

# ASSEMBLY, No. 1704

# STATE OF NEW JERSEY

# 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

**Sponsored by:**

**Assemblywoman VALERIE VAINIERI HUTTLE**

**District 37 (Bergen)**

**Assemblywoman ANNETTE QUIJANO**

**District 20 (Union)**

**Assemblywoman MILA M. JASEY**

**District 27 (Essex and Morris)**

**Co-Sponsored by:**

**Assemblyman Eustace**

**SYNOPSIS**

Authorizes certain gestational carrier agreements.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.

**AN ACT** concerning gestational carrier agreements, revising various parts of the statutory law and supplementing Title 9 of the Revised Statutes.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

1. (New section) Title.

This act shall be known as the “New Jersey Gestational Carrier Agreement Act.”

2. (New section) Purpose.

a. The Legislature finds and declares that gestational carrier agreements executed pursuant to this act are in accord with the public policy of this State.

b. It is the intent and purpose of the Legislature to:

(1) Establish consistent standards and procedural safeguards to promote the best interests of the children who will be born as a result of gestational carrier agreements executed pursuant to

P.L. , c. (C. )(pending before the Legislature as this bill);

(2) Protect all parties involved in gestational carrier agreements executed pursuant to P.L. , c. (C. )(pending before the Legislature as this bill); and

(3) Recognize the technological advances in assisted reproductive medicine in ways that allow the use of these advances by intended parents and gestational carriers according to the public policy of New Jersey.

### 3. (New section) Definitions.

As used in this act:

“Advanced practice nurse” means a person certified in accordance with the provisions of section 8 or 9 of P.L.1991, c.377 (C.45:11-47 or 45:11-48).

“Assisted reproductive technology” means procreative laboratory procedures involving human eggs or pre-embryos, including, but not limited to: in vitro fertilization; embryo transfer; gamete transfer; pronuclear stage transfer; and zygote transfer.

“Attorney” means a person licensed to practice law in New Jersey or another state or the District of Columbia.

“Certified nurse midwife” means a midwife licensed by the State Board of Medical Examiners as a certified nurse midwife pursuant to the provisions of P.L.1991, c.97 (C.45:10-17 et seq.).

“Donor” means a person who contributes gametes for use in assisted reproduction. The term does not include an intended parent who contributes gametes to be used in assisted reproduction pursuant to a valid gestational carrier agreement.

“Fertilization” means the initial union of the sperm and the egg.

“Gamete” means sperm or egg.

“Gestational carrier” means a woman 21 years of age or older who agrees to become pregnant for an intended parent by assisted reproductive technology without the use of her own egg.

“Gestational carrier agreement” means the written contract between the gestational carrier and the intended parent, pursuant to which the intended parent agrees to become the legal parent of a child created through assisted reproductive technology and carried by the gestational carrier.

“Implantation” means when the fertilized egg adheres to the gestational carrier’s uterine wall.

“Intended parent” means a person who enters into a gestational carrier agreement with a gestational carrier pursuant to section 6 of P.L. , c. (C. )(pending before the Legislature as this bill), pursuant to which the person shall be the legal parent of the resulting child. The term shall include persons who are single, married, partners in a civil union or domestic partnership, and couples who are not married or in a civil union or domestic partnership. Any reference to an intended parent shall include both spouses or partners in a civil union or domestic partnership. This term shall include the intended mother, the intended father, the intended mother and intended father, the intended mother and intended mother, or the intended father and intended father.

“In vitro fertilization” means all medical and laboratory procedures that are required to effectuate the formation of a human embryo outside the human body.

“Medical evaluation” means an evaluation and consultation by a physician, a certified nurse midwife, or an advanced practice nurse.

“Order of parentage” means a judgment determining parentage pursuant to the provisions of a gestational carrier agreement that satisfies P.L. , c. (C. ) (pending before the Legislature as this bill).

“Physician” means a person licensed to practice medicine in New Jersey pursuant to R.S.45:9-1 et seq. or licensed to practice in any one of the United States or its territories, or the District of Columbia.

“Pre-embryo” is a fertilized egg prior to 14 days of development.

“Pre-embryo transfer” means all medical and laboratory procedures that are necessary to effectuate the transfer of a pre-embryo into the uterine cavity.

“Psychological evaluation” means an evaluation and consultation by a clinical social worker, psychotherapist, or psychiatrist licensed by the State of New Jersey or licensed to practice in any one of the United States or its territories, or the District of Columbia.

“Reasonable expenses” means medical, hospital, counseling or other similar expenses incurred in connection with the gestational carrier agreement, reasonable attorney fees and costs for legal services in connection with the gestational carrier agreement, and the reasonable living expenses of the gestational carrier during her pregnancy including payments for reasonable food, clothing, medical expenses, shelter, and religious, psychological, vocational, or similar counseling services during the period of the pregnancy and during the period of postpartum recovery. These payments may be made directly to the gestational carrier or on the gestational carrier’s behalf to the supplier of the goods or services pursuant to the gestational carrier agreement.

#### 4. (New section) Rights of Parentage.

a. Provided that the gestational carrier and the intended parent satisfy the eligibility requirements set forth in section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill) and the gestational carrier agreement satisfies the requirements set forth in section 6 of P.L. , c. (C. ) (pending before the Legislature as this bill), immediately upon the birth of the child:

(1) The intended parent shall be the legal parent of the child;

(2) In the case of an intended parent who is a spouse or partner in a civil union or domestic partnership, both spouses or partners shall be the parents of the child; and

(3) Neither the gestational carrier nor her spouse or partner, if any, shall be the legal parent of the child.

b. In the event of a medical or laboratory error in which the resulting child is not genetically related to an intended parent whose gamete was intended to be used under the agreement, the intended parent shall be the parent of the child where the gestational carrier agreement satisfies the requirements set forth in section 6 of P.L. , c. (C. ) (pending before the Legislature as this bill), unless otherwise determined by a court of competent jurisdiction pursuant to a complaint challenging parentage filed by a genetic parent within 120 days of birth.

#### 5. (New section) Eligibility.

a. A gestational carrier shall be deemed to have satisfied the requirements of P.L. , c. (C. ) (pending before the Legislature as this bill) if, at the time the gestational carrier agreement is executed, she:

(1) Is at least 21 years of age;

(2) Has given birth to at least one child;

- (3) Has completed a medical evaluation approving her suitability to serve as a gestational carrier;
- (4) Has completed a psychological evaluation approving her suitability to serve as a gestational carrier;
- (5) Has retained an attorney, independent of the intended parent, but for whose services the intended parent may pay, who has consulted with her about the terms of the gestational carrier agreement and the potential legal consequences of being a gestational carrier under the terms of this agreement.

b. The intended parent shall be deemed to have satisfied the requirements of P.L. , c. (C. ) (pending before the Legislature as this bill) if, at the time the gestational carrier agreement is executed, the intended parent:

- (1) Has completed a psychological evaluation approving the intended parent's suitability to participate in a gestational carrier agreement; and
- (2) Is represented by an attorney who consulted with the intended parent about the terms of the gestational carrier agreement and the potential legal consequences of the agreement.

#### 6. (New section) Requirements for a Gestational Carrier Agreement.

a. A gestational carrier agreement shall satisfy the following requirements:

(1) It is in writing and executed by the gestational carrier, her spouse or partner in a civil union or domestic partnership, if any, and each intended parent. If the intended parent is married or in a domestic partnership or civil union at the time the intended parent enters the agreement, both spouses or partners shall meet the requirements of subsection b. of section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill) and shall be required to enter into the agreement as intended parents. If the intended parent is not married or in a civil union or domestic partnership, no other person shall be deemed a legal parent of the child unless that person meets the requirements of subsection b. of section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill) and duly executes the agreement;

(2) It is executed after the required medical and psychological screenings of the gestational carrier and the psychological screening of the intended parent, but prior to the commencement of any other necessary medical procedures in furtherance of the implantation of the pre-embryo; and

(3) The gestational carrier and her spouse or partner, if any, and the intended parent shall have been represented by separate attorneys in all matters relating to the gestational carrier agreement and each attorney provides an affidavit of such representation.

b. A gestational carrier agreement shall provide:

- (1) Express terms that the gestational carrier shall:
  - (a) Undergo pre-embryo transfer and attempt to carry and give birth to the child;
  - (b) Surrender custody of the child to the intended parent immediately upon the child's birth; and
  - (c) Have the right to medical care for the pregnancy, labor, delivery, and postpartum recovery provided by a physician, advance practice nurse, or certified nurse midwife of her choice, after she notifies, in writing, the intended parent of her choice;

(2) An express term that, if the gestational carrier is married or in a civil union or domestic partnership, the spouse or partner agrees to the obligations imposed on the gestational carrier pursuant to the terms of the gestational carrier agreement and to surrender custody of the child to the intended parent immediately upon the child's birth; and

- (3) Express terms that the intended parent shall:
  - (a) Accept custody of the child immediately upon the child's birth; and
  - (b) Assume sole responsibility for the support of the child immediately upon the child's birth.
    - c. A gestational carrier agreement shall be presumed enforceable if:
      - (1) It satisfies the contractual requirements set forth in subsection a. of this section; and
      - (2) It contains at a minimum each of the terms set forth in subsection b. of this section.

In addition, an enforceable gestational carrier agreement shall include a provision setting forth the financial responsibilities of the parties and shall include a provision that the intended parent shall pay the gestational carrier's reasonable expenses, as defined herein, unless expressly waived, in whole or in part, in writing by the gestational carrier.

d. In the event that any of the requirements of this section are not met, a court of competent jurisdiction shall determine parentage based on the parties' intent.

#### 7. (New section) Duty to Support.

a. The establishment of the parent and child relationship pursuant to a valid gestational carrier agreement shall be the basis upon which an action for child support may be brought against the intended parent and acted upon by the court without further evidentiary proceedings.

b. The breach of the gestational carrier agreement by the intended parent shall not relieve the intended parent of the support obligations imposed by the parent and child relationship created by the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill).

c. Unless a person who donates gametes for use in assisted reproduction enters into a written contract to the contrary, the gamete donor is treated in law as if the gamete donor were not the legal parent of a child thereby conceived and shall have no rights or duties stemming from the conception of the child.

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

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

b. Attached to the complaint shall be:

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

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

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

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

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

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

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

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

h. All records and filings in connection with a gestational carrier agreement shall remain confidential and unavailable to the public, except that such records and filings may be made available to a child born as a result of a valid gestational carrier agreement who has attained at least 18 years of age and who has submitted a written, notarized request for the records or filings.

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

a. A gestational carrier agreement shall not be considered:

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

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

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

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

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

(cf: P.L.1983, c.17, s.2)

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

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

a. The natural mother, may be established by:

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

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

b. The natural father, may be established by proof that his paternity has been adjudicated under prior law; under the laws governing probate; by giving full faith and credit to a determination of paternity made by any other state or jurisdiction, whether established through voluntary acknowledgment or through judicial or administrative processes; by a Certificate of Parentage as provided in section 7 of P.L.1994, c.164 (C.26:8-28.1) that is executed by the father, including an unemancipated minor, prior to or after the birth of a child, and filed with the appropriate State agency; by a default judgment or order of the court; or by an order of the court based on a blood test or genetic test that satisfies or exceeds the specific threshold probability as set by subsection i. of section 11 of P.L.1983, c.17 (C.9:17-48) creating a rebuttable presumption of paternity.

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

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

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

(2) An intended parent, may be established by proof of an order of parentage related to a gestational carrier agreement executed in accordance with the provisions of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_) (pending before the Legislature as this bill);

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

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

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

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

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

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

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

(1) pay the costs of the genetic test and may recoup payment from the alleged father whose paternity is established; and

(2) obtain additional testing if the initial test results are contested, and upon the request and advance payment for the additional test by the contestant.

(cf: P.L.1998, c.1, s.38)

12. Section 6 of P.L.1983, c.17 (C.9:17-43) is amended to read as follows:

6. a. A man is presumed to be the biological father of a child if:

(1) He and the child's biological mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment or divorce;

(2) Before the child's birth, he and the child's biological mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(a) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 300 days after its termination by death, annulment or divorce; or

(b) if the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation;

(3) After the child's birth, he and the child's biological mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(a) he has acknowledged his paternity of the child in writing filed with the local registrar of vital statistics;

(b) he has sought to have his name placed on the child's birth certificate as the child's father, pursuant to R.S.26:8-40; or

(c) he openly holds out the child as his natural child; or

(d) he is obligated to support the child under a written voluntary agreement or court order;

(4) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child;

(5) While the child is under the age of majority, he provides support for the child and openly holds out the child as his natural child; or

(6) He acknowledges his paternity of the child in a writing filed with the local registrar of vital statistics, which shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the local registrar. If another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father. Each attempted acknowledgment, whether or not effective, shall be kept on file by the local registrar of vital statistics and shall entitle the person who filed it to notice of all proceedings concerning parentage and adoption of the child, as provided in section 10 of P.L.1983, c.17 (C.9:17-47) and pursuant to section 9 of P.L.1977, c.367 (C.9:3-45).

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

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

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

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

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

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

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

7. a. If, under the supervision of a licensed physician and with the consent of her husband or partner in a civil union, a [wife] woman is inseminated artificially with semen donated by a man not her husband or partner, the husband or partner is treated in law as if [he] the husband or partner were the natural [father] parent of a child thereby conceived. The [husband's] consent of the husband or partner shall be in writing and signed by [him and his wife] both parties to the marriage or civil union. The physician shall certify their signatures and the date of the insemination, upon forms provided by the Department of Health, and file the [husband's] consent with the State Department of Health, where it shall be kept confidential and in a sealed file. However, the physician's failure to do so shall not affect the [father] parent and child relationship of the husband or partner. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for compelling reasons clearly and convincingly shown.

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

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

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

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

15. Evidence relating to paternity may include:

- a. Evidence of sexual intercourse between the mother and alleged father at any possible time of conception;
  - b. An expert's opinion concerning the statistical probability of the alleged father's paternity, based upon the duration of the mother's pregnancy;
  - c. Genetic or blood tests, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;
  - d. Medical or anthropological evidence relating to the alleged father's paternity of the child, based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; [and]
  - e. All other evidence on behalf of any party, relevant to the issue of paternity of the child; and
  - f. A gestational carrier agreement executed in accordance with the provisions of P.L. \_\_\_\_, c. \_\_\_\_ (C. \_\_\_\_) (pending before the Legislature as this bill).
- (cf: P.L.1983, c.17, s.15)

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

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

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

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

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

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

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

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

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

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

## STATEMENT

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

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

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

This bill requires that the agreement be in writing and executed by the gestational carrier, her spouse or partner in a civil union or domestic partnership, if any, and the intended parent. If the intended parent is married or in a domestic partnership or civil union at the time the intended parent enters the agreement, both spouses or partners are required to enter into the agreement as intended parents. If the intended parent is not married or in a civil union or domestic partnership, any other person who wishes to be an intended parent must duly execute the agreement as an intended parent.

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

The agreement is required to include express terms providing that the gestational carrier agrees to undergo pre-embryo transfer, attempt to carry and give birth to the child, and surrender custody of the child to the intended parent immediately upon the birth of the child. Additionally, the agreement is to expressly state that the

gestational carrier has the right to have medical care for the pregnancy, labor, delivery, and postpartum care provided by a physician, advanced practice nurse, or certified nurse midwife of her choice after notifying the intended parents of her choice. The agreement is required to include a provision that the gestational carrier's spouse or partner in a civil union or domestic partnership, if any, agrees to the obligations imposed on the gestational carrier and to surrender custody of the child immediately upon the birth of the child. With regard to the intended parent, the agreement is required to include express terms that the intended parent agrees to accept custody of the child immediately upon the birth of the child and assume sole responsibility for the support of the child. An agreement including these terms would be presumed enforceable.

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

A parent and child relationship established by a valid gestational carrier agreement is the basis for a child support order and an intended parent would be legally obligated to support the child even in the event that the intended parent breaches the agreement. A person who only donates gametes for use in assisted reproduction would have no rights or duties with respect to a child born of a gestational carrier agreement unless the donor enters into a written contract to the contrary.

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

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

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

The bill provides that the court, to the extent possible, is to schedule and expedite the hearing. All records and filings in connection with a gestational carrier agreement are to remain confidential and unavailable to the

public, except that such records and filings may be made available to a child born of a valid gestational carrier agreement who has attained at least 18 years of age and who submits a written, notarized request for the records or filings. The attorney representing the intended parent is to be present at the hearing unless the court waives an appearance. The court is to enter an order of parentage upon finding the parties complied with the statutory requirements to enter into a gestational carrier agreement.

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

Under the bill, a valid gestational carrier agreement is not to be considered an adoption pursuant to Title 9 of the Revised Statutes, or a surrender of custody or a termination of parental rights in violation of Title 9 of the Revised Statutes. Additionally, the payment of reasonable expenses in connection with a valid gestational carrier agreement would not constitute a violation of section 18 of P.L.1993, c.345 (C.9:3-39.1).

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

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