

Adopted by voice vote

RECOMMENDATION

- 1 RESOLVED, That the American Bar Association approves the Model Act Governing Assisted
- 2 Reproductive Technology, dated February 2008, as appropriate legislation and recommends
- 3 consideration and adoption of the Model Act by appropriate governmental agencies.

(Deletions struck through; Additions underlined)

**AMERICAN BAR ASSOCIATION MODEL ACT GOVERNING
ASSISTED REPRODUCTIVE TECHNOLOGY
(February 2008)**

ARTICLE 1. GENERAL PROVISIONS

SECTION 102. DEFINITIONS

...

2. “Assisted reproductive technology” (ART) is any medical or scientific intervention, including assisted ~~conception~~, reproduction provided for the purpose of achieving live birth that results from assisted conception. Assisted conception means the formation of a human embryo with the intent to produce a live birth.

...

22. “Medical evaluation” means an evaluation and consultation of a physician meeting the requirements of Section ~~43~~ 903.

...

24. “Mental health evaluation” means an evaluation and consultation of a mental health professional meeting the requirements of Section ~~43~~ 301.

...

30. “Preservation” or “preserve” means maintaining organ, tissue, or cellular utility, including, but not limited to, the freezing and storing thereof through cryopreservation, for use in assisted conception.

SECTION 103. GENDER NEUTRALITY

Insofar as practicable, the provisions of this Act shall be applied in a gender-neutral manner.

ARTICLE 2. INFORMED CONSENT

SECTION 201. INFORMED CONSENT STANDARDS

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...

2. Informed consent requires that all of the following be provided to all participants orally and in a record that meets the requirements of Section 202:

...

(b) A statement that the ~~gamete~~ donor's, if any, right to withhold or withdraw consent to fertilization terminates upon retrieval of his or her gametes, subject only to the terms of any prior agreement in a record pursuant to Article 5.

...

SECTION 203. DISCLOSURES

1. Disposition of ~~frozen~~ preserved embryos. Prior to each retrieval and each transfer, a provider must disclose to all participants who have not waived that right in a record the following possible dispositions of embryos, together with a statement as to which are allowed under applicable law:

...

SECTION 205. COLLECTION OF GAMETES OR EMBRYOS FROM PRESERVED TISSUE OR FROM DECEASED OR INCOMPETENT PERSONS

...

3. If gametes or embryos are collected pursuant to paragraphs ~~1 and~~ 2 of this Section, transfer of gametes or of an embryo is expressly prohibited unless approved by a Court. Absence of a record as described in Paragraph 1 shall constitute a presumption of non-consent.

...

ARTICLE 3. MENTAL HEALTH CONSULTATION/ADDITIONAL COUNSELING

SECTION 301. CONSULTATION AS TO MENTAL HEALTH

...

3. ~~Qualified m-~~ Mental health professional is a person who:

...

SECTION 302. ADDITIONAL COUNSELING REQUIREMENTS

...

2. Opportunity to receive counseling. It shall be conclusively presumed that a participant has had the opportunity to receive additional counseling from a mental health professional pursuant to Section 301 if that individual signs a statement containing the following language:

“I understand that counseling is recommended for all participants in collaborative reproduction and that counseling is a separate process from any ~~psychological evaluation~~ consultation that [Provider] has required me to complete. [Provider] has given me the opportunity to meet with and receive counseling from a mental health professional with specialized knowledge of the social and psychological impact of assisted and collaborative reproduction on participants. I understand that I may choose any such mental health professional, and that I am not required to choose one recommended by this treatment facility.”

...

ARTICLE 5. EMBRYO TRANSFER AND DISPOSITION OF EMBRYOS NOT TRANSFERRED

SECTION 501. PARENTAL RIGHTS AND OBLIGATIONS UNDER EMBRYO AGREEMENTS

...

2. All agreements shall include a permanent address and permanent identifier of ~~that participant~~ intended parents.

3. Any agreement must be entered in a record and incorporate the following:

...

(c) In the event of a subsequent disagreement between intended parents, wherein one intended parent no longer wishes to use stored embryos as previously agreed, after receipt of notice in a record to the other party and the clinic or storage facility, by the other intended parent and by the clinic or storage facility of that person’s intent to avoid conception, an intended parent may not transfer the embryos into the body of any woman with the intent to create a child. No prior agreement to the contrary will be enforceable.

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SECTION 504. ABANDONMENT OF EMBRYOS AND DISPOSITION OF ABANDONED EMBRYOS

1. An embryo is deemed to be abandoned only if:

(a) At least five years have elapsed since creation of the embryo unless the participants select another time by agreement as provided in paragraph 1(c) of Section 501; and

...

SECTION 604. CONSENT TO ASSISTED REPRODUCTION.

2. Failure of a man to sign a consent required by ~~subsection~~ paragraph 1, before or after birth of the child, does not preclude a finding of paternity if the woman and the man, during the first two years of the child's life, resided together in the same household with the child and openly held out the child as their own.

...

SECTION 607. PARENTAL STATUS OF DECEASED INDIVIDUAL.

Except as otherwise provided in the enacting jurisdiction's probate code, ~~If~~ an individual who consented in a record to be a parent by assisted reproduction dies before placement of eggs, sperm, or embryos, the deceased individual is not a parent of the resulting child unless the deceased spouse consented in a record that if assisted reproduction were to occur after death, the deceased individual would be a parent of the child.

SECTION 703. HEARING TO VALIDATE GESTATIONAL AGREEMENT

1. If the requirements of ~~subsection (2)~~ paragraph 2 are satisfied, a court may issue an order validating the gestational agreement and declaring that the intended parents will be the parents of a child born during the term of the agreement.

2. The court may issue an order under ~~subsection~~ paragraph 1 only on finding that:

...

SECTION 707. PARENTAGE UNDER VALIDATED GESTATIONAL AGREEMENT

...

3. If the intended parents fail to file notice required under ~~subsection (a)~~, paragraph 1, the gestational carrier or the appropriate State agency may file notice with the court that a child has

been born to the gestational carrier within 300 days after assisted reproduction. Upon proof of a court order issued pursuant to Section 703 validating the gestational agreement, the court shall order the intended parents are the parents of the child and are financially responsible for the child.

...

[ALTERNATIVE B:

SECTION 701. RIGHTS OF PARENTAGE

...

2. In the case of a Gestational Carrier Arrangement satisfying the requirements set forth in ~~subsection~~ paragraph 4 of this Section:

...

4. The parties to a Gestational Carrier Arrangement shall assume the rights and obligations of ~~subsections~~ paragraphs 2 and 3 of this Section if:

(a) The Gestational Carrier satisfies the eligibility requirements set forth in ~~subsection~~ paragraphs 1 of Section 702;

(b) The intended parent or parents satisfy the eligibility requirements set forth in ~~subsection~~ paragraph 2 of Section ~~702~~; and

...

SECTION 702. ELIGIBILITY

...

2. The intended parent or parents shall be deemed to have satisfied the requirements of this Act if he, she, or they have met the following requirements at the time the Gestational Agreement is executed:

(a) He, she, or they contribute at least one of the gametes resulting that will ultimately result in an embryo that the Gestational Carrier will attempt to carry to term;

...

SECTION 703. REQUIREMENTS FOR A GESTATIONAL AGREEMENT.

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1. A Gestational Agreement is enforceable only if:
 - (a) It meets the contractual requirements set forth in ~~subsection~~ paragraph 2 of this Section; and
 - (b) It contains at a minimum each of the terms set forth in ~~subsection~~ paragraph 3 of this Section.

2. A Gestational Agreement shall meet the following requirements:
 - ...
 - (b) It shall be executed prior to the commencement of any medical procedures in furtherance of the gestational carrier arrangement (other than medical or mental health evaluations necessary to determine eligibility of the parties pursuant to Section 702 of this Act) ~~in furtherance of the Gestational Carrier Arrangement~~:
 - (i) By a Gestational Carrier meeting the eligibility requirements of ~~subsection~~ paragraph 1 of Section 702 of this Act and, if married, the Gestational Carrier's legal spouse; and
 - (ii) By the intended parent or parents meeting the eligibility requirements of ~~subsection~~ paragraph 2 of Section 702 of this Act. In the event an intended parent is married, both wife and her legal spouse must execute the Gestational Agreement;
 - ...
 - (e) If the Gestational Agreement provides for the payment of compensation to the Gestational Carrier, the compensation shall have been placed in escrow with an independent escrow agent prior to the Gestational Carrier's commencement of any medical procedure (other than medical or mental health evaluations necessary to determine the Gestational Carrier's eligibility pursuant to ~~subsection (a)~~ paragraph 1 of Section 702 of this Act); and

3. A Gestational Agreement shall provide for:
 - (a) The express written agreement of the Gestational Carrier to:
 - (i) Undergo embryo or gamete transfer and attempt to carry and give birth to the child; and
 - (ii) Surrender custody of ~~the child~~ all resulting children to the intended parent or parents immediately upon the birth of the children;
 - (b) If the Gestational Carrier is married, the express agreement of her ~~husband~~ legal spouse to:

...

(ii) Surrender custody of the children to the intended parent or parents immediately upon the birth of the children;

...

(d) The express written agreement of the intended parent or parents to:

(i) Accept custody of ~~the~~ all resulting children immediately upon ~~his or her~~ the children's birth regardless of number, gender, or mental or physical condition; and

...

4. A ~~G~~gestational ~~A~~greement is enforceable even though it contains one or more of the following provisions:

(a) The ~~G~~gestational ~~C~~arrier's agreement to undergo all medical exams, treatments, and fetal monitoring procedures that the physician recommendeds for the success of the pregnancy;

...

SECTION 704. DUTY TO SUPPORT

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3. A gamete donor may be liable for child support only if he or she fails to enter into a legal agreement ~~with the intended parent or parents in which the donor relinquishes rights to any gametes, resulting embryos, or children and the intended parent or parents fail to enter into an agreement in which the intended parent or parents agree to assume all rights and responsibilities for any resulting child, and the gamete donor relinquishes his or her rights to any gametes, resulting embryos, or children.~~

SECTION 705. ESTABLISHMENT OF THE PARENT-CHILD RELATIONSHIP

1. For purposes of the State's relevant parentage act, a the parent-child relationship shall be that arises immediately upon the birth of the child pursuant to Section 701 is established, if, prior to or within 24 hours of the birth of a child born through a Ggestational Ccarrier Aarrangement if the attorneys representing both the Ggestational Ccarrier and the intended parent or parents certify that the parties entered into the Ggestational Aagreement intended to satisfy the requirements of Section 6 703 of this Act with respect to the child.

2. The attorneys' certifications required by ~~subsection~~ paragraph 1 of this Section shall be filed on forms prescribed by the relevant State regulatory agency and in a manner consistent with the requirements of the State's relevant parentage act, if any.

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3. The attorney certifications required by ~~subsection~~ paragraph 1 of this Section shall be effective for all purposes hereunder if completed prior to or within twenty-four (24) hours after the child's birth.

SECTION 706. EFFECT OF GESTATIONAL CARRIER'S SUBSEQUENT MARRIAGE

Subsequent marriage of the gestational carrier after her execution of a gestational agreement does not affect the validity of the gestational agreement, her legal spouse's consent to the gestational agreement is not required, and her legal spouse is not a presumed parent of the resulting child.

SECTION 706~~7~~. IMMUNITIES

Except as provided in this Act, no person shall be civilly or criminally liable for non-negligent actions taken pursuant to the requirements of this Act. This provision shall not prevent liability or actions between or among the parties, including actions brought by or on behalf of the child, based on negligent, reckless, willful, or intentional acts that result in damages to any party.

...

SECTION 71~~4~~2. IRREVOCABILITY

No action to invalidate a ~~G~~gestational ~~C~~carrier ~~A~~arrangement meeting the requirements of ~~paragraph~~ subsection 4 of Section 701 of this Act or to challenge the rights of parentage established pursuant to Section 701 of this Act and the relevant State parentage act provisions shall be commenced after 12 months from the date of birth of the child.

END ALTERNATIVE B]

ARTICLE 8. PAYMENT TO DONORS AND GESTATIONAL CARRIERS

SECTION 801. REIMBURSEMENT

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2. Economic losses occurring before the donor has entered into valid agreement in a record to be a donor may not be reimbursed, except as provided for in ~~subsection~~ paragraph 3 hereof.

...

SECTION 802. COMPENSATION

1. The consideration, if any, paid to a ~~gamete~~ donor or prospective gestational carrier must be reasonable and ~~or~~ negotiated in good faith between the parties.

...

SECTION 1002. DONOR AND COLLABORATIVE REPRODUCTION REGISTRIES

1. Donor and collaborative reproduction registries (or equivalent) created for the purpose of maintaining contact, medical, and psychosocial information about donors, gestational carriers, and children born as a result of ART, or to benefit the public health, operating within this jurisdiction shall incorporate, at a minimum, the following elements:

(f) Retain all records involving third party reproduction until the resulting child has reached the age of ~~forty~~ 40.

2. Health care providers in this jurisdiction shall not utilize registries that fail to comply with the requirements of paragraph 1, except as may be otherwise required or permitted by federal or state law.