

GESTATIONAL AGREEMENT AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Patrice M. Arent

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill addresses a hearing before a tribunal to validate a gestational agreement.

Highlighted Provisions:

This bill:

- ▶ addresses the Utah Supreme Court's decision in *In re Gestational Agreement*, 2019 UT 40, 449 P.3d 69;
- ▶ repeals a requirement that a party demonstrate certain medical evidence in order to obtain a valid gestational agreement from a tribunal; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-15-803, as renumbered and amended by Laws of Utah 2008, Chapter 3

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78B-15-803** is amended to read:

78B-15-803. Hearing to validate gestational agreement.

(1) If the requirements of Subsection (2) are satisfied, a tribunal may issue an order validating the gestational agreement and declaring that the intended parents will be the parents

30 of a child born during the term of the agreement.

31 (2) The tribunal may issue an order under Subsection (1) only on finding that:

32 (a) the residence requirements of Section 78B-15-802 have been satisfied and the
33 parties have submitted to the jurisdiction of the tribunal under the jurisdictional standards of
34 this part;

35 [~~(b) medical evidence shows that the intended mother is unable to bear a child or is~~
36 ~~unable to do so without unreasonable risk to her physical or mental health or to the unborn~~
37 ~~child;~~]

38 [~~(c)~~] (b) unless waived by the tribunal, a home study of the intended parents has been
39 conducted in accordance with Sections 78B-6-128 through 78B-6-131, and the intended
40 parents meet the standards of fitness applicable to adoptive parents;

41 [~~(d)~~] (c) all parties have participated in counseling with a licensed mental health
42 professional as evidenced by a certificate;

43 (i) signed by the licensed mental health professional [~~which~~] that affirms that all parties
44 have discussed options and consequences of the agreement; and

45 (ii) presented to the tribunal;

46 [~~(e)~~] (d) all parties have voluntarily entered into the agreement and understand [~~its~~] the
47 agreement's terms;

48 [~~(f)~~] (e) the prospective gestational mother has had at least one pregnancy and delivery
49 and her bearing another child will not pose an unreasonable health risk to the unborn child or to
50 the physical or mental health of the prospective gestational mother;

51 [~~(g)~~] (f) adequate provision has been made for all reasonable health-care expense
52 associated with the gestational agreement until the birth of the child, including responsibility
53 for [~~those expenses~~] all reasonable health-care expense if the agreement is terminated;

54 [~~(h)~~] (g) the consideration, if any, paid to the prospective gestational mother is
55 reasonable;

56 [~~(i)~~] (h) all the parties to the agreement are 21 years [~~of age~~] old or older;

57 [~~(j)~~] (i) the gestational mother's eggs are not being used in the assisted reproduction

58 procedure; and

59 ~~[(k)]~~ (j) if the gestational mother is married, her husband's sperm is not being used in
60 the assisted reproduction procedure.

61 (3) Whether to validate a gestational agreement is within the discretion of the tribunal,
62 subject only to review for abuse of discretion.