

CHAPTER 105
SB 264-FN - FINAL VERSION

03/30/2023 1262s

2023 SESSION

23-0973
06/05

SENATE BILL ***264-FN***

AN ACT relative to parentage.

SPONSORS: Sen. Perkins Kwoka, Dist 21; Sen. Soucy, Dist 18; Sen. Rosenwald, Dist 13; Sen. Fenton, Dist 10; Sen. Altschiller, Dist 24; Sen. Watters, Dist 4; Sen. Whitley, Dist 15; Sen. Prentiss, Dist 5; Sen. Chandley, Dist 11; Rep. Simpson, Rock. 33; Rep. Grote, Rock. 24

COMMITTEE: Judiciary

ANALYSIS

This bill changes the name of the surrogacy chapter to "parentage."

This bill makes several technical changes to the surrogacy chapter.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to parentage.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 105:1 Surrogacy. Amend the chapter title preceding RSA 168-B:1 to read as follows:

CHAPTER 168-B

~~[SURROGACY]~~ *PARENTAGE*

4 105:2 Parentage; Definitions. Amend RSA 168-B:1 to read as follows:

5 168-B:1 Definitions. In this chapter:

6 I. "Artificial insemination" means the introduction of semen into a [women's] **woman's** vagina,
7 cervical canal, or uterus through extracorporeal or noncoital means.

8 II. "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse.

9 The term includes, but is not limited to:

10 (a) Artificial insemination.

11 (b) Donation of [eggs] *gametes*.

12 (c) Donation of embryos.

13 (d) In-vitro fertilization and transfer of embryos.

14 (e) Intracytoplasmic sperm injection.

15 III. "Compensation" means payment of any reasonable, valuable consideration to [the] *a gamete*
16 *donor, an embryo donor, or a gestational carrier or on their behalf.*

17 IV. "Court," unless otherwise indicated in this chapter, means the probate division of the circuit
18 court in the county where the gestational carrier resides, where the intended parent or parents reside, or
19 where the resulting child is born or is expected to be born.

V. "Donor" means an individual who contributes a gamete or gametes or an embryo or embryos for the purpose of assisted reproduction with no claim or claims to present or future parental rights and obligations to any resulting child.

23 VI. "Embryo" means the fertilized egg.

VII. "Embryo transfer" means all medical and laboratory procedures that are necessary to effectuate the transfer of an embryo into the uterine cavity.

26 VIII. "Gamete" means either the ovum (egg) or the spermatozoa (sperm).

IX. "Gestational carrier" means a woman who is neither an intended parent nor a donor, who agrees to become pregnant with a child, to whom ~~[she is not genetically related]~~ ***such gestational carrier made no genetic contribution***, by assisted reproduction and pursuant to a gestational carrier arrangement.

X. "Gestational carrier agreement" means a written contract between the gestational carrier, her spouse or partner, if any, and the intended parent or parents, that sets forth the obligations, rights, and duties of the parties to a gestational carrier arrangement.

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XI. "Gestational carrier arrangement" means the process by which a gestational carrier attempts to become pregnant with a child through assisted reproduction using the gamete or gametes *or embryo* provided by the intended parent or parents and/or donor or donors, which may or may not be genetically related to the intended parent or parents, and to which the gestational carrier has made no genetic contribution, and carry and give birth to such a child with the intention that the child will be solely the legal child of the intended parent or parents.

XII. "Health care provider" means a person who is duly licensed, certified, authorized, or registered under the laws of the state to provide health care, and includes all medical, psychological, counseling, and social work professionals.

XIII. "Intended parent" means a person, *married or unmarried*, who intends to become a parent of any child that results from an ~~[gestational carrier agreement]~~ *assisted reproduction*. This term shall include intended mothers, intended fathers, or a combination of both. In the case of a married couple, any reference to an intended parent shall include both spouses for all purposes of this chapter.

XIV. "In vitro fertilization" means all medical and laboratory procedures that are necessary to effectuate the extracorporeal combining of egg and sperm and the resulting fertilization of the egg.

XV. "Mental health consultation" means an in-person *or telehealth* meeting with a licensed mental health professional for the purposes of educating the participants about the effects and potential consequences of their participation in a gestational carrier arrangement, and of evaluating any potential psychological issues and risks posed by a party to a gestational carrier arrangement, including, but not limited to, the intended parent or parents or the gestational carrier's mental health, external and environmental factors, ability to manage relationships, potential attachment issues, and ability to carry out ~~[his or her]~~ *their* obligations, rights, and duties under a gestational carrier arrangement.

XVI. "Mental health professional" means an individual who:

(a) Holds a masters or doctoral degree in the field of psychiatry, psychology, counseling, social work, psychiatric nursing, or marriage and family therapy; and

(b) Is duly licensed, certified, authorized, or registered under the laws of a state to practice in the mental health field.

105:3 Parentage; Parent-Child Relationship. Amend RSA 168-B:2, I - III to read as follows:

I. A person is the parent of a child to whom she has given birth, except as otherwise provided in this chapter and if the pregnancy was established pursuant to a gestational carrier arrangement.

II. A person is the parent of a child conceived via assisted reproduction if the person, except when acting in the capacity of a donor, consents to the performance of assisted reproduction *with intent to parent the resulting child* or provides a gamete or gametes or an embryo or embryos for use in the assisted reproduction *with the intent to parent the resulting child*.

III. A donor is not a parent of a child conceived through assisted reproduction. *A donor may bring a petition for non-parentage to affirm that they are not a parent of a child conceived or to be conceived via assisted reproduction. Such a petition may be brought in the court in the county where the donor resides, where the intended parent or parents reside, where the donation took place, or where the resulting child is*

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1 *born or is expected to be born. Such a petition may be brought either before, during, or subsequent to*
2 *any pregnancy.*

3 105:4 Parentage; Parent-Child Relationship. Amend RSA 168-B:2, VII(a) to read as follows:

4 VII.(a) Any person who is a parent pursuant to RSA 168-B:2, II, without the assistance of a
5 gestational carrier (as gestational carrier arrangements are governed by RSA 168-B:12), may petition the
6 court for a parentage order declaring that the intended parent or parents are the sole parents of a child
7 resulting from assisted reproduction. Such a petition may be brought in the court in the county where the
8 intended parent or parents reside, or where the resulting child is born or is expected to be born. Such a
9 petition may be brought either before, during, or subsequent to the pregnancy. The court shall, within 30
10 days, grant the petition upon a finding that the child was conceived through assisted reproduction as
11 defined in RSA 168-B:1, II, with the use of donor gametes or donor embryos, if applicable, and with
12 *consent to the assisted reproduction and* the intent to parent. Sworn affidavits demonstrating the same
13 shall be sufficient to permit such a finding and a hearing shall not be required unless the court requires
14 additional information which cannot reasonably be ascertained without a hearing. Parentage orders
15 issued under this paragraph shall conclusively establish or affirm, where applicable, the parent-child
16 relationship.

17 105:5 Parentage; Legitimacy. Amend RSA 168-B:3 to read as follows:

18 168-B:3 Legitimacy. If, under the provisions of this chapter, a parent-child relationship is created
19 between 2 persons, the child shall be considered, for all purposes of law, the legitimate child of the parent.
20 *In the absence of specific language to the contrary in a statute or instrument, a legitimated child shall be*
21 *considered the same as a birth child, issue, or heir of the body for all purposes of the law.*

22 105:6 Parentage; Compliance. Amend RSA 168-B:4 to read as follows:

23 168-B:4 [Effect of Noncompliance] *Substantial Compliance.* [Noncompliance] *Substantial compliance*
24 with the requirements of this chapter [~~shall not affect the determination of parenthood~~] *is sufficient to allow*
25 *for a determination of parentage* under this chapter.

26 105:7 Parentage; Eligibility of a Gestational Carrier. Amend RSA 168-B:9 to read as follows:

27 168-B:9 Eligibility of a Gestational Carrier. Prior to any medical procedures to impregnate the
28 gestational carrier, a woman, intending to be a gestational carrier, shall meet all of the following
29 requirements:

30 I. She is at least 21 years of age.

31 II. She has given birth to at least one child.

32 III. She has completed a physical medical evaluation, [~~in substantial conformance with the~~
33 ~~guidelines set forth by the American Society for Reproductive Medicine,~~] relating to the anticipated
34 pregnancy.

35 IV. She has completed a mental health consultation.

36 V. She, and her spouse or partner, if any, have undergone legal consultation with independent
37 legal counsel regarding the terms of the gestational carrier agreement and have been advised of the
38 potential legal consequences of the gestational carrier agreement.

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105:8 Parentage; Enforceability of Gestational Carrier Agreement. Amend RSA 168-B:10 to read as follows:

168-B:10 Enforceability of Gestational Carrier Agreement. To best protect all parties entering into a gestational carrier arrangement, a gestational carrier agreement shall meet the minimum requirements under RSA 168-B:11. A gestational carrier agreement that ***substantially*** conforms to these requirements is a legal contract that is presumed to be valid and enforceable and is legally enforceable by the court. The parties to a gestational carrier agreement may petition the court for an order affirming the status of a gestational carrier agreement. The court shall issue such an order upon a finding that the agreement ***substantially*** meets the minimum requirements under RSA 168-B:11.

105:9 Parentage; Requirements for a Gestational Carrier Agreement. Amend RSA 168-B:11, IV(e) to read as follows:

(e) ~~[The express written agreement of all parties as to how]~~ ***Acknowledgment by the gestational carrier, and her spouse or partner, if any, that,*** if the gestational carrier breaches a provision of this chapter or of the gestational carrier agreement, and ***a court of competent jurisdiction determines that*** such a breach causes harm to the resulting child, the gestational carrier ~~[will cover her potential liability]~~ ***may be held financially responsible*** for such harm, pursuant to RSA 168-B:18.

105:10 Parentage Orders. Amend RSA 168-B:12, I to read as follows:

I. Any of the parties to a gestational carrier agreement may petition the court for a parentage order declaring that the intended parent or parents are the sole parents of a child resulting from assisted reproduction and a gestational carrier arrangement, and that the gestational carrier and her spouse or partner, if any, are not the parent or parents of such a child. Such a petition may be brought in the court in the county where the gestational carrier resides, where the intended parent or parents reside, ***where the transfer of embryos takes place, where at least one of the required legal or mental health consultations took place,*** or where the resulting child is born or is expected to be born. Such a petition may be brought either before, during, or subsequent to the pregnancy. The court shall, within 30 days, grant the petition upon a finding that the parties have substantially complied with the requirements of this chapter pertaining to the execution of a gestational carrier agreement. Sworn affidavits demonstrating substantial compliance shall be sufficient to permit such a finding and a hearing shall not be required unless the court requires additional information which cannot reasonably be ascertained without a hearing. In the absence of such substantial compliance, the court may in its discretion issue such parentage order upon a finding that the parties intended to enter into a gestational carrier arrangement and the best interests of the child would be met by permitting parentage to be established in this manner. Such parentage orders issued under this section shall conclusively establish or affirm, where applicable, the parent-child relationship.

105:11 Parentage; Marriage or Partnership of a Gestational Carrier During the Gestational Carrier Arrangement. Amend RSA 168-B:13 to read as follows:

168-B:13 Marriage or Partnership of a Gestational Carrier During the Gestational Carrier Arrangement. The marriage, ~~[or]~~ partnership, ***separation, or divorce*** of ~~[a gestational carrier after she executes a]~~ ***any party to a*** gestational carrier agreement does not affect the validity or the terms of the gestational carrier agreement~~[, and her spouse or partner shall not be a parent of the resulting child].~~

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105:12 Parentage; Remedies. Amend RSA 168-B:18, V and VI to read as follows:

V. A breach of a provision of this chapter and/or of the gestational carrier agreement by the gestational carrier, after the gestational carrier is impregnated, shall not relieve the gestational carrier of her obligations imposed by this chapter.

VI. A breach of a provision of this chapter and/or of the gestational carrier agreement by the gestational carrier, after the gestational carrier is impregnated, shall not relieve such intended parent or parents of the intended parent's or parents' parental rights or responsibilities to the child, unless it is determined by genetic testing, that the child is the genetic child of the gestational carrier.

[V4] VII. If the gestational carrier breaches a provision of this chapter and/or of the gestational carrier agreement, and such a breach causes harm to the resulting child, the gestational carrier may be liable for payment of the resulting child's medical expenses not otherwise covered by the intended parent's or parents' insurance.

VIII. Nothing in this chapter is intended to abrogate any rights of the resulting child to pursue any legally authorized action.

105:13 Rulemaking. Amend RSA 168-B:20 to read as follows:

168-B:20 Rulemaking. The department of health and human services [shall] ***may*** adopt rules, pursuant to RSA 541-A, to carry out its duties under this chapter. ~~[Until such time as the department of health and human services adopts rules pursuant to this section, medical evaluations, mental health consultations, and other procedures required under this chapter shall be conducted in accordance with the relevant sections of guidelines published by the American Society for Reproductive Medicine (ASRM), the Society for Assisted Reproductive Technologies (SART), and the American College of Obstetricians and Gynecologists (ACOG).]~~

105:14 Effective Date. This act shall take effect 60 days after its passage.

Approved: June 20, 2023
Effective Date: August 19, 2023

