

HOUSE BILL NO. 553
INTRODUCED BY H. RASER

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR ASSISTED REPRODUCTION AND GESTATIONAL AGREEMENTS; DEFINING TERMS; PROVIDING FOR PARENTAL RIGHTS; PROVIDING THAT A DONOR IS NOT A PARENT; PROVIDING THAT VIOLATIONS BY A HEALTH CARE PROVIDER ARE UNPROFESSIONAL CONDUCT; PROVIDING FOR CONFIDENTIALITY; PROVIDING FOR PARENT AND CHILD STATUS IN AN ASSISTED REPRODUCTION; REQUIRING CONSENT OF THE DONOR AND PARTICIPANTS IN ASSISTED REPRODUCTION SERVICES; PROVIDING FOR COURT APPROVAL OF GESTATIONAL AGREEMENTS; REQUIRING FINDINGS; PROVIDING FOR JURISDICTION; PROVIDING FOR TERMINATION OF AGREEMENTS; PROVIDING FOR PARENTAL STATUS UNDER GESTATIONAL AGREEMENTS; AND REPEALING SECTION 40-6-106, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 20], the following definitions apply:

(1) "Assisted reproduction" means a method, other than sexual intercourse, of causing pregnancy. The term includes but is not limited to:

- (a) artificial insemination;
- (b) transfer of gametes or embryos; and
- (c) in vitro fertilization.

(2) "Child" means an individual of any age whose parentage may be determined under [sections 1 through 20].

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) (a) "Donor" means an individual who produces gametes used for assisted reproduction, whether or not for consideration.

(b) The term does not include:

(i) a husband who provides sperm or a wife who provides eggs to be used for assisted reproduction by the wife;

(ii) an unmarried man who provides sperm to be used for assisted reproduction by an unmarried woman,

both of whom intend to be parents of the resulting child; or

(iii) a woman who gives birth to a child by means of assisted reproduction, except as otherwise provided in [sections 13 through 20].

(5) "Embryo transfer" means to place an embryo into the uterus of a woman who is intended to gestate the embryo.

(6) "Gametes" means eggs or sperm.

(7) "Gestational agreement" is an agreement described in [section 13].

(8) "Gestational carrier" means the woman who agrees, pursuant to a gestational agreement, to bear a child for intended parent or parents.

(9) "Health care provider" means a person licensed as a health care provider who, within the provider's scope of practice, as provided in Title 37, provides assisted reproduction services or facilitates gamete or embryo donation.

(10) "Intended parent or parents" means one or two individuals who enter into a gestational agreement providing that the individual or individuals will be the parent or parents of a child born to a gestational carrier pursuant to a gestational agreement approved under [sections 1 through 20], whether or not the intended parent has a genetic relationship with the child.

(11) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

NEW SECTION. Section 2. Scope -- applicability -- parental rights. (1) [Sections 1 through 20] do not apply to the birth of a child conceived by means of sexual intercourse.

(2) The provisions of [sections 1 through 20] may not be waived.

(3) Except as provided in [sections 1 through 20], [sections 1 through 20] do not create, enlarge, or diminish parental rights and duties as established by other laws of this state.

NEW SECTION. Section 3. Parental status of donor. A donor is not a parent of a child conceived by means of assisted reproduction with the donor's gametes. Neither a donor nor any person claiming by or through a donor has a right or interest in a child or the estate of a child born by means of assisted reproduction. A child born by means of assisted reproduction is not an heir of a donor.

NEW SECTION. Section 4. Violation. Violation of [sections 1 through 20] by a health care provider

must be considered a matter of unprofessional conduct by the appropriate board or the department of commerce as provided in Title 37.

NEW SECTION. Section 5. Confidentiality of records. (1) A health care provider may not assist a woman to become pregnant through assisted reproduction unless the health care provider maintains the following information about the donor:

- (a) family medical and mental health history;
- (b) substance abuse history; and
- (c) results of any genetic testing done as part of donor screening.

(2) All information maintained about the donor is confidential and subject to inspection, in a manner that does not disclose the identity of the donor, only by a potential recipient of gametes of the donor, by the parent or parents or guardian of a child born as the result of assisted reproduction using the gametes of the donor, and by the child when the child is 18 years of age or older.

(3) A donor shall enter either a nonanonymous donor program or an anonymous donor program. Recipients of donor gametes may choose to receive gametes from either the nonanonymous donor program or the anonymous donor program. In the nonanonymous donor program, the identity of the donor is available from the health care provider to the parent or parents or guardian of the child born as the result of assisted reproduction and to the child when the child is 18 years of age or older. In the anonymous donor program, the identity of the donor is confidential and is not available to the parent or parents or guardian of the child born as the result of assisted reproduction or to the child. Donors and potential recipients of donor gametes must receive adequate counseling by the health care provider regarding the implications of using the nonanonymous and anonymous donor programs.

(4) The health care provider shall, before receiving eggs, sperm, or embryos for donation, record the address of the donor and request the donor to keep a current address on file with the health care provider.

(5) The provisions concerning maintenance and inspection of records of the identity of donors do not apply to donors of gametes collected before [the effective date of this act].

NEW SECTION. Section 6. Parenthood of child of assisted reproduction. (1) This section does not apply to the parentage of a child conceived as the result of a gestational agreement as provided in [section 13].

(2) A woman who gives birth to a child by means of assisted reproduction is the mother of the resulting child.

(3) A husband who provides sperm for or consents to the use of assisted reproduction by the husband's wife as provided in [section 9] is the father of a resulting child born to the wife. Failure of a husband to sign the consent required by [section 9(2)] before or after birth of the child does not preclude a finding that the husband is the father of a child born to the husband's wife if the wife and husband openly treat the child as their own.

(4) An unmarried man who provides sperm for assisted reproduction by an unmarried woman with the intent that they will both be the parents of the resulting child is the father of the resulting child born to the woman if the man and woman have signed the consent provided for in [section 9].

NEW SECTION. Section 7. Status of child born of assisted reproduction. A child born as a result of assisted reproduction is, in all respects, the child of the mother and father described in [section 6] or, in the case of a gestational agreement, the child of the intended parent or parents.

NEW SECTION. Section 8. Status of child determined by jurisdiction of birth. (1) This section does not apply to a gestational agreement as provided in [section 13].

(2) A child conceived as a result of assisted reproduction performed in Montana and born in another jurisdiction must have the child's status determined by the law of the other jurisdiction unless the mother of the child resides in Montana both at the time of conception and of the birth of the child.

(3) If a child is conceived by assisted reproduction in another jurisdiction but is born in Montana to a woman who, at the time of conception, was not a resident of Montana but who is a resident at the time of the birth of the child, the child has the same status as is provided in [section 7], even if the provisions of [section 9] have not been complied with.

NEW SECTION. Section 9. Consent to assisted reproduction services. (1) This section does not apply to a donor.

(2) A health care provider may not provide services for assisted reproduction involving donor eggs, sperm, or embryos unless:

(a) the individual receiving the services has been given information, both orally and in writing, about the implications of the use of assisted reproduction that is sufficient to allow the individual to make an informed decision;

(b) the individual has been offered counseling by a mental health professional qualified to practice in the area of reproductive health, about the social and psychological implications of assisted reproduction on

participants; and

(c) the individual has signed a record consenting to the procedures to be employed.

(3) If an individual declines the counseling offered in subsection (2), the health care provider may not provide assisted reproduction services unless the individual signs a record stating that the individual has been offered counseling and has elected not to receive it.

(4) If the use of assisted reproduction is by a married woman, the provisions of subsection (2) also apply to the woman's husband and the consent must be signed by both the woman and the woman's husband.

(5) If an unmarried man provides sperm to be used for assisted reproduction by an unmarried woman and both intend to be parents of a resulting child, the provisions of subsection (2) also apply to the man and the consent must be signed by both the man and the woman.

(6) If the assisted reproduction services involve embryo creation or embryo transfer, the record of consent required in subsection (2) must also contain:

(a) a description of the intended use of the embryos;

(b) information regarding the number of embryos to be transferred and the risk of multiple births;

(c) directions for the use and disposition of the embryos in the event of divorce, illness, death, or other change in circumstances designated by the parties; and

(d) the time at which and the conditions under which embryos will be considered abandoned and directions for disposal of the abandoned embryos.

NEW SECTION. Section 10. Consent of donor. A health care provider may not facilitate gamete or embryo donation unless:

(1) the donor has been given information, both orally and in writing, about the medical, psychological, and social implications of the use of assisted reproduction that is sufficient to allow the donor to make an informed decision; and

(2) the donor has signed a record consenting to the procedures to be employed.

NEW SECTION. Section 11. Revocation of consent -- effect of dissolution of marriage or death.

(1) This section does not apply to the consent of a donor signed pursuant to [section 10] and to a gestational agreement as provided in [section 13].

(2) An individual who signed a consent to assisted reproduction pursuant to [section 9] may revoke the consent in a record at any time before the transfer of gametes or embryos.

(3) If the individuals who signed a consent pursuant to [section 9] are married and their marriage is dissolved before the transfer of gametes or embryos, the former husband is not the father of a resulting child unless the former husband consented in a record that if assisted reproduction were to occur after a dissolution of the marriage, the former husband would be the father of the child.

(4) If a husband who signed a consent pursuant to [section 9] dies before the transfer of gametes or embryos, the deceased husband is not the father of a resulting child unless the deceased husband consented in a record that if assisted reproduction were to occur after death, the deceased husband would be the father of the child. If an unmarried man who signed a consent pursuant to [section 9] dies before the transfer of gametes or embryos, the deceased man is not the father of a resulting child unless the deceased man consented in a record that if assisted reproduction were to occur after death, the deceased man would be the father of the child.

NEW SECTION. Section 12. Egg donation. An agreement to pay consideration to an egg donor in exchange for the donor's eggs is not enforceable unless it is reasonable, based on the donor's time, effort, risk, and inconvenience.

NEW SECTION. Section 13. Gestational agreements. (1) A prospective gestational carrier, the carrier's husband, if the carrier is married, and the intended parent or parents may enter into a gestational agreement that provides that:

(a) the prospective gestational carrier agrees to pregnancy by means of assisted reproduction by a health care provider;

(b) the prospective gestational carrier and the carrier's husband, if the carrier is married, relinquish all rights and duties as parents of a child born pursuant to a gestational agreement approved under [section 14]; and

(c) each intended parent becomes the parent of the child.

(2) If the intended parents are married, both spouses must be parties to the gestational agreement.

(3) The gestational agreement must be a record, signed by the parties.

(4) For purposes of [sections 1 through 20], a gestational agreement is not valid unless approved under [section 14].

NEW SECTION. Section 14. Petition and hearing -- order approving gestational agreement. (1) The intended parent or parents and the prospective gestational carrier may file a petition to approve a gestational agreement in the district court in which any one of them resides. The gestational carrier's husband, if the carrier

is married, shall join in the petition. A copy of the agreement must be attached to the petition.

(2) A petition to approve a gestational agreement may not be maintained unless either the gestational carrier or intended parent or parents have continuously been residents of Montana for the preceding 90 days.

(3) On receipt of the petition, the court shall set a hearing within 30 days and give notice to the gestational carrier, the carrier's husband, if the carrier is married, the intended parent or parents, and any other interested parties as the court may direct. The court shall hold a hearing on the petition and, if the requirements of [section 15] are satisfied, may enter an order approving the gestational agreement and declaring that the intended parent or parent's will be the parent or parents of a child born during the term of the agreement.

(4) The court shall close all proceedings held under this section. All records of the proceedings are confidential and subject to inspection only by the parties to the agreement and by the guardian of the child born to the gestational carrier. The court shall, on request of a child who is 18 years of age or older and who was born to a gestational carrier who is genetically related to the child, release to the child the identity of the gestational carrier.

NEW SECTION. Section 15. Required findings to approve gestational agreement. The court may not issue an order under [section 14] unless it finds that:

(1) the prospective gestational carrier, the carrier's husband, if the carrier is married, and the intended parent or parents have entered into a gestational agreement that provides that the gestational carrier agrees to conceive by means of assisted reproduction, that the gestational carrier and the carrier's husband, if the carrier is married, relinquish all rights and duties as a parent of a child born during the term of the agreement, and that the intended parent or parents become the parent or parents of the resulting child;

(2) the agreement provides that the gestational carrier can attempt to achieve pregnancy for no more than 1 year from the date of approval of the agreement by the court;

(3) the residence requirement of [section 14] has been satisfied and the parties have submitted to jurisdiction of the court;

(4) the intended parent or parents and the prospective gestational carrier are 21 years of age or older;

(5) if an intended parent is married, the spouse of the intended parent is a party to the gestational agreement as an intended parent;

(6) the gestational agreement does not limit the right of the gestational carrier to make decisions regarding the gestational carrier's health or that of the embryo or fetus;

(7) the agreement under review by the court is the entire agreement between the parties;

(8) the parties understand that they have a right to separate legal counsel and, if a party proceeds without legal counsel, that party has knowingly waived the right to counsel;

(9) the parties understand that it is recommended that the parties have received mental health counseling, by a mental health professional qualified to practice in the area of reproductive medicine, about the social and psychological implications of being a gestational carrier and an intended parent and, if a party has entered the agreement without the benefit of mental health counseling, that the party has knowingly declined counseling;

(10) adequate provision has been made for all reasonable health care expense associated with the gestational agreement until the birth of the child, including responsibility for those expenses if the agreement is terminated;

(11) consideration, if any, paid to the prospective gestational carrier is reasonable; and

(12) all parties have voluntarily entered into the agreement and understand its terms.

NEW SECTION. Section 16. Gestational agreement -- miscellaneous provisions. (1) A gestational agreement that is the basis for an order under [sections 1 through 20] may provide for payment of reasonable consideration, based only on the gestational carrier's time, effort, risk, and inconvenience.

(2) After the entry of an order under [section 14], marriage of the gestational carrier does not affect the effectiveness of the gestational agreement, consent to the gestational agreement is not required of the gestational carrier's husband, and the husband is not considered to be the father of the resulting child.

(3) If, under the gestational agreement, the intended parent or parents are required to pay the gestational carrier's legal fees, counsel for the gestational carrier shall represent the interests of the gestational carrier only.

(4) A provision in a gestational agreement approved pursuant to [section 14] that is contrary to a provision in [sections 1 through 20] is unenforceable.

NEW SECTION. Section 17. Jurisdiction. Subject to the jurisdictional standards of the Uniform Child Custody Jurisdiction and Enforcement Act, provided in Title 40, chapter 7, the court conducting a proceeding under [sections 1 through 20] has exclusive, continuing jurisdiction of all matters arising out of the gestational agreement until a child born to the gestational carrier during the period governed by the agreement attains the age of 180 days.

NEW SECTION. Section 18. Termination of gestational agreement. (1) After entry of an order under

[section 14] but before the prospective gestational carrier becomes pregnant by means of assisted reproduction, the prospective gestational carrier, the carrier's husband, if the carrier is married, or the intended parent or parents may seek to terminate the agreement by filing notice of the termination with the district court and by giving written notice of termination to all other parties and to any health care provider who is providing assisted reproduction services. The court, for good cause shown, such as death or divorce of an intended parent, may also, before pregnancy, give notice of intent to terminate the agreement.

(2) On receipt of the notice and on finding that a pregnancy has not occurred by means of assisted reproduction, the court shall vacate the order entered under [sections 13 through 20].

(3) A prospective gestational carrier or the carrier's husband, if the carrier is married, is not liable to the intended parent or parents for terminating an agreement pursuant to this section.

(4) If a prospective gestational carrier terminates the agreement under this section, any egg retrieved from the carrier or any embryo created belongs to the intended parent or parents. If the intended parent or parents terminate the agreement under this section, any egg retrieved from the gestational carrier or embryo created using an egg retrieved from the gestational carrier belongs to the gestational carrier.

NEW SECTION. Section 19. Parentage under approved gestational agreement. (1) On the birth of a child to a gestational carrier within 300 days of the last procedure using assisted reproduction pursuant to a gestational agreement, an individual or individuals who are the intended parent or parents of the child are, in all respects, the parent or parents of the child.

(2) On birth of the child to a gestational carrier, the intended parent or parents or the gestational carrier shall immediately furnish a certified copy of the order of the court issued under [section 14] to the facility in which the birth takes place or to any other person required to prepare and file a birth certificate as provided in 50-15-221. A birth certificate must be filed in accordance with the provisions of 50-15-221. A certified copy of the order of the court issued under [section 14] must be sent to the department by the facility or person required to prepare and file a birth certificate.

(3) On application, the district court may issue an order supplemental to the order issued pursuant to [section 14]. As necessary, the court, in its supplemental order, may:

(a) confirm that the intended parent or parents are the parent or parents of the child;

(b) order that the child be surrendered to the intended parent or parents;

(c) if a birth certificate has not been prepared and filed pursuant to 50-15-221, direct that a birth certificate be prepared and filed by the appropriate authority naming the appropriate individual or individuals as

parent or parents of the child;

(d) if a birth certificate has already been prepared and filed pursuant to 50-15-221, direct the department to issue an amended birth certificate removing the names of any inappropriate individual, adding the names of any appropriate individual, and, if necessary, changing the name of the child;

(e) if the birth is not consistent with the gestational agreement approved under [section 14], determine the parentage of the child; and

(f) make any other order necessary to carry out the purposes of [sections 1 through 20] with respect to a gestational agreement approved under [section 14].

NEW SECTION. Section 20. Nonapproved gestational agreement. (1) A gestational agreement not approved by a court pursuant to [section 14] is not effective and enforceable under [sections 1 through 20]. [Sections 1 through 20] do not affect the validity of a nonapproved agreement entered into either before or after [the effective date of this act] if the agreement is valid under any other law of this state.

(2) If a birth results under an agreement not approved by a court under [sections 1 through 20], the parent-child relationship is determined under the provisions of part 1 of this chapter.

(3) An individual who is a party to a nonapproved gestational agreement as an intended parent may be held liable for support of the resulting child even if the agreement is otherwise unenforceable. The liability under this subsection includes assessing filing fees, reasonable attorneys fees, fees for genetic testing, other costs and necessary travel, and other reasonable expenses incurred to adjudicate parentage.

(4) This section applies to a nonapproved gestational agreement regardless of whether the agreement was submitted to the court for approval.

NEW SECTION. Section 21. Repealer. Section 40-6-106, MCA, is repealed.

NEW SECTION. Section 22. Codification instruction. [Sections 1 through 20] are intended to be codified as an integral part of Title 40, chapter 6, and the provisions of Title 40, chapter 6, apply to [sections 1 through 20].

NEW SECTION. Section 23. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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