

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2401:

Miller (Ray)

AS INTRODUCED

An Act relating to children; creating the Oklahoma Surrogate Parentage Act; providing short title; providing for choice of law; defining terms; providing for establishment of parent-child relationship; providing for authorization of gestational agreement; authorizing requirements for agreement; providing for petition to validate agreement; establishing court proceeding for validation of agreement; providing for inspection of records; establishing continuing exclusive jurisdiction; providing for termination of agreement; establishing parentage under validated agreement; requiring notice; providing for effect of agreement that is not validated; amending 10 O.S. 2001, Sections 552, 554, 555 and 556, which relate to status of child resulting from artificial insemination; clarifying method of determining status of certain children; amending 63 O.S. 2001, Sections 1-311 and 1-311.3, which relate to birth certificates; expanding method of obtaining birth certificates for certain children; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 560 of Title 10, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 11 of this act shall be known and may be cited as the "Oklahoma Surrogate Parentage Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 561 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. The purpose of the Oklahoma Surrogate Parentage Act is to recognize a written gestational agreement between a woman and a married couple in which:

1. The woman agrees to conceive a child by means of assisted reproduction and give birth to the child on behalf of the married couple;

2. The woman relinquishes her parental rights to the child; and

3. The married couple become the parents of the child.

B. The Oklahoma Surrogate Parentage Act controls over any other law with respect to a child conceived under a valid gestational agreement authorized by the Oklahoma Surrogate Parentage Act.

C. The parent-child relationship between the married couple and the child born by assisted reproduction pursuant to a valid gestational agreement shall not be subject to the Oklahoma Adoption Code except as prescribed for in the Oklahoma Surrogate Parentage Act.

D. As used in the Oklahoma Surrogate Parentage Act:

1. "Donor" means a human egg or sperm provider;

2. "Gestational agreement" means a contract and any supporting documentation or other written agreements between the gestational mother and the married couple executed and made pursuant to the Oklahoma Surrogate Parentage Act;

3. "Gestational mother" means a woman who gives birth to a child conceived under a valid gestational agreement;

4. "Intended parents" means a married couple who have entered into a valid gestational agreement with a gestational mother pursuant to the provisions of the Oklahoma Surrogate Parentage Act; and

5. "Married couple" means a man and a woman married to each other pursuant to the laws of this state.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 562 of Title 10, unless there is created a duplication in numbering, reads as follows:

A legal parent-child relationship exists between a married couple and a child born to a gestational mother, if such

relationship was established pursuant to a court order issued as provided by the Oklahoma Surrogate Parentage Act, regardless of the fact that the gestational mother gave birth to the child.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 563 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. A prospective gestational mother, her husband if she is married, any donor, and the married couple who are intended parents may enter into a written agreement providing that:

1. The prospective gestational mother agrees to a pregnancy by means of assisted reproduction on behalf of the married couple;

2. The prospective gestational mother, her husband if she is married, and each donor other than either of the intended parents, relinquish all parental rights and duties with respect to a child conceived through assisted reproduction;

3. The married couple who are the intended parents will be the parents of the child; and

4. The gestational mother and each intended parent agree to exchange throughout the period covered by the agreement all relevant information regarding the health of the gestational mother and each intended parent.

B. Each intended parent must be a party to the gestational agreement.

C. The gestational agreement must require that the eggs used in the assisted reproduction procedure be retrieved from an intended parent or a donor. The eggs of the gestational mother shall not be used in the assisted reproduction procedure.

D. The gestational agreement must state that the physician who will perform the assisted reproduction procedure as provided by the agreement has informed the parties to the agreement of:

1. The rate of successful conceptions and births attributable to the procedure, including the most recent published outcome

statistics of the procedure at the facility at which it will be performed;

2. The potential for and risks associated with the procedure;

3. The nature of and expenses related to the procedure; and

4. Reasonably foreseeable psychological effects resulting from the procedure.

E. The parties to a gestational agreement must enter into the agreement before the fourteenth day preceding the date the transfer of eggs or sperm to the gestational mother occurs for the purpose of conception or implantation.

F. A gestational agreement shall not apply to the birth of a child conceived by means of sexual intercourse.

G. A gestational agreement shall not limit the right of the gestational mother to make decisions to safeguard her health or the health of the unborn child.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 564 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. The intended parents and the prospective gestational mother under a gestational agreement may commence a court proceeding to validate the agreement.

B. A person may maintain a proceeding to validate a gestational agreement only if:

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

2. The husband of the prospective gestational mother, if she is married, is joined as a party to the court proceeding; and

3. A copy of the gestational agreement is attached to the petition.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 565 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. A gestational agreement must be validated as provided by this section.

B. The court may validate a gestational agreement as provided by subsection C of this section only if the court finds that:

1. The parties have submitted to the jurisdiction of the court under the jurisdictional standards of this state;

2. The medical evidence provided shows that the intended mother is unable to carry a pregnancy to term and give birth to the child or is unable to carry the pregnancy to term and give birth to the child without unreasonable risk to her physical or mental health or to the health of the unborn child;

3. Unless waived by the court, an agency or other person has conducted a home study of the intended parents and has determined that the intended parents meet the standards of fitness applicable to adoptive parents pursuant to the Oklahoma Adoption Code;

4. Each party to the agreement has voluntarily entered into and understands the terms of the agreement;

5. The pregnancy is carried to term and giving birth to a child would not pose an unreasonable risk to the health of the child or the physical or mental health of the prospective gestational mother; and

6. The parties have adequately specified in the gestational agreement which party is responsible for all reasonable health care expenses associated with the pregnancy, including, but not limited to, who is responsible for those expenses if the agreement is terminated.

C. If the court finds that the requirements of subsection B of this section are satisfied, the court may issue an order validating

the gestational agreement and declaring that the intended parents will be the parents of a child born pursuant to the agreement.

D. The court may validate the gestational agreement at the discretion of the court. The determination of the court of whether to validate the agreement is subject to review only for abuse of discretion.

E. The proceedings, records, and identities of the parties to a gestational agreement pursuant to the Oklahoma Surrogate Parentage Act are subject to inspection under the same standards of confidentiality that apply to an adoption made pursuant to the Oklahoma Adoption Code.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 566 of Title 10, unless there is created a duplication in numbering, reads as follows:

Subject to the Oklahoma Surrogate Parentage Act, a court that conducts a proceeding pursuant to the Oklahoma Surrogate Parentage Act has continuing, exclusive jurisdiction of all matters arising out of the gestational agreement from the date the child is born to the gestational mother during the period covered by the agreement and until the child reaches one hundred eighty (180) days of age.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 567 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. Before a prospective gestational mother becomes pregnant by means of assisted reproduction, the prospective gestational mother, her husband if she is married, or either intended parent may terminate a gestational agreement validated pursuant to the Oklahoma Surrogate Parentage Act by giving written notice of the termination to all parties to the agreement.

B. A person who terminates a gestational agreement under subsection A of this section shall file notice of the termination with the court.

C. On receipt of the notice of termination, the court shall vacate the order rendered pursuant to the Oklahoma Surrogate Parentage Act validating the gestational agreement.

D. A prospective gestational mother and her husband, if she is married, shall not be liable to an intended parent for terminating a gestational agreement if the termination is in accordance with this section.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 568 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. On the birth of a child to a gestational mother under a validated gestational agreement, the intended parents shall file a notice of the birth with the court within five (5) days of the birth of the child.

B. After receiving notice of the birth, the court shall render an order that:

1. Confirms that the intended parents are the parents of the child;

2. Requires the gestational mother to surrender the child to the intended parents, if necessary; and

3. Requires the Vital Records Section of the State Department of Health to issue a birth certificate naming the intended parents as the parents of the child.

C. If a person alleges that a child born to a gestational mother did not result from assisted reproduction, the court shall order that scientifically accepted parentage testing be conducted to determine the parents of the child.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 569 of Title 10, unless there is created a duplication in numbering, reads as follows:

If a gestational mother is married after the court renders an order validating a gestational agreement pursuant to the Oklahoma Surrogate Parentage Act:

1. The validity of the gestational agreement is not affected;
2. The husband of the gestational mother is not required to consent to the agreement; and
3. The husband of the gestational mother is not a presumed father of the child born under the terms of the agreement pursuant to Section 2 of Title 10 of the Oklahoma Statutes.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 570 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. A gestational agreement that is not validated as provided by the Oklahoma Surrogate Parentage Act is unenforceable.

B. The parent-child relationship of a child born under a gestational agreement that is not validated as provided by the Oklahoma Surrogate Parentage Act shall be determined as otherwise provided by Title 10 of the Oklahoma Statutes.

C. If a gestational agreement is not validated as provided by the Oklahoma Surrogate Parentage Act, the court shall determine which of the parties shall be liable for the support of the child after birth.

D. The court may assess filing fees, reasonable attorney fees, fees for genetic testing, other costs, and necessary travel and other reasonable expenses incurred in a proceeding under this section. Attorney fees awarded by the court may be paid directly to the attorney. An attorney who is awarded attorney fees may enforce the order in the name of the attorney.

SECTION 12. AMENDATORY 10 O.S. 2001, Section 552, is amended to read as follows:

Section 552. Any child or children born as the result ~~thereof~~ of an heterologous artificial insemination shall be considered at



law in all respects the same as a naturally conceived legitimate child of the husband and wife so requesting and consenting to the use of such technique. However, the status of any child or children born as a result of a gestational agreement shall be governed by the Oklahoma Surrogate Parentage Act.

SECTION 13. AMENDATORY 10 O.S. 2001, Section 554, is amended to read as follows:

Section 554. Any child or children born as a result of a heterologous oocyte donation shall be considered for all legal intents and purposes, the same as a naturally conceived legitimate child of the husband and wife which consent to and receive an oocyte pursuant to the use of the technique of heterologous oocyte donation. However, the status of any child or children born as a result of a gestational agreement shall be governed by the Oklahoma Surrogate Parentage Act.

SECTION 14. AMENDATORY 10 O.S. 2001, Section 555, is amended to read as follows:

Section 555. An oocyte donor shall have no right, obligation or interest with respect to a child born as a result of a heterologous oocyte donation from such donor. A child born as a result of a heterologous oocyte donation shall have no right, obligation or interest with respect to the person who donated the oocyte which resulted in the birth of the child. However, the status of any child or children born as a result of a gestational agreement shall be governed by the Oklahoma Surrogate Parentage Act.

SECTION 15. AMENDATORY 10 O.S. 2001, Section 556, is amended to read as follows:

Section 556. A. 1. No person shall perform the technique of human embryo transfer unless currently licensed to practice medicine in this state, and then only at the request and with the written consent of the husband and wife desiring to receive the human embryo

transfer. In addition, the written consent of the husband and wife donating the human embryo shall be obtained by the physician.

2. The written consent of the husband and wife desiring to receive the human embryo transfer shall be executed and acknowledged by both the husband and wife, by the physician who is to perform the technique, and by any judge of a court having adoption jurisdiction in this state. The original of the executed consent shall be filed with the court in conformity to Section 553 of ~~Title 10 of the Oklahoma Statutes~~ this title.

3. The original of the written consent of the husband and wife donating the human embryo shall be filed with the court by the physician performing the technique.

4. The written consents so filed shall not be open to the general public. The information contained therein, may be released only to persons having a legitimate interest therein as evidenced by a specific court order.

B. 1. Any child or children born as a result of a human embryo transfer donation shall be considered for all legal intents and purposes, the same as a naturally conceived legitimate child of the husband and wife that consent to and receive a human embryo transfer.

2. The husband and wife donating the human embryo shall be relieved of all parental responsibilities for any child or children resulting from the human embryo transfer.

3. However, the status of any child or children born as a result of a gestational agreement shall be governed by the Oklahoma Surrogate Parentage Act.

C. The husband and wife donating the embryo shall have no right, obligation or interest with respect to a child born as a result of the donation or to the property of the child by descent or distribution.

D. A child born as a result of an embryo transfer donation shall have no right, obligation or interest with respect to the husband and wife who donated the embryo.

E. The transfer and donation of human embryos pursuant to this section shall not be construed as trafficking in children if:

1. The human embryo is donated by the biological parents of the embryo;

2. The human embryo is not at anytime offered for sale or sold; and

3. The human embryo transfer and donation is made pursuant to the provisions of this section.

SECTION 16. AMENDATORY 63 O.S. 2001, Section 1-311, is amended to read as follows:

Section 1-311. A. A certificate of birth for each live birth which occurs in this state shall be filed with the local registrar of the district in which the birth occurs, within seven (7) days after the birth; provided, that when a birth occurs on a moving conveyance, a birth certificate shall be filed in the district in which the child was first removed from the conveyance.

B. When a birth occurs in an institution, the person in charge of the institution or a designated representative shall obtain the personal data, prepare the certificate, secure the signatures required by the certificate and file the certificate with the local registrar. The physician in attendance shall certify to the facts of birth and provide the medical information required by the certificate within five (5) days after the birth.

C. When a birth occurs outside an institution, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

1. The physician in attendance at or immediately after the birth;

2. Any other person in attendance at or immediately after the birth; or

3. The father, the mother, or, in the absence or inability of the father or mother, the person in charge of the premises where the birth occurred and present at the birth.

D. 1. If the mother was married at the time of conception and birth, the name of the husband shall be entered on the certificate as the father of the child unless paternity has been determined otherwise by a court of competent jurisdiction or a husband's denial of paternity form has been filed along with an affidavit acknowledging paternity, in which case the name of the father as determined by the court or affidavit acknowledging paternity shall be entered.

2. If the mother was not married at the time of conception and birth, the name of the father shall be entered on the certificate of birth only if:

- a. a determination of paternity has been made by an administrative action through the Department of Human Services or a court of competent jurisdiction, in which case the name of the father shall be entered, or
- b. the mother and father have signed an affidavit acknowledging paternity pursuant to Section 1-311.3 of this title, or substantially similar affidavit from another state and filed it with the State Registrar of Vital Statistics.

3. When issuing a birth certificate, the status of any child or children born as a result of a gestational agreement shall be governed by the Oklahoma Surrogate Parentage Act.

E. Either of the parents of the child shall sign the certificate of live birth to attest to the accuracy of the personal data entered thereon, in time to permit its filing within the seven (7) days prescribed in this section.

SECTION 17. AMENDATORY 63 O.S. 2001, Section 1-311.3, is amended to read as follows:

Section 1-311.3 A. Unless an adoption decree has been presented, ~~and~~ consent to adoption has been given as otherwise provided by law, or a validated gestational agreement has been filed with the court, upon the birth of a child to an unmarried woman, the person required by Section 1-311 of this title to prepare and file a birth certificate shall:

1. Provide written materials and an oral, audio, or video presentation to the child's mother and/or natural father including an affidavit acknowledging paternity on a form prescribed by the Department of Human Services. The completed affidavit shall be filed with the local registrar. The affidavit shall contain:

- a. a statement by the mother consenting to the assertion of paternity and stating the name of the father,
- b. a statement by the father that he is the natural father of the child,
- c. the social security numbers of both parents, and
- d. other information as the Secretary of ~~Health and~~ Human Services may require;

2. Provide written information, furnished by the Department of Human Services, along with an oral, audio, or video presentation, to the mother:

- a. explaining that the completed, notarized affidavit shall be filed with the local registrar,
- b. regarding the benefits of having her child's paternity established and of the availability of paternity establishment services, including a request for support enforcement services, and
- c. explaining the implications of signing, including parental rights and responsibilities; and

3. Provide the original affidavit acknowledging paternity to the Office of the State Registrar of Vital Statistics. Copies of the original affidavit acknowledging paternity shall be provided to the Department of Human Services Child Support Enforcement Division and to the mother and acknowledged father of the child. The Department of Human Services shall provide access to the affidavits acknowledging paternity via electronic means to the paternity registry created pursuant to Section 7506-1.1 of Title 10 of the Oklahoma Statutes.

B. The Department of Human Services shall make the affidavits acknowledging paternity, the rescission of affidavit acknowledging paternity, and the husband's denial of paternity forms available at each county office of the Department and at the Office of the State Registrar of Vital Statistics and at the office of each local registrar.

C. Upon receipt by the State Registrar of Vital Statistics of a certified copy of an order ~~or decree~~ of adoption or validated gestational agreement, the State Registrar shall prepare a supplementary birth certificate as directed by Section 7505-6.6 of Title 10 of the Oklahoma Statutes regardless of whether an affidavit acknowledging paternity has been prepared or filed with the Office of the State Registrar of Vital Statistics pursuant to this section.

SECTION 18. This act shall become effective November 1, 2004.

49-2-8207 SB 01/20/04