

Texas Family Code (2004)
(based upon Uniform Parentage Act (2000))

Note to class: Substitute this statute for the Uniform Parentage Act provisions on pp. 148-50.

SUBCHAPTER I. GESTATIONAL AGREEMENTS

§ 160.751. DEFINITION. In this subchapter, "gestational mother" means a woman who gives birth to a child conceived under a gestational agreement.

§ 160.752. SCOPE OF SUBCHAPTER; CHOICE OF LAW.

(a) Notwithstanding any other provision of this chapter or another law, this subchapter authorizes an agreement between a woman and the intended parents of a child in which the woman relinquishes all rights as a parent of a child conceived by means of assisted reproduction and that provides that the intended parents become the parents of the child.

(b) This subchapter controls over any other law with respect to a child conceived under a gestational agreement under this subchapter.

§ 160.753. ESTABLISHMENT OF PARENT-CHILD RELATIONSHIP.

(a) Notwithstanding any other provision of this chapter or another law, the mother-child relationship exists between a woman and a child by an adjudication confirming the woman as a parent of the child born to a gestational mother under a gestational agreement if the gestational agreement is validated under this subchapter or enforceable under other law, regardless of the fact that the gestational mother gave birth to the child.

(b) The father-child relationship exists between a child and a man by an adjudication confirming the man as a parent of the child born to a gestational mother under a gestational agreement if the gestational agreement is validated under this subchapter or enforceable under other law.

§ 160.754. GESTATIONAL AGREEMENT AUTHORIZED.

(a) A prospective gestational mother, her husband if she is married, each donor, and each intended parent may enter into a written agreement providing that:

(1) the prospective gestational mother agrees to pregnancy by means of assisted reproduction;

(2) the prospective gestational mother, her husband if she is married, and each donor other than the intended parents, if applicable, relinquish all parental rights and duties with respect to a child conceived through assisted reproduction;

(3) the intended parents will be the parents of the child; and

(4) the gestational mother and each intended parent agree to exchange throughout the period covered by the agreement all relevant information regarding the health of the gestational mother and each intended parent.

(b) The intended parents must be married to each other. Each intended parent must be a party to the gestational agreement.

(c) The gestational agreement must require that the eggs used in the assisted reproduction procedure be retrieved from an intended parent or a donor. The gestational mother's eggs may not be used in the assisted reproduction procedure.

(d) The gestational agreement must state that the physician who will perform the assisted reproduction procedure as provided by the agreement has informed the parties to the agreement of:

(1) the rate of successful conceptions and births attributable to the procedure, including the most recent published outcome statistics of the procedure at the facility at which it will be performed;

(2) the potential for and risks associated with the implantation of multiple embryos and consequent multiple births resulting from the procedure;

(3) the nature of and expenses related to the procedure;

(4) the health risks associated with, as applicable, fertility drugs used in the procedure, egg retrieval procedures, and egg or embryo transfer procedures; and

(5) reasonably foreseeable psychological effects resulting from the procedure.

(e) The parties to a gestational agreement must enter into the agreement before the 14th day preceding the date the transfer of eggs, sperm, or embryos to the gestational mother occurs for the purpose of conception or implantation.

(f) A gestational agreement does not apply to the birth of a child conceived by means of sexual intercourse.

(g) A gestational agreement may not limit the right of the gestational mother to make decisions to safeguard her health or the health of an embryo.

§ 160.755. PETITION TO VALIDATE GESTATIONAL AGREEMENT.

(a) The intended parents and the prospective gestational mother under a gestational agreement may commence a proceeding to validate the agreement.

(b) A person may maintain a proceeding to validate a gestational agreement only if:

(1) the prospective gestational mother or the intended parents have resided in this state for the 90 days preceding the date the proceeding is commenced;

(2) the prospective gestational mother's husband, if she is married, is joined as a party to the proceeding; and

(3) a copy of the gestational agreement is attached to the petition.

§ 160.756. HEARING TO VALIDATE GESTATIONAL AGREEMENT.

(a) A gestational agreement must be validated as provided by this section.

(b) The court may validate a gestational agreement as provided by Subsection

(c) only if the court finds that:

(1) the parties have submitted to the jurisdiction of the court under the jurisdictional standards of this chapter;

(2) the medical evidence provided shows that the intended mother is unable to carry a pregnancy to term and give birth to the child or is unable to carry the pregnancy to term and give birth to the child without unreasonable risk to her physical or mental health or to the health of the unborn child;

(3) unless waived by the court, an agency or other person has conducted a home study of the intended parents and has determined that the intended parents meet the standards of fitness applicable to adoptive parents;

(4) each party to the agreement has voluntarily entered into and understands the terms of the agreement;

(5) the prospective gestational mother has had at least one previous pregnancy and delivery and carrying another pregnancy to term and giving birth to another child would not pose an unreasonable risk to the child's health or the physical or mental health of the prospective gestational mother; and

(6) the parties have adequately provided for which party is responsible for all reasonable health care expenses associated with the pregnancy, including providing for who is responsible for those expenses if the agreement is terminated.

(c) If the court finds that the requirements of Subsection (b) are satisfied, the court may render an order validating the gestational agreement and declaring that the intended parents will be the parents of a child born under the agreement.

(d) The court may validate the gestational agreement at the court's discretion. The court's determination of whether to validate the agreement is subject to review only for abuse of discretion.

§ 160.757. INSPECTION OF RECORDS. The proceedings, records, and identities of the parties to a gestational agreement under this subchapter are subject to inspection under the same standards of confidentiality that apply to an adoption under the laws of this state.

§ 160.758. CONTINUING, EXCLUSIVE JURISDICTION. Subject to Section 152.201, a court that conducts a proceeding under this subchapter has continuing, exclusive jurisdiction of all matters arising out of the gestational agreement until the date a child born to the gestational mother during the period covered by the agreement reaches 180 days of age.

§ 160.759. TERMINATION OF GESTATIONAL AGREEMENT.

(a) Before a prospective gestational mother becomes pregnant by means of assisted reproduction, the prospective gestational mother, her husband if she is married, or either intended parent may terminate a gestational agreement validated under Section 160.756 by giving written notice of the termination to each other party to the agreement.

(b) A person who terminates a gestational agreement under Subsection (a) shall file notice of the termination with the court. A person having the duty to notify the court who does not notify the court of the termination of the agreement is subject to appropriate sanctions.

(c) On receipt of the notice of termination, the court shall vacate the order rendered under Section 160.756 validating the gestational agreement.

(d) A prospective gestational mother and her husband, if she is married, may not be liable to an intended parent for terminating a gestational agreement if the termination is in accordance with this section.

§ 160.760. PARENTAGE UNDER VALIDATED GESTATIONAL AGREEMENT.

(a) On the birth of a child to a gestational mother under a validated gestational agreement, the intended parents shall file a notice of the birth with the court not later than the 300th day after the date assisted reproduction occurred.

(b) After receiving notice of the birth, the court shall render an order that:

(1) confirms that the intended parents are the child's parents;

(2) requires the gestational mother to surrender the child to the intended parents, if necessary; and

(3) requires the bureau of vital statistics to issue a birth certificate naming the intended parents as the child's parents.

(c) If a person alleges that a child born to a gestational mother did not result from assisted reproduction, the court shall order that scientifically accepted parentage testing be conducted to determine the child's parentage.

§ 160.761. EFFECT OF GESTATIONAL MOTHER'S MARRIAGE AFTER VALIDATION OF AGREEMENT. If a gestational mother is married after the court renders an order validating a gestational agreement under this subchapter:

(1) the validity of the gestational agreement is not affected;

(2) the gestational mother's husband is not required to consent to the agreement; and

(3) the gestational mother's husband is not a presumed father of the child born under the terms of the agreement.

§ 160.762. EFFECT OF GESTATIONAL AGREEMENT THAT IS NOT VALIDATED.

(a) A gestational agreement that is not validated as provided by this subchapter is unenforceable, regardless of whether the agreement is in a record.

(b) The parent-child relationship of a child born under a gestational agreement that is not validated as provided by this subchapter is determined as otherwise provided by this chapter.

(c) A party to a gestational agreement that is not validated as provided by this subchapter who is an intended parent under the agreement may be held liable for the support of a child born under the agreement, even if the agreement is otherwise unenforceable.

(d) The court may assess filing fees, reasonable attorney's fees, fees for genetic testing, other costs, and necessary travel and other reasonable expenses incurred in a proceeding under this section. Attorney's fees awarded by the court may be paid directly to the attorney. An attorney who is awarded attorney's fees may enforce the order in the attorney's own name.

§ 160.763. HEALTH CARE FACILITY REPORTING
REQUIREMENT.

(a) The Texas Department of Health by rule shall develop and implement a confidential reporting system that requires each health care facility in this state at which assisted reproduction procedures are performed under gestational agreements to report statistics related to those procedures.

(b) In developing the reporting system, the department shall require each health care facility described by Subsection (a) to annually report:

- (1) the number of assisted reproduction procedures under a gestational agreement performed at the facility during the preceding year; and
- (2) the number and current status of embryos created through assisted reproduction procedures described by Subdivision (1) that were not transferred for implantation.