

SENATE, No. 482

STATE OF NEW JERSEY
218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Co-Sponsored by:

Senator Ruiz

SYNOPSIS

Authorizes certain gestational carrier agreements.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning gestational carrier agreements, supplementing
2 Title 9 of the Revised Statutes and amending P.L.1983, c.17 and
3 R.S.26:8-28.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. (New section) Title.

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

11
12 2. (New section) Purpose.

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

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

17 (1) Establish consistent standards and procedural safeguards to
18 promote the best interests of the children who will be born as a
19 result of gestational carrier agreements executed pursuant to
20 P.L. , c. (C.)(pending before the Legislature as this bill);

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

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

28
29 3. (New section) Definitions.

30 As used in this act:

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

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

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

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

43 “Donor” means a person who contributes gametes for use in
44 assisted reproduction. The term does not include an intended parent

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 who contributes gametes to be used in assisted reproduction
2 pursuant to a valid gestational carrier agreement.

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

4 “Gamete” means sperm or egg.

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

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

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

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

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

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

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

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

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

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

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

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

13
14 4. (New section) Rights of Parentage.

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

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

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

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

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

36
37 5. (New section) Eligibility.

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

42 (1) Is at least 21 years of age;

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

44 (3) Has completed a medical evaluation approving her
45 suitability to serve as a gestational carrier;

46 (4) Has completed a psychological evaluation approving her
47 suitability to serve as a gestational carrier;

1 (5) Has retained an attorney, independent of the intended parent,
2 but for whose services the intended parent may pay, who has
3 consulted with her about the terms of the gestational carrier
4 agreement and the potential legal consequences of being a
5 gestational carrier under the terms of this agreement.

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

10 (1) Has completed a psychological evaluation approving the
11 intended parent's suitability to participate in a gestational carrier
12 agreement; and

13 (2) Is represented by an attorney who consulted with the
14 intended parent about the terms of the gestational carrier agreement
15 and the potential legal consequences of the agreement.

16

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

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

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

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

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

43 b. A gestational carrier agreement shall provide:

44 (1) Express terms that the gestational carrier shall:

45 (a) Undergo pre-embryo transfer and attempt to carry and give
46 birth to the child;

47 (b) Surrender custody of the child to the intended parent
48 immediately upon the child's birth; and

1 (c) Have the right to medical care for the pregnancy, labor,
2 delivery, and postpartum recovery provided by a physician, advance
3 practice nurse, or certified nurse midwife of her choice, after she
4 notifies, in writing, the intended parent of her choice;

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

11 (3) Express terms that the intended parent shall:

12 (a) Accept custody of the child immediately upon the child's
13 birth; and

14 (b) Assume sole responsibility for the support of the child
15 immediately upon the child's birth.

16 c. A gestational carrier agreement shall be presumed
17 enforceable if:

18 (1) It satisfies the contractual requirements set forth in
19 subsection a. of this section; and

20 (2) It contains at a minimum each of the terms set forth in
21 subsection b. of this section.

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

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

31
32 7. (New section) Duty to Support.

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

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

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

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

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

9 b. Attached to the complaint shall be:

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

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

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

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

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

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

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

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

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

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

3 a. A gestational carrier agreement shall not be considered:

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

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

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

11
12 10. Section 2 of P.L.1983, c.17 (C.9:17-39) is amended to read
13 as follows:

14 2. As used in this act, "parent and child relationship" means the
15 legal relationship existing between a child and the child's natural or
16 adoptive parents or between the child and the child's intended
17 parents pursuant to a gestational carrier agreement executed in
18 accordance with the provisions of P.L. , c. (C.)(pending
19 before the Legislature as this bill), incident to which the law confers
20 or imposes rights, privileges, duties, and obligations. It includes the
21 mother and child relationship and the father and child relationship.
22 (cf: P.L.1983, c.17, s.2)

23
24 11. Section 4 of P.L.1983, c.17 (C.9:17-41) is amended to read
25 as follows:

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

27 a. The natural mother, may be established by:

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

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

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

47 In accordance with **【section 331 of Pub.L.104-193】 42 U.S.C.**
48 **s.666(a)(5)**, a signed voluntary acknowledgment of paternity shall

1 be considered a legal finding of paternity subject to the right of the
2 signatory to rescind the acknowledgment within 60 days of the date
3 of signing, or by the date of establishment of a support order to
4 which the signatory is a party, whichever is earlier.

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

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

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

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

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

24 f. In any case in which the parties execute a Certificate of
25 Parentage or a rebuttable presumption of paternity is created
26 through genetic testing, the presumption of paternity under section
27 6 of P.L.1983, c.17 (C.9:17-43) shall not apply;

28 g. Pursuant to the provisions of [section 331 of Pub.L.104-
29 193] 42 U.S.C. s.666(a)(5), the child and other parties in a
30 contested paternity case shall submit to a genetic test upon the
31 request of one of the parties, unless that person has good cause for
32 refusal, if the request is supported by a sworn statement by the
33 requesting party:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33
34 13. Section 7 of P.L.1983, c.17 (C.9:17-44) is amended to read
35 as follows:

36 7. a. If, under the supervision of a licensed physician and with
37 the consent of her husband or partner in a civil union, a **【wife】**
38 woman is inseminated artificially with semen donated by a man not
39 her husband or partner, the husband or partner is treated in law as if
40 **【he were the natural father】** the husband or partner were the natural
41 parent of a child thereby conceived. The **【husband's】** consent of
42 the husband or partner shall be in writing and signed by **【him and**
43 **his wife】** both parties to the marriage or civil union. The physician
44 shall certify their signatures and the date of the insemination, upon
45 forms provided by the Department of Health, and file the
46 **【husband's】** consent with the State Department of Health, where it
47 shall be kept confidential and in a sealed file. However, the

1 physician's failure to do so shall not affect the **【father】** parent and
2 child relationship of the husband or partner. All papers and records
3 pertaining to the insemination, whether part of the permanent record
4 of a court or of a file held by the supervising physician or
5 elsewhere, are subject to inspection only upon an order of the court
6 for compelling reasons clearly and convincingly shown.

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

14 c. This section shall not apply in a proceeding to determine
15 parentage of a child born in connection with a gestational carrier
16 agreement executed in accordance with the provisions of P.L. _____,

17 c. (C. _____)(pending before the Legislature as this bill).
18 (cf: P.L.1983, c.17, s.7)

19
20 14. Section 15 of P.L.1983, c.17 (C.9:17-52) is amended to read
21 as follows:

22 15. Evidence relating to paternity may include:

23 a. Evidence of sexual intercourse between the mother and
24 alleged father at any possible time of conception;

25 b. An expert's opinion concerning the statistical probability of
26 the alleged father's paternity, based upon the duration of the
27 mother's pregnancy;

28 c. Genetic or blood tests, weighted in accordance with
29 evidence, if available, of the statistical probability of the alleged
30 father's paternity;

31 d. Medical or anthropological evidence relating to the alleged
32 father's paternity of the child, based on tests performed by experts.
33 If a man has been identified as a possible father of the child, the
34 court may, and upon request of a party shall, require the child, the
35 mother, and the man to submit to appropriate tests; **【and】**

36 e. All other evidence on behalf of any party, relevant to the
37 issue of paternity of the child; and

38 f. A gestational carrier agreement executed in accordance with
39 the provisions of P.L. _____, c. _____ (C. _____)(pending before the
40 Legislature as this bill).

41 (cf: P.L.1983, c.17, s.15)

42
43 15. R.S.26:8-28 is amended to read as follows:

44 26:8-28. a. (1) Except as provided by subsection e. of this
45 section, within five days after each birth, there shall be filed with
46 the local registrar of the district in which the birth occurred a
47 certificate of the birth filled out with durable black or blue ink in a
48 legible manner.

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

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

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

18 b. As part of the birth record, all information required by the
19 State IV-D agency pursuant to section 7 of P.L.1994, c.164 (C.26:8-
20 28.1) shall be recorded on a separate form provided or approved by
21 the State registrar pursuant to subsection c. of R.S.26:8-24, and
22 filed with the State IV-D agency pursuant to R.S.26:8-30 and
23 R.S.26:8-31 for the establishment and enforcement of child support
24 matters in the State. For the purposes of this subsection, "State IV-
25 D agency" means the agency in the Department of Human Services
26 designated to administer the Title IV-D Child Support Program.

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

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

34 e. Notwithstanding the provisions of subsection a. of this
35 section to the contrary, the filing of a child's birth certificate may be
36 delayed, based on the parent's religious beliefs, until such time as
37 the child is named; however, no such delay shall result in the filing
38 of the birth certificate more than 15 days after the child's date of
39 birth. Any parent whose religious beliefs necessitate a delay in the
40 filing of a birth certificate pursuant to this subsection, shall: (1)
41 provide notice of the religious need for a filing delay, within five
42 days after the child's date of birth, to the person who is responsible
43 for filing the birth certificate, as provided by R.S.26:8-30 or
44 R.S.26:8-31, except that, if the parent is responsible for such filing,
45 no such notice shall be required; and (2) file the child's birth
46 certificate, or authorize such filing by the person responsible
47 therefor, as soon as possible after the child is named, but in no case
48 more than 15 days after the child's birth. If a child is not named

1 within the 15-day extended timeframe provided by this subsection,
2 the child's birth certificate shall be filed, and the naming procedure
3 outlined in R.S.26:8-34 shall be applied.
4 (cf: P.L.2017, c.4, s.1)

5
6 16. This act shall take effect immediately and shall apply only to
7 gestational carrier agreements entered into on or after the effective
8 date.

11 STATEMENT

12
13 This bill, entitled the "New Jersey Gestational Carrier Agreement
14 Act," would authorize gestational carrier agreements. A gestational
15 carrier agreement is a written contract pursuant to which a woman
16 agrees to carry and give birth to a child with whom she has no genetic
17 relationship and who is created using assisted reproduction on behalf
18 of an intended parent. Upon the birth of the child, the intended parent
19 becomes the legal parent of the child and the woman, who is called a
20 "gestational carrier," has no parental rights or obligations.

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

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

43 This bill requires that the agreement be in writing and executed by
44 the gestational carrier, her spouse or partner in a civil union or
45 domestic partnership, if any, and the intended parent. If the intended
46 parent is married or in a domestic partnership or civil union at the time
47 the intended parent enters the agreement, both spouses or partners are
48 required to enter into the agreement as intended parents. If the

1 intended parent is not married or in a civil union or domestic
2 partnership, any other person who wishes to be an intended parent
3 must duly execute the agreement as an intended parent.

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

8 The agreement is required to include express terms providing that
9 the gestational carrier agrees to undergo pre-embryo transfer, attempt
10 to carry and give birth to the child, and surrender custody of the child
11 to the intended parent immediately upon the birth of the child.
12 Additionally, the agreement is to expressly state that the gestational
13 carrier has the right to have medical care for the pregnancy, labor,
14 delivery, and postpartum care provided by a physician, advanced
15 practice nurse, or certified nurse midwife of her choice after notifying
16 the intended parents of her choice. The agreement is required to
17 include a provision that the gestational carrier's spouse or partner in a
18 civil union or domestic partnership, if any, agrees to the obligations
19 imposed on the gestational carrier and to surrender custody of the child
20 immediately upon the birth of the child. With regard to the intended
21 parent, the agreement is required to include express terms that the
22 intended parent agrees to accept custody of the child immediately upon
23 the birth of the child and assume sole responsibility for the support of
24 the child. An agreement including these terms would be presumed
25 enforceable.

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

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

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

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

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

24 The bill provides that the court, to the extent possible, is to
25 schedule and expedite the hearing. All records and filings in
26 connection with a gestational carrier agreement are to remain
27 confidential and unavailable to the public, except that such records and
28 filings may be made available to a child born of a valid gestational
29 carrier agreement who has attained at least 18 years of age and who
30 submits a written, notarized request for the records or filings. The
31 attorney representing the intended parent is to be present at the hearing
32 unless the court waives an appearance. The court is to enter an order
33 of parentage upon finding the parties complied with the statutory
34 requirements to enter into a gestational carrier agreement.

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

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

46 This bill would amend sections 2 and 4 of P.L.1983, c.17 (C.9:17-
47 39 and C.9:17-41), which concern the definition and establishment of
48 the parent and child relationship, to include intended parents pursuant

1 to a valid gestational carrier agreement. It would also amend section
2 15 of P.L.1983, c.17 (C.9:17-52) to provide that a valid gestational
3 carrier agreement may serve as evidence of paternity. This bill would
4 provide that the ordinary presumptions of paternity set forth in section
5 6 of P.L.1983, c.17 (C.9:17-43) and the provisions of section 7 of
6 P.L.1983, c.17 (C.9:17-44), which pertains to artificial insemination,
7 do not apply to a child born pursuant to a valid gestational carrier
8 agreement. Finally, the bill would amend R.S.26:8-28 to provide that
9 the intended parent's name appear on the birth certificate as the parent
10 of a child born pursuant to a valid gestational carrier agreement.

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