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**GESTATIONAL AGREEMENT REQUIREMENTS**  
2024 GENERAL SESSION  
STATE OF UTAH  
**Chief Sponsor: Stephanie Pitcher**  
House Sponsor: Robert M. Spendlove

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**LONG TITLE**

**General Description:**

This bill amends provisions relating to gestational agreements.

**Highlighted Provisions:**

This bill:

- amends requirements regarding a prospective gestational mother's spouse; and
- makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

- 78B-15-801**, as renumbered and amended by Laws of Utah 2008, Chapter 3
  - 78B-15-802**, as renumbered and amended by Laws of Utah 2008, Chapter 3
  - 78B-15-803**, as last amended by Laws of Utah 2020, Chapter 101
  - 78B-15-806**, as renumbered and amended by Laws of Utah 2008, Chapter 3
  - 78B-15-808**, as renumbered and amended by Laws of Utah 2008, Chapter 3
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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **78B-15-801** is amended to read:

**78B-15-801 . Gestational agreement authorized.**

- (1) A prospective gestational mother, [~~her husband~~] the prospective gestational mother's spouse if [~~she~~] the prospective gestational mother is married, a donor or the donors, and the intended parents may enter into a written agreement providing that:
  - (a) the prospective gestational mother agrees to pregnancy by means of assisted

- 29 reproduction;
- 30 (b) the prospective gestational mother, [~~her husband~~] the prospective gestational mother's  
 31 spouse if [~~she~~] the prospective gestational mother is married, and the donors  
 32 relinquish all rights and duties as the parents of a child conceived through assisted  
 33 reproduction; and
- 34 (c) the intended parents become the parents of the child.
- 35 (2) The intended gestational mother may not currently be receiving Medicaid or any other  
 36 state assistance.
- 37 (3) (a) The intended parents shall be married[~~, and both spouses~~] .  
 38 (b) Both intended parents must be parties to the gestational agreement.
- 39 (4) A gestational agreement is enforceable only if validated as provided in Section  
 40 78B-15-803.
- 41 (5) A gestational agreement does not apply:  
 42 (a) to the birth of a child conceived by means of sexual intercourse; or  
 43 (b) if neither intended parent is a donor.
- 44 (6) The parties to a gestational agreement shall be 21 years [~~of age~~] old or older.
- 45 (7) The gestational mother's eggs may not be used in the assisted reproduction procedure.
- 46 (8) If the gestational mother is married, [~~her husband's~~] the gestational mother's spouse's  
 47 sperm or eggs may not be used in the assisted reproduction procedure.
- 48 Section 2. Section **78B-15-802** is amended to read:  
 49 **78B-15-802 . Requirements of petition.**
- 50 (1) The intended parents and the prospective gestational mother may file a petition in the  
 51 district tribunal to validate a gestational agreement.
- 52 (2) A petition to validate a gestational agreement may not be maintained unless either the  
 53 mother or intended parents have been residents of this state for at least 90 days.
- 54 (3) The prospective gestational mother's [~~husband~~] spouse, if [~~she~~] the prospective  
 55 gestational mother is married, must join in the petition.
- 56 (4) A copy of the gestational agreement must be attached to the petition.
- 57 Section 3. Section **78B-15-803** is amended to read:  
 58 **78B-15-803 . Hearing to validate gestational agreement.**
- 59 (1) If the requirements of Subsection (2) are satisfied, a tribunal may issue an order  
 60 validating the gestational agreement and declaring that the intended parents will be the  
 61 parents of a child born during the term of the agreement.
- 62 (2) The tribunal may issue an order under Subsection (1) only on finding that:

- 63 (a) the residence requirements of Section 78B-15-802 have been satisfied and the parties  
64 have submitted to the jurisdiction of the tribunal under the jurisdictional standards of  
65 this part;
- 66 (b) unless waived by the tribunal, a home study of the intended parents has been  
67 conducted in accordance with Sections 78B-6-128 through 78B-6-131, and the  
68 intended parents meet the standards of fitness applicable to adoptive parents;
- 69 (c) all parties have participated in counseling with a licensed mental health professional  
70 as evidenced by a certificate:
- 71 (i) signed by the licensed mental health professional that affirms that all parties have  
72 discussed options and consequences of the agreement; and
- 73 (ii) presented to the tribunal;
- 74 (d) all parties have voluntarily entered into the agreement and understand the  
75 agreement's terms;
- 76 (e) the prospective gestational mother has had at least one pregnancy and delivery and [  
77 ~~her~~] the prospective gestational mother's bearing another child will not pose an  
78 unreasonable health risk to the unborn child or to the physical or mental health of the  
79 prospective gestational mother;
- 80 (f) adequate provision has been made for all reasonable health-care expense associated  
81 with the gestational agreement until the birth of the child, including responsibility for  
82 all reasonable health-care expense if the agreement is terminated;
- 83 (g) the consideration, if any, paid to the prospective gestational mother is reasonable;
- 84 (h) all the parties to the agreement are 21 years old or older;
- 85 (i) the gestational mother's eggs are not being used in the assisted reproduction  
86 procedure; and
- 87 (j) if the gestational mother is married, [~~her husband's sperm is~~] the gestational mother's  
88 spouse's sperm or eggs are not being used in the assisted reproduction procedure.
- 89 (3) Whether to validate a gestational agreement is within the discretion of the tribunal,  
90 subject only to review for abuse of discretion.

91 Section 4. Section **78B-15-806** is amended to read:

92 **78B-15-806 . Termination of gestational agreement.**

- 93 (1) After issuance of an order under this part, but before the prospective gestational mother  
94 becomes pregnant by means of assisted reproduction, the prospective gestational mother, [  
95 ~~her husband~~] the prospective gestational mother's spouse, or either of the intended  
96 parents may terminate the gestational agreement only by giving written notice of

97 termination to all other parties.

98 (2) The tribunal for good cause shown also may terminate the gestational agreement.

99 (3) An individual who terminates an agreement shall file notice of the termination with the  
100 tribunal. On receipt of the notice, the tribunal shall vacate the order issued under this  
101 part. An individual who does not notify the tribunal of the termination of the agreement  
102 is subject to appropriate sanctions.

103 (4) [~~Neither a prospective gestational mother nor her husband, if any, is liable~~] A  
104 prospective gestational mother, or the prospective gestational mother's spouse if married,  
105 is not liable to the intended parents for terminating an agreement pursuant to this section.

106 Section 5. Section **78B-15-808** is amended to read:

107 **78B-15-808 . Gestational agreement -- Miscellaneous provisions.**

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

109 (2) A gestational agreement may not limit the right of the gestational mother to make  
110 decisions to safeguard [~~her~~] the gestational mother's health or that of the embryo or fetus.

111 (3) After the issuance of an order under this part, subsequent marriage of the gestational  
112 mother does not affect the validity of a gestational agreement, and [~~her husband's~~] the  
113 gestational mother's spouse's consent to the agreement is not required, nor is [~~her~~  
114 ~~husband~~] the gestational mother's spouse a presumed [~~father~~] parent of the resulting child.

115 Section 6. **Effective date.**

116 This bill takes effect on May 1, 2024.