

TITLE 7
SPECIAL PROCEEDINGS

CHAPTER 16
GESTATIONAL AGREEMENTS ACT

7-1601. SHORT TITLE. This chapter shall be known and may be cited as the "Gestational Agreements Act."

[7-1601, added 2023, ch. 228, sec. 1, p. 701.]

7-1602. PURPOSE. The purpose of this chapter is to:

- (1) Facilitate the use of gestational agreements in accordance with the public policy of the state of Idaho;
- (2) Establish consistent standards and procedural safeguards for the protection of all parties to gestational agreements;
- (3) Protect the welfare of children born as a result of gestational agreements; and
- (4) Clarify the parentage of children born under the terms of gestational agreements.

[7-1602, added 2023, ch. 228, sec. 1, p. 701.]

7-1603. DEFINITIONS. As used in this chapter:

- (1) "Assisted reproduction" means the laboratory and medical procedures used by a medical professional in which human gametes are used outside the body for reproductive purposes.
- (2) "Gamete" means a mature male or female germ cell usually possessing a haploid chromosome set and capable of initiating formation of a new diploid individual by fusion with a gamete of the opposite sex.
- (3) "Genetic testing" means an analysis of genetic markers to exclude or identify a person as the parent of a child, including an analysis of one (1) or a combination of the following:
 - (a) Deoxyribonucleic acid; and
 - (b) Blood group antigens, red cell antigens, human leukocyte antigens, serum enzymes, serum proteins, or red cell enzymes.
- (4) "Gestational agreement" means a contract under which a gestational carrier agrees to become pregnant by means of assisted reproduction in order to give birth to a child who will be parented by an intended parent.
- (5) "Gestational carrier" means an adult woman who:
 - (a) Becomes pregnant or intends to become pregnant under the terms of a gestational agreement; or
 - (b) Gives birth or intends to give birth to a child under the terms of a gestational agreement.
- (6) "Intended parent" means an individual who intends to be the parent of a child born under the terms of a gestational agreement.
 - (a) There may be one (1) intended parent or two (2) intended parents under a gestational agreement.
 - (b) Except where context otherwise requires, any provision of this chapter relating to an intended parent shall relate to both intended parents if there are two (2).
- (7) "Order of parentage" means an order issued by a court or administrative body with authority to issue the order, which order identifies the legal parent or parents of a child born under the terms of a gestational agreement.

[7-1603, added 2023, ch. 228, sec. 1, p. 702.]

7-1604. GESTATIONAL AGREEMENT. (1) Prior to assisted reproduction, a gestational carrier and an intended parent shall enter into a written gestational agreement. If the gestational carrier is married, her spouse shall also be a party to the agreement. Neither the gestational carrier nor her spouse may contribute gametes for use in assisted reproduction under the gestational agreement.

(2) The gestational agreement shall provide that the intended parent will be the parent of any child conceived through assisted reproduction and born under the terms of the agreement.

(3) The gestational agreement shall include the following:

(a) Acceptance by the intended parent of all rights and duties of a parent for any child conceived through assisted reproduction and born under the terms of the gestational agreement;

(b) Verification that:

(i) All parties to the agreement are at least twenty-one (21) years of age;

(ii) The gestational carrier has given birth to a live child at least once before; and

(iii) The gestational carrier agrees to become pregnant by means of assisted reproduction; and

(c) Relinquishment by the prospective gestational carrier, the prospective gestational carrier's spouse if she is married, and the prospective donor of a gamete for use in assisted reproduction if such prospective donor is not an intended parent of all rights and duties of a parent for any child conceived through assisted reproduction and born under the terms of the agreement.

(4) A prospective gestational carrier may not be receiving public assistance as defined by section [56-201](#), Idaho Code.

(5) A gestational agreement may provide for payment of consideration.

(6) A gestational agreement shall not limit the right of the gestational carrier to make decisions to safeguard her health or that of an embryo or a fetus that she is carrying.

(7) In matters relating to the gestational agreement, the gestational carrier and the intended parent shall have independent legal representation.

[7-1604, added 2023, ch. 228, sec. 1, p. 702.]

7-1605. VALIDATION OF AGREEMENT. (1) A gestational agreement entered under this chapter is enforceable only if it is validated pursuant to this section.

(2) For a gestational agreement to be validated pursuant to this section, at least one (1) party to the agreement must reside in Idaho and have so resided for at least six (6) months prior to entering into the gestational agreement or have contacts with the state of Idaho sufficient to justify jurisdiction in the opinion of an Idaho district court.

(3) The parties seeking validation of a gestational agreement shall file a petition in an Idaho district court.

(a) The petition shall be filed after entry of the agreement but no later than seven (7) days after the birth of a child under the terms of the agreement.

(b) The gestational agreement shall be attached to the petition.

(4) The district court may hold a hearing to determine the validity of the agreement. The district court shall issue an order validating the agreement and declaring that the intended parent is or will be the parent of any child born under the terms of the agreement upon finding that:

- (a) The gestational agreement satisfies the provisions of this chapter;
- (b) The parties have voluntarily entered into the agreement and understand its terms;
- (c) Adequate provision has been made for all reasonable health care expenses associated with the gestational agreement, including responsibility for those expenses if the agreement is terminated; and
- (d) The consideration provided for in the agreement, if any, is reasonable.

[7-1605, added 2023, ch. 228, sec. 1, p. 703.]

7-1606. TERMINATION OF AGREEMENT. (1) A party to a gestational agreement may terminate the agreement at any time prior to the gestational carrier becoming pregnant by means of assisted reproduction under the terms of the agreement. The terminating party must give written notice of termination to the other parties.

(a) If the agreement has been validated pursuant to section [7-1605](#), Idaho Code, the terminating party shall file notice of termination with the district court, and the court shall vacate the order of validation.

(b) Failure to provide the notice required by paragraph (a) of this subsection shall be considered contempt of the authority of the court pursuant to [chapter 6, title 7](#), Idaho Code.

(2) The district court for good cause shown may terminate a gestational agreement.

(3) Neither a gestational carrier nor a gestational carrier's spouse shall be liable to any intended parent for terminating a gestational agreement.

[7-1606, added 2023, ch. 228, sec. 1, p. 703.]

7-1607. PARENTAGE UNDER A VALIDATED GESTATIONAL AGREEMENT. (1) This section shall apply in determining the parentage of a child born under the terms of a gestational agreement that has been validated pursuant to section [7-1605](#), Idaho Code.

(2) No later than fourteen (14) days after the birth of the child, the intended parent shall file notice of the birth with the district court that issued the validation order. The court shall then issue an order of parentage confirming that the intended parent is the parent of the child and directing the state registrar of vital statistics to file a birth certificate naming the intended parent as the parent of the child. If necessary, the court shall further order that the child be surrendered to the intended parent. The order of parentage shall contain the following information:

- (a) The child's full name;
- (b) The child's date of birth;
- (c) The child's place of birth;
- (d) The gestational carrier's full name;
- (e) The full name of the gestational carrier's spouse, if the gestational carrier is married; and
- (f) The full name of each intended parent.

(3) If the intended parent fails to file notice as required under subsection (2) of this section, the gestational carrier or the department of health and welfare may file such notice, and the court shall order that the intended parent is the parent of the child and financially responsible for the child.

(4) Failure to file notice required by this section shall be considered contempt of the authority of the court pursuant to [chapter 6, title 7](#), Idaho Code.

[7-1607, added 2023, ch. 228, sec. 1, p. 703.]

7-1608. DISPUTED PARENTAGE. (1) If a party to a gestational agreement validated pursuant to section [7-1605](#), Idaho Code, disputes the parentage of a child allegedly born under the terms of the agreement, the court that issued the validation order shall order genetic testing to determine the parentage of the child.

(a) If the results of genetic testing are consistent with assisted reproduction as provided for in the agreement, then parentage shall be determined according to the agreement.

(b) If the results of genetic testing are inconsistent with assisted reproduction as provided for in the agreement, then parentage shall be determined according to other applicable law.

(2) If a child is born under the terms of an agreement found to be invalid and parentage of the child is disputed, then parentage shall be determined according to other applicable law.

[7-1608, added 2023, ch. 228, sec. 1, p. 704.]

7-1609. SEALED RECORD OF PROCEEDING. On the motion of any party to a proceeding under this chapter, the district court shall order that the record of its proceedings under this chapter be sealed. When such order has been made and entered, the court shall seal the record, and thereafter the seal shall not be broken except on the motion of a party to the proceeding or of a person whose parentage was determined under this chapter. If the seal is broken, the record may again be sealed as provided in this section.

[7-1609, added 2023, ch. 228, sec. 1, p. 704.]

7-1610. JURISDICTION. Subject to the jurisdictional standards of [chapter 11, title 32](#), Idaho Code, the court that conducts a proceeding under this chapter shall have exclusive, continuing jurisdiction of all matters arising out of the gestational agreement until a child born under the terms of the agreement attains the age of one hundred eighty (180) days.

[7-1610, added 2023, ch. 228, sec. 1, p. 704.]

7-1611. FULL FAITH AND CREDIT. (1) An order of parentage issued by a court or administrative body of another state with jurisdiction to make the order shall be entitled to full faith and credit and shall be accepted by the courts of this state.

(2) To certify an order of parentage issued in another state, a person seeking to register the order shall:

(a) Provide, to the court or administrative body that issued the order, notice of intent to register the order in this state; and

(b) File as a foreign judgment certified copies of the order in a court of any appropriate county of this state.

[7-1611, added 2023, ch. 228, sec. 1, p. 704.]

7-1612. MEDICAL INFORMATION OF DONOR. A gestational agreement may provide for the disclosure of a gamete donor's medical information to a child born according to the terms of the gestational agreement and may describe the circumstances warranting such disclosure. However, if a gamete donor wishes to remain anonymous, only non-identifying medical information may be disclosed pursuant to the gestational agreement.

[7-1612, added 2023, ch. 228, sec. 1, p. 705.]