreements entered into on or after the effective
3 date.

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STATEMENT

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

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

26 Pursuant to the bill, a gestational carrier is required to be at least
27 21 years of age, have given birth to at least one child, have
28 completed medical and psychological evaluations conducted by
29 licensed professionals, and have retained an attorney independent of
30 the intended parent but for whose services the intended parent
31 would be permitted to pay. The bill requires that an intended parent
32 have completed a psychological evaluation conducted by a licensed
33 professional approving the intended parent’s suitability to
34 participate in a gestational carrier agreement, and to have retained
35 an attorney to advise the intended parent about the terms and
36 potential legal consequences of entering into the agreement. Under
37 the bill, single people, as well as those who are married or in a civil
38 union or domestic partnership, are permitted to enter into
39 gestational carrier agreements as either intended parents or as
40 gestational carriers.

41 This bill requires that the agreement be in writing and executed
42 by the gestational carrier, her spouse or partner in a civil union or
43 domestic partnership, if any, and the intended parent. If the
44 intended parent is married or in a domestic partnership or civil
45 union at the time the intended parent enters the agreement, both
46 spouses or partners are required to enter into the agreement as
47 intended parents. If the intended parent is not married or in a civil

1 union or domestic partnership, any other person who wishes to be
2 an intended parent must duly execute the agreement as an intended
3 parent.

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

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

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

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

1 gestational carrier agreement unless the donor enters into a written
2 contract to the contrary.

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

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

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

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

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

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

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

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

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