

By: Representative Owen

To: Judiciary A

HOUSE BILL NO. 209

1 AN ACT TO AUTHORIZE THE CREATION AND JUDICIAL VALIDATION OF A
2 GESTATIONAL AGREEMENT BETWEEN A GESTATIONAL MOTHER AND THE
3 INTENDED PARENTS OF A CHILD; TO DEFINE THE TERM "GESTATIONAL
4 MOTHER"; TO PROVIDE THAT UNDER A GESTATIONAL AGREEMENT, A WOMAN
5 AGREES TO RELINQUISH ALL PARENTAL RIGHTS TO A CHILD CONCEIVED BY
6 ASSISTED REPRODUCTION AND THE INTENDED PARENTS BECOME THE PARENTS,
7 IN FACT, OF THE CHILD; TO DECLARE THE PARENT-CHILD RELATIONSHIP OF
8 A CHILD WHO IS BORN TO A GESTATIONAL MOTHER; TO PRESCRIBE THE
9 REQUIREMENTS OF A GESTATIONAL AGREEMENT; TO AUTHORIZE GESTATIONAL
10 AGREEMENTS TO BE VALIDATED BY A COURT UPON CERTAIN FINDINGS BEING
11 MADE; TO DECLARE THAT RECORDS RELATING TO THE VALIDATION OF
12 GESTATIONAL AGREEMENTS ARE CONFIDENTIAL; TO PROVIDE THAT THE COURT
13 HAS CONTINUING JURISDICTION OVER MATTERS RELATING TO A GESTATIONAL
14 AGREEMENT UNTIL AFTER THE CHILD IS BORN; TO AUTHORIZE PARTIES TO
15 TERMINATE THE AGREEMENT; TO REQUIRE THE COURT TO VACATE THE ORDER
16 VALIDATING THE GESTATIONAL AGREEMENT UPON RECEIVING NOTICE OF ITS
17 TERMINATION BY A PARTY; TO REQUIRE A COURT RECEIVING NOTICE OF A
18 CHILD'S BIRTH TO ENTER AN ORDER REQUIRING THE GESTATIONAL MOTHER
19 TO RELINQUISH THE CHILD, IF NECESSARY, AND REQUIRING THE BIRTH
20 CERTIFICATE TO INDICATE THAT THE INTENDED PARENTS ARE THE CHILD'S
21 PARENTS; TO PROVIDE THAT IF A GESTATIONAL MOTHER MARRIES AFTER A
22 GESTATIONAL AGREEMENT HAS BEEN VALIDATED, THE SPOUSE IS NOT
23 PRESUMED TO BE THE CHILD'S FATHER; TO DECLARE THAT GESTATIONAL
24 AGREEMENTS NOT VALIDATED BY A COURT ARE UNENFORCEABLE; TO REQUIRE
25 HEALTH CARE FACILITIES IN THE STATE WHERE ASSISTED REPRODUCTION
26 PROCEDURES ARE PERFORMED UNDER GESTATIONAL AGREEMENTS TO REPORT
27 CERTAIN STATISTICS TO THE STATE BOARD OF HEALTH; AND FOR RELATED
28 PURPOSES.

29 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

30 **SECTION 1.** As used in this act, the term "gestational



mother" means a woman who gives birth to a child conceived under a gestational agreement.

SECTION 2. (1) This act authorizes an agreement between a woman and the intended parents of a child in which the woman relinquishes all rights as a parent of a child conceived by means of assisted reproduction and which provides that the intended parents become the parents of the child.

(2) This act controls over any other law with respect to a child conceived under a gestational agreement.

SECTION 3. (1) Notwithstanding any other provision of this act or another law, the mother-child relationship exists between a woman and a child by an adjudication confirming the woman as a parent of the child born to a gestational mother under a gestational agreement if the gestational agreement is validated under this act or enforceable under other law, regardless of the fact that the gestational mother gave birth to the child.

(2) 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 act or enforceable under other law.

SECTION 4. (1) A prospective gestational mother, her spouse if she is married, each donor, and each intended parent may enter into a written agreement providing that:



55 (a) The prospective gestational mother agrees to
56 pregnancy by means of assisted reproduction;

57 (b) The prospective gestational mother, her spouse if
58 she is married, and each donor other than the intended parents, if
59 applicable, relinquish all parental rights and duties with respect
60 to a child conceived through assisted reproduction;

61 (c) The intended parents will be the parents of the
62 child; and

63 (d) The gestational mother and each intended parent
64 agree to exchange throughout the period covered by the agreement
65 all relevant information regarding the health of the gestational
66 mother and each intended parent.

67 (2) The intended parents must be married to each other.
68 Each intended parent must be a party to the gestational agreement.

69 (3) The gestational agreement must require that the eggs
70 used in the assisted reproduction procedure be retrieved from an
71 intended parent or a donor. The gestational mother's eggs may not
72 be used in the assisted reproduction procedure.

73 (4) The gestational agreement must state that the physician
74 who will perform the assisted reproduction procedure, as provided
75 by the agreement, has informed the parties to the agreement of:

76 (a) The rate of successful conceptions and births
77 attributable to the procedure, including the most recent published
78 outcome statistics of the procedure at the facility at which it
79 will be performed;



(b) The potential for and risks associated with the implantation of multiple embryos and consequent multiple births resulting from the procedure;

(c) The nature of and expenses related to the procedure;

(d) The health risks associated with, as applicable, fertility drugs used in the procedure, egg retrieval procedures, and egg or embryo transfer procedures; and

(e) Reasonably foreseeable psychological effects resulting from the procedure.

(5) The parties to a gestational agreement must enter into the agreement before the fourteenth day preceding the date on which the transfer of eggs, sperm or embryos to the gestational mother will occur for the purpose of conception or implantation.

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

(7) A gestational agreement may not limit the right of the gestational mother to make decisions to safeguard her health or the health of an embryo.

SECTION 5. (1) A proceeding to validate a gestational agreement may be commenced by the intended parents and the prospective gestational mother under the agreement.

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



(a) 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;

(b) The prospective gestational mother's spouse, if she is married, is joined as a party to the proceeding; and

(c) A copy of the gestational agreement is attached to the petition.

SECTION 6. (1) A gestational agreement must be validated as provided by this section.

(2) The court may validate a gestational agreement as provided by subsection (3) only if the court finds that:

(a) The parties have submitted to the jurisdiction of the court;

(b) 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;

(c) 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;

(d) Each party to the agreement has voluntarily entered into and understands the terms of the agreement;



(e) The prospective gestational mother has had at least one (1) previous pregnancy and delivery and carrying another pregnancy to term and giving birth to another child would not pose an unreasonable risk to the child's health or the physical or mental health of the prospective gestational mother; and

(f) The parties have provided adequately for which party is responsible for all reasonable health care expenses associated with the pregnancy, including providing for which party is responsible for those expenses if the agreement is terminated.

(3) If the court finds that the requirements of subsection (2) are satisfied, the court may render an order validating the gestational agreement and declaring that the intended parents will be the parents of a child born under the agreement.

(4) The court may validate the gestational agreement at the court's discretion. The court's determination of whether to validate the agreement is subject to review only for abuse of discretion.

SECTION 7. The proceedings, records and identities of the parties to a gestational agreement under this act are subject to inspection under the same standards of confidentiality which apply to an adoption under the laws of this state.

SECTION 8. A court that conducts a proceeding under this act has continuing, exclusive jurisdiction of all matters arising out of the gestational agreement until the date a child born to the



gestational mother during the period covered by the agreement reaches one hundred eighty (180) days of age.

SECTION 9. (1) Before a prospective gestational mother becomes pregnant by means of assisted reproduction, the prospective gestational mother, her spouse if she is married, or either intended parent may terminate a gestational agreement validated under Section 6 of this act by giving written notice of the termination to each other party to the agreement.

(2) A person who terminates a gestational agreement under subsection (1) shall file notice of the termination with the court. A person having the duty to notify the court who does not notify the court of the termination of the agreement is subject to appropriate sanctions.

(3) On receipt of the notice of termination, the court shall vacate the order validating the gestational agreement rendered under Section 6.

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

SECTION 10. (1) 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 not later than three hundred (300) days after the date assisted reproduction occurred.



(2) After receiving notice of the birth, the court shall render an order that:

(a) Confirms that the intended parents are the child's parents;

(b) Requires the gestational mother to surrender the child to the intended parents, if necessary; and

(c) Requires the Bureau of Vital Statistics to issue a birth certificate naming the intended parents as the child's parents.

(3) 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 child's parentage.

(4) If the intended parents fail to file the notice required by subsection (1), the gestational mother or an appropriate state agency may file the notice required by that subsection. On a showing that an order validating the gestational agreement was rendered in accordance with Section 6, the court shall order that the intended parents are the child's parents and are financially responsible for the child.

SECTION 11. If a gestational mother marries after the court renders an order validating a gestational agreement under this act:

(a) The validity of the gestational agreement is not affected;



(b) The gestational mother's spouse is not required to consent to the agreement; and

(c) The gestational mother's spouse is not a presumed father of the child born under the terms of the agreement.

SECTION 12. (1) A gestational agreement that is not validated as provided by this act is unenforceable, regardless of whether the agreement is in a record.

(2) The parent-child relationship of a child born under a gestational agreement that is not validated as provided by this act is determined as otherwise provided by statutory or case law of this state.

(3) A party to a gestational agreement that is not validated as provided by this act who is an intended parent under the agreement may be held liable for the support of a child born under the agreement, even if the agreement is otherwise unenforceable.

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

SECTION 13. (1) The State Board of Health shall adopt a rule establishing and implementing a confidential reporting system that requires each health care facility in this state at which



assisted reproduction procedures are performed under gestational agreements to report statistics related to those procedures.

(2) In developing the reporting system, the board shall require each health care facility described by subsection (1) to annually report:

(a) The number of assisted reproduction procedures under a gestational agreement performed at the facility during the preceding year; and

(b) The number and current status of embryos created through assisted reproduction procedures described by paragraph (a) which were not transferred for implantation.

SECTION 14. This act shall take effect and be in force from and after July 1, 2021.

