

HOUSE BILL No. 1413

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-41-14; IC 29-1; IC 31-9-2; IC 31-14-7-1; IC 31-20; IC 35-46-5-3.

Synopsis: Assisted reproduction and gestational surrogacy. Amends provisions regarding testing of donated human sperm and eggs. Repeals current Indiana law regarding surrogacy agreements. Enacts the gestational surrogacy act, which establishes: (1) presumptions regarding parentage; (2) prerequisites for individuals who wish to enter into a gestational surrogacy agreement; (3) procedural requirements for gestational surrogacy; (4) requirements for gestational surrogacy agreements; (5) support obligations with regard to a child born as the result of gestational surrogacy; (6) remedies for breach of a gestational surrogacy agreement; and (7) provisions for determination of jurisdiction over litigation regarding a gestational surrogacy agreement. Enacts the gamete donation act, which establishes: (1) presumptions regarding parentage of a child born as the result of gamete donation; (2) prerequisites for individuals who wish to enter into a gamete donation agreement; (3) procedural requirements for gamete donation; (4) requirements for gamete donation agreements; (5) provisions regarding parentage of a child born posthumously to a gamete donor; (6) remedies for breach of a gamete donation agreement; and (7) provisions for determination of jurisdiction over litigation regarding a gamete donation agreement. Increases the maximum amount an ovum donor may be compensated for the donor's recovery time from \$4,000 to \$6,000. Requires legal counsel to have significant experience in assisted reproduction matters in certain instances. Provides that a gestational surrogacy agreement may not limit the right of the gestational surrogate to make any decision concerning the gestational surrogate's right to terminate or continue a pregnancy. Provides that
(Continued next page)

Effective: July 1, 2020.

Eberhart

January 15, 2020, read first time and referred to Committee on Judiciary.



any term or condition in a gestational surrogacy agreement that contradicts or seeks to abrogate a surrogate's right to continue or terminate a pregnancy is void. Provides that the marriage of a gestational surrogate after the execution of a gestational surrogacy agreement does not affect the validity of the gestational surrogacy agreement. Provides that consent from a gestational surrogate's spouse is not required in order for the terms of the gestational surrogacy agreement to be completed or performed. Provides that a person who becomes the spouse of a gestational surrogate after the execution of a gestational surrogacy agreement is not a presumed parent of the resulting child. Provides that if a gestational surrogate initiates divorce proceedings or becomes divorced before the intended parent can establish parentage, the spouse of the gestational surrogate shall not be the presumed parent of a resulting child and shall not be required to sign, or otherwise authenticate, any establishment of parentage documentation required by a court. Provides that certain conditions must be met prior to the issuance of a prebirth court order by a court. Requires all reproductive endocrinologists and mental health professionals engaging in gestational surrogacy matters to remain informed of recommended guidelines published by the American Society for Reproductive Medicine and the American College of Obstetricians and Gynecologists. Provides that court orders concerning gestational surrogacy do not provide a court with jurisdiction over the matters of child custody or child support if jurisdiction over the matters is not otherwise authorized. Provides that a court order concerning the establishment of parentage shall be given full faith and credit in another state if an Indiana establishment of parentage court order constitutes a signed record and otherwise complies with the laws of the other state. Exempts donor compensation for gamete donation from certain prohibitions concerning the sale of a human ovum, zygote, embryo, or fetus under certain circumstances. Allows the retrieval of gametes from a person who is: (1) deceased; (2) brain dead; (3) comatose; or (4) in a persistent vegetative state; in certain instances. Specifies that: (1) maternity; and (2) paternity; must be established not later than four years after the death of a parent in instances involving children born through use of assisted reproduction. Specifies factors for a court to consider when deciding upon the disposition of cryopreserved preembryos: (1) during a divorce or separation; and (2) in the absence of an agreement concerning the ultimate disposition of cryopreserved preembryos. Defines certain terms. Makes conforming amendments.



Introduced

Second Regular Session of the 121st General Assembly (2020)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2019 Regular Session of the General Assembly.

HOUSE BILL No. 1413

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 16-41-14-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 1. This chapter does not
3 apply to a donor who is the husband **or sexually intimate partner** of
4 the recipient.
- 5 SECTION 2. IC 16-41-14-3.2 IS ADDED TO THE INDIANA
6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
7 [EFFECTIVE JULY 1, 2020]: **Sec. 3.2. As used in this chapter,**
8 **"fertility clinic" has the meaning set forth in IC 31-20-1.2-6.**
- 9 SECTION 3. IC 16-41-14-3.3 IS ADDED TO THE INDIANA
10 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
11 [EFFECTIVE JULY 1, 2020]: **Sec. 3.3. As used in this chapter,**
12 **"gamete" has the meaning set forth in IC 31-20-1.2-7.**
- 13 SECTION 4. IC 16-41-14-4.5 IS ADDED TO THE INDIANA
14 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
15 [EFFECTIVE JULY 1, 2020]: **Sec. 4.5. As used in this chapter,**

2020

IN 1413—LS 7025/DI 123



1 **"sexually intimate partner" has the meaning set forth in**
 2 **IC 31-20-1.2-15.**

3 SECTION 5. IC 16-41-14-4.8 IS ADDED TO THE INDIANA
 4 CODE AS A NEW SECTION TO READ AS FOLLOWS
 5 [EFFECTIVE JULY 1, 2020]: **Sec. 4.8. (a) An**
 6 **obstetrician/gynecologist may perform an anonymous donor**
 7 **insemination if the sperm used in the insemination is supplied by**
 8 **a laboratory or clinic that is:**

9 (1) registered with; and

10 (2) compliant with the regulations issued by;
 11 **the federal Food and Drug Administration.**

12 (b) **A medical procedure related to a gamete donation in which**
 13 **the donor's identity is known by the intended parent must be**
 14 **performed at a fertility clinic that is:**

15 (1) registered with; and

16 (2) compliant with the regulations issued by;
 17 **the federal Food and Drug Administration.**

18 SECTION 6. IC 16-41-14-5 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 5. (a) Except as**
 20 **provided in subsection (e) and section 7 7.1 of this chapter, a**
 21 **practitioner shall test each donor of semen for the following diseases**
 22 **before the donor provides a donation:**

23 (1) Syphilis.

24 (2) Hepatitis B surface antigen and core antibody.

25 (3) HIV antibody.

26 (b) Except as provided in section 7 7.1 of this chapter, a practitioner
 27 shall test each recipient initially and at least annually as long as
 28 artificial insemination procedures are continuing for the following
 29 diseases:

30 (1) Syphilis.

31 (2) Hepatitis B surface antigen.

32 (3) HIV antibody.

33 (c) A practitioner shall perform or arrange for a confirmatory test for
 34 HIV antibody if the initial screening test for HIV antibody yields
 35 positive results.

36 (d) The practitioner shall report the information required under
 37 IC 16-41-2 when a test performed under subsection (c) confirms the
 38 presence of a disease required to be reported to the state department.

39 (e) If a practitioner states in writing that a person has a disease or
 40 will soon undergo medical treatment that may damage the person's:

41 (1) ability to donate semen; or

42 (2) semen;



1 the practitioner shall allow the person to donate semen before
2 performing the tests required under subsection (a).

3 SECTION 7. IC 16-41-14-7 IS REPEALED [EFFECTIVE JULY 1,
4 2020]. Sec. 7: (a) Except as provided in subsection (b), a practitioner
5 may not use a donation of semen until the following conditions are met:

6 (1) The specimen has been frozen and quarantined for at least one
7 hundred eighty (180) days:

8 (2) The donor is retested after one hundred eighty (180) days for
9 the HIV antibody:

10 (b) If the recipient indicates that the donor is in a mutually
11 monogamous relationship with the recipient, the practitioner:

12 (1) shall perform the HIV test required under this chapter for the
13 donor at least annually as long as artificial insemination
14 procedures are continuing; and

15 (2) may not perform artificial insemination unless the tests for
16 HIV antibody performed under this chapter produce negative
17 results:

18 SECTION 8. IC 16-41-14-7.1 IS ADDED TO THE INDIANA
19 CODE AS A NEW SECTION TO READ AS FOLLOWS
20 [EFFECTIVE JULY 1, 2020]: **Sec. 7.1. A practitioner may not use
21 a donated gamete in a nonanonymous donation under IC 31-20-1.2
22 unless the practitioner complies with the testing requirements of
23 the federal Food and Drug Administration.**

24 SECTION 9. IC 16-41-14-14 IS AMENDED TO READ AS
25 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 14. (a) A practitioner
26 shall keep the following:

27 (1) A record of the information required under this chapter.

28 (2) The results of tests required under sections 5 and 7.1 of this
29 chapter.

30 (3) A writing required under section 5(e) of this chapter.

31 (b) Records kept under this section shall be made available to the
32 state department for inspection.

33 (c) The state department may enter and inspect a practitioner's
34 facility to investigate the premises, books, and records as necessary to
35 carry out this chapter.

36 (d) A person may not interfere with the performance of the state
37 department of health under this chapter.

38 SECTION 10. IC 16-41-14-16 IS AMENDED TO READ AS
39 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 16. **Except as
40 otherwise provided in this chapter**, a practitioner who:

41 (1) is responsible for conducting a screening test required under
42 this chapter; and



1 (2) knowingly or intentionally fails to conduct the screening test;
2 commits a Class A misdemeanor.

3 SECTION 11. IC 29-1-1-3, AS AMENDED BY P.L.231-2019,
4 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2020]: Sec. 3. (a) The following definitions apply throughout
6 this article, unless otherwise apparent from the context:

7 (1) "Child" includes:

8 (A) an adopted child; or

9 (B) a child that is:

10 (i) in gestation before the death of a deceased parent and
11 born within forty-three (43) weeks after the death of that
12 parent; and

13 (ii) naturally conceived; or

14 (C) a child that is:

15 (i) conceived through assisted reproduction; and

16 (ii) determined to be, by a court of competent
17 jurisdiction, the child of a deceased mother or father;
18 after the death of the parent if an action to establish legal
19 parentage is filed not later than four (4) years after the
20 death of the parent.

21 The term does not include a grandchild or other more remote
22 descendants, nor, except as provided in IC 29-1-2-7, a child born
23 out of wedlock.

24 (2) "Claimant" means a person having a claim against the
25 decedent's estate as described in IC 29-1-14-1(a).

26 (3) "Claims" includes liabilities of a decedent which survive,
27 whether arising in contract or in tort or otherwise, expenses of
28 administration, and all taxes imposed by reason of the person's
29 death. However, for purposes of IC 29-1-2-1 and IC 29-1-3-1, the
30 term does not include taxes imposed by reason of the person's
31 death.

32 (4) "Court" means the court having probate jurisdiction.

33 (5) "Decedent" means one who dies testate or intestate.

34 (6) "Devise" or "legacy", when used as a noun, means a
35 testamentary disposition of either real or personal property or
36 both.

37 (7) "Devise", when used as a verb, means to dispose of either real
38 or personal property or both by will.

39 (8) "Devisee" includes legatee, and "legatee" includes devisee.

40 (9) "Distributee" denotes those persons who are entitled to the
41 real and personal property of a decedent under a will, under the
42 statutes of intestate succession, or under IC 29-1-4-1.



- 1 (10) "Estate" denotes the real and personal property of the
 2 decedent or protected person, as from time to time changed in
 3 form by sale, reinvestment, or otherwise, and augmented by any
 4 accretions and additions thereto and substitutions therefor and
 5 diminished by any decreases and distributions therefrom.
- 6 (11) "Expenses of administration" includes expenses incurred by
 7 or on behalf of a decedent's estate in the collection of assets, the
 8 payment of debts, and the distribution of property to the persons
 9 entitled to the property, including funeral expenses, expenses of
 10 a tombstone, expenses incurred in the disposition of the
 11 decedent's body, executor's commissions, attorney's fees, and
 12 miscellaneous expenses.
- 13 (12) "Fiduciary" includes a:
 14 (A) personal representative;
 15 (B) guardian;
 16 (C) conservator;
 17 (D) trustee; and
 18 (E) person designated in a protective order to act on behalf of
 19 a protected person.
- 20 (13) "Heirs" denotes those persons, including the surviving
 21 spouse, who are entitled under the statutes of intestate succession
 22 to the real and personal property of a decedent on the decedent's
 23 death intestate, unless otherwise defined or limited by the will.
- 24 (14) "Incapacitated" has the meaning set forth in IC 29-3-1-7.5.
- 25 (15) "Interested persons" means heirs, devisees, spouses,
 26 creditors, or any others having a property right in or claim against
 27 the estate of a decedent being administered. This meaning may
 28 vary at different stages and different parts of a proceeding and
 29 must be determined according to the particular purpose and
 30 matter involved.
- 31 (16) "Issue" of a person, when used to refer to persons who take
 32 by intestate succession, includes all lawful lineal descendants
 33 except those who are lineal descendants of living lineal
 34 descendants of the intestate.
- 35 (17) "Lease" includes an oil and gas lease or other mineral lease.
- 36 (18) "Letters" includes letters testamentary, letters of
 37 administration, and letters of guardianship.
- 38 (19) "Minor" or "minor child" or "minority" refers to any person
 39 under the age of eighteen (18) years.
- 40 (20) "Mortgage" includes deed of trust, vendor's lien, and chattel
 41 mortgage.
- 42 (21) "Net estate" refers to the real and personal property of a



- 1 decedent less the allowances provided under IC 29-1-4-1 and
 2 enforceable claims against the estate.
- 3 (22) "No contest provision" refers to a provision of a will that, if
 4 given effect, would reduce or eliminate the interest of a
 5 beneficiary of the will who, directly or indirectly, initiates or
 6 otherwise pursues:
- 7 (A) an action to contest the admissibility or validity of the will;
 - 8 (B) an action to set aside a term of the will; or
 - 9 (C) any other act to frustrate or defeat the testator's intent as
 10 expressed in the terms of the will.
- 11 (23) "Person" means:
- 12 (A) an individual;
 - 13 (B) a corporation;
 - 14 (C) a trust;
 - 15 (D) a limited liability company;
 - 16 (E) a partnership;
 - 17 (F) a business trust;
 - 18 (G) an estate;
 - 19 (H) an association;
 - 20 (I) a joint venture;
 - 21 (J) a government or political subdivision;
 - 22 (K) an agency;
 - 23 (L) an instrumentality; or
 - 24 (M) any other legal or commercial entity.
- 25 (24) "Personal property" includes interests in goods, money,
 26 choses in action, evidences of debt, and chattels real.
- 27 (25) "Personal representative" includes executor, administrator,
 28 administrator with the will annexed, administrator de bonis non,
 29 and special administrator.
- 30 (26) "Petition for administration" means a petition filed under
 31 IC 29-1-7-5 for the:
- 32 (A) probate of a will and for issuance of letters testamentary;
 - 33 (B) appointment of an administrator with the will annexed; or
 - 34 (C) appointment of an administrator.
- 35 (27) "Probate estate" denotes the property transferred at the death
 36 of a decedent under the decedent's will or under IC 29-1-2, in the
 37 case of a decedent dying intestate.
- 38 (28) "Property" includes both real and personal property.
- 39 (29) "Protected person" has the meaning set forth in IC 29-3-1-13.
- 40 (30) "Real property" includes estates and interests in land,
 41 corporeal or incorporeal, legal or equitable, other than chattels
 42 real.



- 1 (31) "Unit" means the estate recovery unit of the office of
 2 Medicaid policy and planning established under IC 12-8-6.5-1.
 3 (32) "Unit address" means the unit's mailing address that appears
 4 on the unit's Internet web site.
 5 (33) "Will" includes all wills, testaments, and codicils. The term
 6 also includes a testamentary instrument which merely appoints an
 7 executor or revokes or revives another will.
 8 (b) The following rules of construction apply throughout this article
 9 unless otherwise apparent from the context:
 10 (1) The singular number includes the plural and the plural number
 11 includes the singular.
 12 (2) The masculine gender includes the feminine and neuter.
 13 SECTION 12. IC 29-1-2-7, AS AMENDED BY P.L.190-2016,
 14 SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2020]: Sec. 7. (a) For the purpose of inheritance (on the
 16 maternal side) to, through, and from a child born out of wedlock, the
 17 child shall be treated as if the child's mother were married to the child's
 18 father at the time of the child's birth, so that the child and the child's
 19 issue shall inherit from the child's mother and from the child's maternal
 20 kindred, both descendants and collaterals, in all degrees, and they may
 21 inherit from the child. The child shall also be treated as if the child's
 22 mother were married to the child's father at the time of the child's birth,
 23 for the purpose of determining homestead rights and the making of
 24 family allowances.
 25 **(b) If a child is:**
 26 **(1) born after the death of the mother;**
 27 **(2) conceived through assisted reproduction; and**
 28 **(3) determined to be the child of the deceased mother by an**
 29 **action filed in a court of competent jurisdiction not later than**
 30 **four (4) years after the death of the mother;**
 31 **the child shall be treated as if the child were naturally born during**
 32 **the mother's lifetime.**
 33 ~~(b)~~ (c) For the purpose of inheritance (on the paternal side) to,
 34 through, and from a child born out of wedlock, the child shall be
 35 treated as if the child's father were married to the child's mother at the
 36 time of the child's birth, if one (1) of the following requirements is met:
 37 (1) The paternity of a child who was at least twenty (20) years of
 38 age when the father died has been established by law in a cause
 39 of action that is filed during the father's lifetime.
 40 (2) The paternity of a child who was less than twenty (20) years
 41 of age when the father died has been established by law in a cause
 42 of action that is filed:



- 1 (A) during the father's lifetime; ~~or~~
 2 (B) within five (5) months after the father's death **if the child**
 3 **is conceived naturally; or**
 4 **(C) within four (4) years after the father's death if the child**
 5 **is born:**
 6 (i) through use of assisted reproduction; and
 7 (ii) posthumously.
- 8 (3) The paternity of a child born after the father died has been
 9 established by law:
 10 (A) in a cause of action that is filed within eleven (11) months
 11 after the father's death **if the child is conceived naturally; or**
 12 **(B) in a cause of action that is filed within four (4) years**
 13 **after the father's death if the child is born:**
 14 (i) through assisted reproduction; and
 15 (ii) posthumously.
- 16 (4) The putative father marries the mother of the child and
 17 acknowledges the child to be his own.
- 18 (5) The putative father executed a paternity affidavit in
 19 accordance with IC 31-6-6.1-9(b) (before its repeal).
- 20 (6) The putative father executes a paternity affidavit as set forth
 21 in IC 16-37-2-2.1.
- 22 ~~(c)~~ (d) The testimony of the mother may be received in evidence to
 23 establish such paternity and acknowledgment, but no judgment shall be
 24 made upon the evidence of the mother alone. The evidence of the
 25 mother must be supported by corroborative evidence or circumstances.
- 26 ~~(d)~~ (e) If paternity is established as described in this section, the
 27 child shall be treated as if the child's father were married to the child's
 28 mother at the time of the child's birth, so that the child and the child's
 29 issue shall inherit from the child's father and from the child's paternal
 30 kindred, both descendants and collateral, in all degrees, and they may
 31 inherit from the child. The child shall also be treated as if the child's
 32 father were married to the child's mother at the time of the child's birth,
 33 for the purpose of determining homestead rights and the making of
 34 family allowances.
- 35 SECTION 13. IC 31-9-2-10, AS AMENDED BY P.L.191-2011,
 36 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JULY 1, 2020]: Sec. 10. "Birth parent", for purposes of IC 31-19-17
 38 through IC 31-19-25.5, means:
 39 (1) the woman who is legally presumed under ~~Indiana law~~
 40 **IC 31-20-1.1-22** to be the mother of biological origin of an
 41 adoptee;
 42 (2) the man who is legally presumed under Indiana law to be the



1 father of biological origin of an adoptee; or
 2 (3) a man who establishes paternity of a child born out of
 3 wedlock:

4 (A) in a court proceeding; or

5 (B) by executing a paternity affidavit under IC 16-37-2-2.1.

6 SECTION 14. IC 31-9-2-63 IS REPEALED [EFFECTIVE JULY 1,
 7 2020]. Sec. ~~63~~: "Intended biological parent", for purposes of sections
 8 ~~126~~ and ~~127~~ of this chapter, means a party to a surrogate agreement
 9 who:

10 (1) agrees to be or is genetically related to a child borne by a
 11 surrogate; and

12 (2) is not the surrogate's spouse.

13 SECTION 15. IC 31-9-2-126 IS REPEALED [EFFECTIVE JULY
 14 1, 2020]. Sec. ~~126~~: "Surrogate", for purposes of IC 31-20; means a
 15 party to a surrogate agreement who agrees to bear or bears a child that
 16 is genetically related to:

17 (1) the party who agrees to bear or bears the child and an intended
 18 biological parent;

19 (2) an intended biological parent and a gamete donor who is not:

20 (A) an intended biological parent; and

21 (B) the spouse of the party who agrees to bear or bears the
 22 child; or

23 (3) two (2) intended biological parents of the child.

24 SECTION 16. IC 31-9-2-127 IS REPEALED [EFFECTIVE JULY
 25 1, 2020]. Sec. ~~127~~: "Surrogate agreement", for purposes of IC 31-20;
 26 means an agreement that is entered into before the birth of a child
 27 between a surrogate and one (1) or more parties and that is intended by
 28 the parties at the time that the agreement is made to induce the
 29 surrogate to relinquish care, custody, and control over the child at birth
 30 to any of the following:

31 (1) An intended biological parent of the child.

32 (2) An intended biological parent of the child and another person
 33 who is not:

34 (A) genetically related to the child; and

35 (B) the surrogate's spouse.

36 (3) Two (2) intended biological parents of the child.

37 SECTION 17. IC 31-14-7-1 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 1. A man is presumed
 39 to be a child's biological father if:

40 (1) the:

41 (A) man and the child's biological mother are or have been
 42 married to each other; and



- 1 (B) child is born during the marriage or not later than three
- 2 hundred (300) days after the marriage is terminated by death,
- 3 annulment, or dissolution;
- 4 (2) the:
- 5 (A) man and the child's biological mother attempted to marry
- 6 each other by a marriage solemnized in apparent compliance
- 7 with the law, even though the marriage:
- 8 (i) is void under IC 31-11-8-2, IC 31-11-8-3, IC 31-11-8-4,
- 9 or IC 31-11-8-6; or
- 10 (ii) is voidable under IC 31-11-9; and
- 11 (B) child is born during the attempted marriage or not later
- 12 than three hundred (300) days after the attempted marriage is
- 13 terminated by death, annulment, or dissolution; ~~or~~
- 14 (3) the man undergoes a genetic test that indicates with at least a
- 15 ninety-nine percent (99%) probability that the man is the child's
- 16 biological father; ~~or~~
- 17 **(4) a court of competent jurisdiction has determined for**
- 18 **purposes of inheritance that the man is the father of the child,**
- 19 **through a proceeding for paternity filed within four (4) years**
- 20 **after the father's death, through means of assisted**
- 21 **reproduction.**

22 SECTION 18. IC 31-20-1 IS REPEALED [EFFECTIVE JULY 1,
23 2020]. (Surrogate Agreements).

24 SECTION 19. IC 31-20-1.1 IS ADDED TO THE INDIANA CODE
25 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
26 JULY 1, 2020]:

27 **Chapter 1.1. Indiana Gestational Surrogacy Act**

28 **Sec. 1. This chapter applies only to gestational surrogacy**
29 **agreements entered into after June 30, 2020.**

30 **Sec. 2. This chapter may be cited as the gestational surrogacy**
31 **act.**

32 **Sec. 3. The purpose of this chapter is to establish consistent**
33 **standards and procedural safeguards for the protection of all**
34 **parties that agree to use Indiana as the jurisdiction for**
35 **enforcement of the gestational surrogacy agreement and to**
36 **confirm the legal status of children born as a result of these**
37 **agreements. These standards and safeguards are meant to facilitate**
38 **the use of this type of reproductive agreement in accordance with**
39 **the public policy of Indiana.**

40 **Sec. 4. As used in this chapter, "assisted reproduction" means**
41 **treatments and procedures that:**

- 42 **(1) are performed by a physician; and**



- 1 (2) are intended to achieve pregnancy.
- 2 **Sec. 5.** As used in this chapter, "compensation" means payment
3 of any valuable consideration for services in excess of reasonable
4 medical and ancillary costs.
- 5 **Sec. 6.** As used in this chapter, "gamete" means a human:
6 (1) sperm; or
7 (2) egg.
- 8 **Sec. 7.** As used in this chapter, "gamete donor" means an
9 individual who contributes a gamete or gametes for the purpose of
10 in vitro fertilization, or implantation in another individual.
- 11 **Sec. 8.** As used in this chapter, "gestational surrogacy" means
12 the process by which a woman attempts to carry and give birth to
13 a child for an intended parent:
14 (1) that is created through in vitro fertilization; and
15 (2) to which the woman has made no genetic contribution.
- 16 **Sec. 9.** As used in this chapter, "gestational surrogacy
17 agreement" means a written agreement entered into under this
18 chapter regarding a gestational surrogacy.
- 19 **Sec. 10.** As used in this chapter, "gestational surrogate" means
20 a woman who agrees to engage in a gestational surrogacy.
- 21 **Sec. 11.** As used in this chapter, "health care provider" means
22 a person who is licensed to provide health care (as defined in
23 IC 16-36-1-1), including a medical, psychological, or counseling
24 professional.
- 25 **Sec. 12.** As used in this chapter, "intended parent" means an
26 individual who enters into a gestational surrogacy agreement
27 under which the individual intends to be the legal parent of the
28 resulting child.
- 29 **Sec. 13.** As used in this chapter, "in vitro fertilization" means all
30 medical and laboratory procedures that are necessary to effectuate
31 the extracorporeal fertilization of egg and sperm.
- 32 **Sec. 14.** As used in this chapter, "legal counsel" means a licensed
33 attorney who complies with the Indiana rules of professional
34 conduct.
- 35 **Sec. 15.** As used in this chapter, "medical evaluation" means:
36 (1) a consultation of; and
37 (2) an evaluation by;
38 a reproductive endocrinologist or another qualified individual
39 working under the authority, order, or supervision of a
40 reproductive endocrinologist.
- 41 **Sec. 16.** As used in this chapter, "mental health evaluation"
42 means:



1 (1) a consultation with; and
 2 (2) an evaluation by;
 3 a mental health professional who has knowledge of the mental
 4 health aspects of gestational surrogacy.

5 Sec. 17. As used in this chapter, "parent-child relationship"
 6 means the legal relationship between a child and a parent of the
 7 child.

8 Sec. 18. As used in this chapter, "physician" means a person
 9 licensed under IC 25-22.5.

10 Sec. 19. As used in this chapter, "preembryo" means a fertilized
 11 egg at less than fourteen (14) days of development.

12 Sec. 20. As used in this chapter, "preembryo transfer" means all
 13 medical and laboratory procedures that are necessary to effectuate
 14 the transfer of a preembryo into a gestational surrogate's uterine
 15 cavity.

16 Sec. 21. As used in this chapter, "reproductive endocrinologist"
 17 means a physician who:

- 18 (1) has completed an accredited fellowship in reproductive
- 19 endocrinology and infertility; or
- 20 (2) is board eligible for certification in reproductive
- 21 endocrinology and infertility.

22 Sec. 22. (a) Except as provided in this chapter:

- 23 (1) the woman who gives birth to a child is presumed to be the
- 24 legal parent of the child for purposes of Indiana law; and
- 25 (2) if the woman is married, her spouse is presumed to be the
- 26 joint legal parent of the child.

27 (b) Immediately upon the birth of a child resulting from a
 28 gestational surrogacy that meets the requirements of this chapter:

- 29 (1) the intended parent is the legal parent of the child for
- 30 purposes of Indiana law;
- 31 (2) the child is considered the legitimate child of the intended
- 32 parent for purposes of Indiana law;
- 33 (3) parental rights vest in the intended parent;
- 34 (4) sole custody of the child rests with the intended parent;
- 35 and
- 36 (5) neither the gestational surrogate nor her spouse, if any,
- 37 are the parent of the child for purposes of Indiana law.

38 (c) If, due to a laboratory error, a gestational surrogacy that
 39 meets the requirements of this chapter results in the birth of a child
 40 who is not genetically related to the intended parent, the intended
 41 parent is the parent of the child for purposes of Indiana law unless
 42 a court of competent jurisdiction determines otherwise.



1 (d) The parties to a gestational surrogacy agreement shall
2 assume the rights and obligations of subsections (b) and (c) if:

3 (1) the gestational surrogate meets the requirements of section
4 23(a) of this chapter;

5 (2) the intended parent meets the requirements of section
6 23(b) of this chapter; and

7 (3) the gestational surrogacy meets the requirements of
8 section 24 of this chapter.

9 (e) If a child is born as a result of a gestational surrogacy that
10 does not meet the requirements of this chapter, section 39 of this
11 chapter shall determine parentage until a court of competent
12 jurisdiction determines the parentage of the child based on
13 evidence of the parties' intent.

14 Sec. 23. (a) At the time a gestational surrogacy agreement is
15 executed, the gestational surrogate must:

16 (1) be at least twenty-one (21) years of age;

17 (2) have given birth to at least one (1) child;

18 (3) have completed a medical evaluation by a reproductive
19 endocrinologist or a qualified individual supervised by a
20 reproductive endocrinologist;

21 (4) have completed a mental health evaluation which may be
22 conducted by a mental health professional through federal
23 Health Insurance Portability and Accountability Act (HIPAA)
24 compliant video conferencing or in person;

25 (5) have:

26 (A) retained legal counsel that is separate and independent
27 from legal counsel representing the intended parent; and

28 (B) been advised by the gestational surrogate's retained
29 legal counsel regarding the terms of the gestational
30 surrogacy agreement and the potential legal consequences
31 of the gestational surrogacy; and

32 (6) have or agree to obtain a health insurance policy that:

33 (A) covers major medical treatments and hospitalization;
34 and

35 (B) has a term that extends through the duration of the
36 expected pregnancy and for eight (8) weeks after the birth
37 of the child.

38 The policy of insurance required under subdivision (6) may be
39 procured by the intended parent on behalf of the gestational
40 surrogate under the gestational surrogacy agreement, and an
41 insurer that covers maternity care shall not deny, limit, or seek
42 reimbursement for maternity care because the gestational



1 surrogate is acting as a gestational surrogate.

2 (b) At the time a gestational surrogacy agreement is executed,
3 the intended parent must:

4 (1) be at least twenty-one (21) years of age;

5 (2) have completed a mental health evaluation which may be
6 conducted by a mental health professional through federal
7 Health Insurance Portability and Accountability Act (HIPAA)
8 compliant video conferencing or in person; and

9 (3) have:

10 (A) retained legal counsel that is separate and independent
11 from legal counsel representing the gestational surrogate;
12 and

13 (B) been advised by the intended parent's retained legal
14 counsel regarding the terms of the gestational surrogacy
15 agreement and the potential legal consequences of the
16 gestational surrogacy.

17 Sec. 24. A gestational surrogacy must meet the following
18 requirements:

19 (1) The gestational surrogacy agreement must meet the
20 requirements of section 25 of this chapter.

21 (2) The gestational surrogate and the intended parent must be
22 represented by separate and independent legal counsel in all
23 matters concerning the gestational surrogacy and the
24 gestational surrogacy agreement.

25 (3) The:

26 (A) gestational surrogate must sign a written
27 acknowledgment that the gestational surrogate received;
28 and

29 (B) intended parent must sign a written acknowledgment
30 that the intended parent received;

31 information about the legal, financial, and contractual rights,
32 expectations, penalties, and obligations of the surrogacy
33 agreement.

34 (4) If the gestational surrogacy agreement provides for the
35 payment of compensation to the gestational surrogate, the
36 compensation must be:

37 (A) placed in escrow with an independent escrow agent
38 that is not held by the legal counsel for any party to the
39 gestational surrogacy agreement; and

40 (B) placed in escrow under clause (A) before the
41 gestational surrogate's commencement of any medical
42 procedure in furtherance of the gestational surrogacy



1 (other than medical or mental health evaluations necessary
 2 to determine whether the gestational surrogate meets the
 3 requirements of section 23(a) of this chapter).

4 **Sec. 25. (a) A gestational surrogacy agreement must:**

5 (1) be in writing;

6 (2) be executed before the commencement of any medical
 7 procedures in furtherance of the gestational surrogacy (other
 8 than medical or mental health evaluations or consultations
 9 necessary to determine whether the parties meet the
 10 requirements of section 23 of this chapter);

11 (3) be executed by:

12 (A) a gestational surrogate who meets the requirements of
 13 section 23(a) of this chapter;

14 (B) the gestational surrogate's spouse, if the gestational
 15 surrogate is married;

16 (C) an intended parent who meets the eligibility
 17 requirements of section 23(b) of this chapter; and

18 (D) the intended parent's spouse, if the intended parent is
 19 married;

20 (4) be notarized; and

21 (5) include the following provisions:

22 (A) The express written agreement of the gestational
 23 surrogate to:

24 (i) undergo preembryo transfer and attempt to carry and
 25 give birth to the child; and

26 (ii) surrender custody of the child to the intended parent
 27 immediately upon the birth of the child.

28 (B) If the gestational surrogate is married, the express
 29 agreement of her spouse to:

30 (i) undertake the obligations imposed on the gestational
 31 surrogate under the terms of the gestational surrogacy
 32 agreement; and

33 (ii) surrender custody of the child to the intended parent
 34 immediately upon the birth of the child.

35 (C) The right of the gestational surrogate to use the
 36 services of an obstetrician physician or qualified medical
 37 provider of her choosing, after consultation with the
 38 intended parents, to provide her care during the
 39 pregnancy.

40 (D) The express written agreement of the intended parent
 41 to:

42 (i) accept custody of the child; and



- 1 (ii) assume sole responsibility for the support of the
2 child;
3 immediately upon the child's birth, regardless of the
4 number, gender, or mental or physical condition of the
5 child or children.
- 6 (b) A gestational surrogacy agreement may include one (1) or
7 more of the following provisions:
- 8 (1) The gestational surrogate's agreement to undergo all
9 medical exams, treatments, and fetal monitoring procedures
10 recommended by a physician or qualified medical provider
11 for the success of the pregnancy.
- 12 (2) The gestational surrogate's agreement to abstain from any
13 activities that the intended parent or a physician or qualified
14 medical provider reasonably believes to be harmful to the
15 pregnancy and future health of the child, including:
- 16 (A) smoking;
17 (B) drinking alcohol;
18 (C) using nonprescribed drugs not authorized by a
19 physician or qualified medical provider who is aware of
20 the gestational surrogate's pregnancy;
21 (D) using prescription drugs not authorized by a physician
22 or qualified medical provider who is aware of the
23 gestational surrogate's pregnancy;
24 (E) exposure to radiation; or
25 (F) any other activities proscribed by a health care
26 provider.
- 27 (3) The agreement of the intended parent to pay the
28 gestational surrogate reasonable compensation.
- 29 (4) The agreement of the intended parent to pay for or
30 reimburse the gestational surrogate for reasonable expenses
31 (including medical, legal, or other professional expenses)
32 related to the gestational surrogacy and the gestational
33 surrogacy agreement.
- 34 Sec. 26. (a) Subject to subsection (b), a gestational surrogacy
35 agreement may not limit the right of the gestational surrogate to
36 make any decision concerning the gestational surrogate's right to
37 terminate or continue a pregnancy. Any term or condition in a
38 gestational surrogacy agreement that contradicts or seeks to
39 abrogate this section is void.
- 40 (b) The intended parent may seek reimbursement of any
41 expenses incurred during the gestational surrogacy as a result of
42 the gestational surrogate terminating a fetus against the wishes of



1 the intended parent unless the life of the gestational surrogate was
2 at risk.

3 **Sec. 27. (a) The marriage of a gestational surrogate after the**
4 **execution of a gestational surrogacy agreement does not affect the**
5 **validity of the gestational surrogacy agreement, and consent from**
6 **the gestational surrogate's spouse is not required in order for the**
7 **terms of the gestational surrogacy agreement to be completed or**
8 **performed.**

9 **(b) A person who becomes the spouse of a gestational surrogate**
10 **after the execution of the gestational surrogacy agreement is not a**
11 **presumed parent of the resulting child.**

12 **Sec. 28. If a gestational surrogate is a party to divorce**
13 **proceedings or becomes divorced before the intended parent can**
14 **establish parentage, the spouse of the gestational surrogate shall**
15 **not be the presumed parent of a resulting child and shall not be**
16 **required to sign, or otherwise authenticate, any establishment of**
17 **parentage documentation required by a court.**

18 **Sec. 29. (a) An individual who is considered to be the parent of**
19 **a child under section 22 of this chapter is obligated to support the**
20 **child.**

21 **(b) The breach of a gestational surrogacy agreement by the**
22 **intended parent does not relieve the intended parent of the support**
23 **obligations imposed by this chapter.**

24 **(c) A gamete donor is liable for child support only if the gamete**
25 **donor fails to comply with IC 31-20-1.2.**

26 **Sec. 30. For purposes of this chapter, a parent-child relationship**
27 **is considered established prior to the birth of a child through**
28 **gestational surrogacy if, in addition to the gestational surrogacy**
29 **satisfying the requirements of this chapter, the following conditions**
30 **are met:**

31 **(1) The legal counsel representing a party to the gestational**
32 **surrogacy agreement certifies that the parties to the**
33 **gestational surrogacy agreement intend to satisfy the**
34 **requirements of this chapter with respect to the child.**

35 **(2) A copy of the gestational surrogacy agreement is**
36 **submitted to an appropriate court of competent jurisdiction**
37 **under section 37 of this chapter.**

38 **The conditions described under this section must be met before the**
39 **issuance of a prebirth court order by a court with competent**
40 **jurisdiction.**

41 **Sec. 31. Except as provided in this chapter, an individual is not**
42 **civily or criminally liable for non-negligent actions taken under**



1 this chapter.

2 **Sec. 32. (a) Noncompliance by a party to a gestational surrogacy**
 3 **agreement occurs when the party materially breaches a provision**
 4 **of the gestational surrogacy agreement.**

5 **(b) Except as otherwise provided in this chapter, in the event of**
 6 **a party's noncompliance with the requirements of this chapter, a**
 7 **court of competent jurisdiction shall determine the respective**
 8 **rights and obligations of the parties.**

9 **(c) There is no specific performance remedy for a breach by the**
 10 **gestation surrogate of a gestation surrogacy agreement term that**
 11 **requires the gestational surrogate to:**

- 12 **(1) be impregnated;**
 13 **(2) terminate a pregnancy; or**
 14 **(3) carry a pregnancy to term.**

15 **(d) Except as expressly provided in the gestational surrogacy**
 16 **agreement, the intended parent is entitled to all remedies available**
 17 **at law or equity.**

18 **(e) Except as expressly provided in the gestational surrogacy**
 19 **agreement, the gestational surrogate is entitled to all remedies**
 20 **available at law or equity.**

21 **Sec. 33. All reproductive endocrinologists and mental health**
 22 **professionals engaging in gestational surrogacy matters shall**
 23 **remain informed of the recommended guidelines published by the**
 24 **American Society for Reproductive Medicine and the American**
 25 **College of Obstetricians and Gynecologists.**

26 **Sec. 34. If any provision of this chapter or its application to any**
 27 **person or circumstance is held invalid, the invalidity of that**
 28 **provision or application does not affect other provisions or**
 29 **applications of this chapter that can be given effect without the**
 30 **invalid provision or application.**

31 **Sec. 35. An action to:**

- 32 **(1) invalidate a gestational surrogacy agreement that meets**
 33 **the requirements of this chapter; or**
 34 **(2) challenge rights of parentage established under this**
 35 **chapter;**

36 **may not be commenced later than twelve (12) months after the date**
 37 **of birth of a child who is born as a result of the gestational**
 38 **surrogacy.**

39 **Sec. 36. Unless the court orders otherwise, a petition and any**
 40 **other document related to a gestational surrogacy under this**
 41 **chapter that is filed with a court is confidential under Indiana**
 42 **Administrative Rule 9. Filed documents are not open to inspection**



1 by any person other than:

- 2 (1) the parties to the proceeding;
 3 (2) the parties' legal counsel; and
 4 (3) the vital statistics division of the state department of health
 5 for the purpose of receiving the court order and issuing a
 6 birth certificate;

7 except as necessary under exigent circumstances.

8 **Sec. 37. (a) Any establishment of parentage proceeding or**
 9 **gestational surrogacy agreement enforcement proceeding may be**
 10 **brought in an Indiana county:**

- 11 (1) in which the child resides or will reside;
 12 (2) in which the gestational surrogate resides;
 13 (3) in which the intended parent resides;
 14 (4) in which a:
 15 (A) medical evaluation or procedure; or
 16 (B) mental health evaluation or consultation;
 17 under the gestational surrogacy agreement occurred; or
 18 (5) to which all parties agree in the gestational surrogacy
 19 agreement if a significant event furthering the gestational
 20 surrogacy:

- 21 (A) has occurred; or
 22 (B) will occur;

23 in Indiana;

24 not later than twelve (12) months after the birth of a child who is
 25 born as a result of the gestational surrogacy.

26 (b) An Indiana court conducting a proceeding under this
 27 chapter has exclusive, continuing jurisdiction over all matters
 28 arising out of the gestational surrogacy. Nothing in this chapter
 29 shall be construed to give a court jurisdiction over a child custody
 30 or child support action if jurisdiction over the issues of child
 31 custody or child support is not otherwise authorized.

32 **Sec. 38. An Indiana court order concerning the establishment of**
 33 **parentage shall be given full faith and credit in another state if the**
 34 **establishment of parentage court order constitutes a signed record**
 35 **and otherwise complies with the laws of the other state.**

36 **Sec. 39. (a) In the event that a child is born prior to the issuance**
 37 **of a court order establishing legal parentage for an intended**
 38 **parent, a legal statement letter that:**

- 39 (1) complies with subsection (b); and
 40 (2) is reviewed and signed by the:
 41 (A) gestational surrogate's; and
 42 (B) intended parent's;



1 **respective legal counsels;**
 2 **shall be sufficient for a hospital to allow the intended parent to**
 3 **care for the child as though a valid court order establishing**
 4 **parentage for the intended parent existed at the time of the child's**
 5 **birth.**

6 **(b) A legal statement letter described in subsection (a) must**
 7 **explicitly state and certify that the parties are in substantial**
 8 **compliance with this chapter and that the parties are actively**
 9 **engaging in the steps necessary to obtain a court order to establish**
 10 **the intended parent's parentage.**

11 SECTION 20. IC 31-20-1.2 IS ADDED TO THE INDIANA CODE
 12 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2020]:

14 **Chapter 1.2. Indiana Gamete Donation Act**

15 **Sec. 1. (a) This chapter applies only to gamete donation**
 16 **agreements entered into after June 30, 2020.**

17 **(b) Except as otherwise provided in this chapter, this chapter**
 18 **does not apply to the birth of a child:**

19 **(1) conceived by means of sexual intercourse or home**
 20 **insemination; or**

21 **(2) born as a result of a gestational surrogacy that meets the**
 22 **requirements of IC 31-20-1.1.**

23 **Sec. 2. This chapter may be cited as the gamete donation act.**

24 **Sec. 3. The purpose of this chapter is to establish consistent**
 25 **standards and procedural safeguards for the protection of all**
 26 **parties involved in a gamete donation agreement in Indiana and to**
 27 **confirm the legal status of children born as a result of these**
 28 **agreements. These standards and safeguards are meant to facilitate**
 29 **the use of this type of reproductive agreement in accordance with**
 30 **the public policy of Indiana.**

31 **Sec. 4. As used in this chapter, "assisted reproduction" means**
 32 **treatments and procedures that:**

33 **(1) are performed by a physician; and**

34 **(2) are intended to achieve pregnancy.**

35 **Sec. 5. As used in this chapter, "compensation" means payment**
 36 **of any valuable consideration for services in excess of reasonable**
 37 **medical and ancillary costs.**

38 **Sec. 6. As used in this chapter, "fertility clinic" means a medical**
 39 **clinic that:**

40 **(1) employs a licensed physician who is qualified to perform**
 41 **assisted reproduction; and**

42 **(2) complies with guidelines for gamete donation issued by the**



- 1 **federal Food and Drug Administration.**
 2 **Sec. 7. As used in this chapter, "gamete" means either a sperm**
 3 **or an egg.**
 4 **Sec. 8. As used in this chapter, "gamete donor" means an**
 5 **individual who contributes a gamete or gametes for the purpose of**
 6 **in vitro fertilization, insemination, or implantation in another**
 7 **individual.**
 8 **Sec. 9. As used in this chapter, "intended parent" means an**
 9 **individual who enters into an agreement under this chapter under**
 10 **which the individual intends to be the legal parent of the resulting**
 11 **child.**
 12 **Sec. 10. As used in this chapter, "in vitro fertilization" means all**
 13 **medical and laboratory procedures that are necessary to effectuate**
 14 **the extracorporeal fertilization of egg and sperm.**
 15 **Sec. 11. As used in this chapter, "legal counsel" means a licensed**
 16 **attorney who complies with the Indiana rules of professional**
 17 **conduct.**
 18 **Sec. 12. As used in this chapter, "medical evaluation" means:**
 19 **(1) a consultation of; and**
 20 **(2) an evaluation by;**
 21 **a physician or another qualified individual working under the**
 22 **authority, order, or supervision of the physician.**
 23 **Sec. 13. As used in this chapter, "mental health evaluation"**
 24 **means:**
 25 **(1) a consultation of; and**
 26 **(2) an evaluation by;**
 27 **a mental health professional.**
 28 **Sec. 14. As used in this chapter, "physician" means a person**
 29 **licensed under IC 25-22.5.**
 30 **Sec. 15. As used in this chapter, "sexually intimate partner"**
 31 **means, with regard to an individual, another individual with whom**
 32 **the individual engages in sexual activity.**
 33 **Sec. 16. Except as provided in this chapter:**
 34 **(1) a gamete donor is not a parent of a child conceived by**
 35 **means of assisted reproduction;**
 36 **(2) an intended parent is not considered a gamete donor if:**
 37 **(A) the intended parent contributes the intended parent's**
 38 **genetic material to a physician to be used by the other**
 39 **intended parent; and**
 40 **(B) the intended parent is:**
 41 **(i) married to; or**
 42 **(ii) a sexually intimate partner of;**



- 1 the other intended parent; and
- 2 (3) the legal parentage rights and responsibilities of the
- 3 intended parent shall be presumed if the intended parent
- 4 consents to the assisted reproduction.
- 5 **Sec. 17. (a) A gamete donor must:**
- 6 (1) be at least twenty-one (21) years of age;
- 7 (2) have completed a medical evaluation by a reproductive
- 8 endocrinologist or another qualified individual working under
- 9 the authority, order, or supervision of the reproductive
- 10 endocrinologist;
- 11 (3) have completed a mental health evaluation which may be
- 12 conducted through federal Health Insurance Portability and
- 13 Accountability Act (HIPAA) compliant video conferencing or
- 14 in person; and
- 15 (4) have:
- 16 (A) retained legal counsel that is separate and independent
- 17 from legal counsel representing the intended parent; and
- 18 (B) been advised by the gamete donor's retained legal
- 19 counsel regarding the terms of the gamete donation
- 20 agreement and the potential legal consequences of the
- 21 gamete donation.
- 22 **(b) An intended parent must:**
- 23 (1) have completed a mental health evaluation which may be
- 24 conducted through federal Health Insurance Portability and
- 25 Accountability Act (HIPAA) compliant video conferencing or
- 26 in person; and
- 27 (2) have:
- 28 (A) retained legal counsel that is separate and independent
- 29 from legal counsel representing the gamete donor; and
- 30 (B) been advised by the intended parent's retained legal
- 31 counsel regarding the terms of the gamete donation
- 32 agreement and the potential legal consequences of the
- 33 gamete donation.
- 34 **Sec. 18. (a) A gamete donation agreement must be:**
- 35 (1) in writing;
- 36 (2) executed before the gamete donation;
- 37 (3) executed by:
- 38 (A) a gamete donor who meets the requirements of section
- 39 17(a) of this chapter;
- 40 (B) the gamete donor's spouse, if the gamete donor is
- 41 married;
- 42 (C) an intended parent who meets the eligibility



- 1 requirements of section 17(b) of this chapter; and
 2 (D) the intended parent's spouse, if the intended parent is
 3 married; and
 4 (4) notarized.
 5 (b) An anonymous gamete donation agreement must be executed
 6 as follows:
 7 (1) Each party and witness shall sign:
 8 (A) one (1) signature page with his or her full legal name;
 9 and
 10 (B) one (1) signature page with a generic title that does not
 11 disclose his or her identity.
 12 (2) Executed copies of the agreement must be distributed as
 13 follows:
 14 (A) A fully executed copy of the agreement with a
 15 signature page described in subdivision (1)(B) must be
 16 distributed to each of the parties.
 17 (B) Each legal counsel or fertility clinic shall retain a copy
 18 of the agreement with a signature page described in
 19 subdivision (1)(A).
 20 Sec. 19. (a) If:
 21 (1) a gamete donor and an intended parent have entered into
 22 a written legal agreement under which the gamete donor
 23 relinquishes all rights and responsibilities to any child
 24 resulting from the gamete donation; and
 25 (2) the gamete donor meets the requirements of section 17(a)
 26 of this chapter and the intended parent meets the
 27 requirements of section 17(b) of this chapter;
 28 the intended parent is the legal parent of a child whose birth results
 29 from the gamete donation.
 30 (b) If a child is born as the result of a gamete donation and a
 31 court of competent jurisdiction finds that:
 32 (1) the requirements of subsection (a) were not met; and
 33 (2) section 20 of this chapter is inapplicable;
 34 the court shall determine parentage of the child based on evidence
 35 of the parties' intent at the time of the gamete donation.
 36 Sec. 20. (a) If a gamete donor:
 37 (1) makes an anonymous gamete donation to a facility that is:
 38 (A) registered with; and
 39 (B) compliant with guidelines and regulations issued by;
 40 the federal Food and Drug Administration;
 41 (2) does not have an intended parent designated by himself or
 42 herself or the fertility clinic or facility, as applicable, at the



1 time of the gamete donation; and

2 (3) relinquishes his or her parental rights in a written
3 statement provided at the time of the gamete donation to the
4 fertility clinic or facility to which the individual donates his or
5 her gametes;

6 no direct agreement between the intended parent and the
7 anonymous gamete donor is necessary (unless the gamete donor
8 and intended parent desire an agreement regarding future contact
9 and confidentiality), the intended parent is the legal parent of any
10 child resulting from the anonymous gamete donation, and the
11 anonymous gamete donor's relinquishment is legally enforceable.

12 (b) If a child is born as the result of an anonymous gamete
13 donation and a court of competent jurisdiction finds that the
14 requirements of subsection (a) were not met, the court shall
15 determine parentage of the child based on evidence of the parties'
16 intent at the time of the gamete donation.

17 **Sec. 21. (a)** When there is a designated intended parent already
18 chosen to receive the donor's gametes, a gamete donor may
19 withdraw consent to the use of his or her gametes if the withdrawal
20 of consent:

21 (1) is made in a writing or legal pleading with notice to the
22 other parties to the gamete donation agreement; and

23 (2) prior to:

24 (A) the retrieval of any gametes; or

25 (B) in the case of embryo donation or previously
26 cryopreserved gametes, the transfer of legal ownership to
27 the intended parent through an executed legal agreement.

28 (b) When there is a designated gamete donor already chosen by
29 the intended parent, the intended parent may withdraw the
30 intended parent's acceptance of legal ownership of any gametes
31 retrieved from that gamete donor if the withdrawal of acceptance
32 of legal ownership:

33 (1) is made in writing or legal pleading with notice to the
34 other parties to the gamete donation agreement; and

35 (2) prior to:

36 (A) the retrieval of any gametes; or

37 (B) in the case of embryo donation or previously
38 cryopreserved gametes, the acceptance of transfer of legal
39 ownership through an executed written legal agreement.

40 (c) If:

41 (1) there is no designated intended parent at the time of a
42 gamete donation; and



1 (2) the gamete donor withdraws consent to the use of the
2 donor's gametes;
3 the gamete donor may be liable to the fertility clinic to which the
4 gamete donation was made for costs of gamete retrieval, storage
5 costs of the gametes, and any compensation the gamete donor
6 received from the fertility clinic for the donation.

7 **Sec. 22. (a) Subject to subsection (b), an individual who:**

8 (1) consents in writing to posthumously be the parent of any
9 child born of the individual's gametes; and

10 (2) dies before the insemination of the individual's gametes or
11 embryo transfer;

12 is a parent of any child born of the individual's gametes not later
13 than forty-eight (48) months after the individual's death.

14 (b) The forty-eight (48) month period described in subsection (a)
15 may be longer if active litigation concerning the posthumous
16 reproductive material is ongoing.

17 (c) The rights of a child born to an individual posthumously
18 under subsection (a) to an inheritance or to property under an
19 instrument are governed by IC 29.

20 **Sec. 23. (a) Subject to subsection (b), in the event that:**

21 (1) an individual is:

22 (A) deceased;

23 (B) brain dead;

24 (C) comatose; or

25 (D) in a persistent, vegetative state; and

26 (2) the spouse or committed partner of the individual
27 described in subdivision (1) requests the retrieval of gametes:

28 (A) from the person described in subdivision (1); or

29 (B) within a medically appropriate time postmortem;

30 a qualified physician may retrieve gametes from the individual
31 described in subdivision (1) if there is no prior written directive
32 concerning gamete retrieval by the individual described in
33 subdivision (1).

34 (b) Gametes retrieved from a person described in subsection
35 (a)(1) may not be used by the spouse or committed partner of the
36 individual described in subsection (a)(1) to create a child unless
37 clear and convincing evidence is presented to a court of competent
38 jurisdiction that the individual described in subsection (a)(1) had
39 a strong desire to have a child with the spouse or committed
40 partner and the court issues an order allowing the use of the
41 gametes.

42 **Sec. 24. The following must be proved by clear and convincing**



1 evidence:

2 (1) Parentage under section 16 or 19 of this chapter.

3 (2) A withdrawal of consent under section 21 of this chapter.

4 (3) The nonexistence of a parent-child relationship under
5 section 25 of this chapter.

6 **Sec. 25. An action to declare the nonexistence of a parent-child**
7 **relationship under this chapter is barred unless it is brought not**
8 **more than ninety (90) days after the birth of the child.**

9 **Sec. 26. (a) In the event that two (2) legal owners of**
10 **cryopreserved preembryos are separating or divorcing and do not**
11 **agree upon the disposition of any cryopreserved preembryos, a**
12 **court of competent jurisdiction shall first look to any existing**
13 **agreement expressing the couple's intent regarding the disposition**
14 **of the couple's remaining preembryos in the event of divorce or**
15 **separation. In the absence of an agreement or a dispute concerning**
16 **the validity of an agreement, the court shall attempt to balance the**
17 **parties' interests when awarding the preembryos.**

18 **(b) A court shall consider the following factors when balancing**
19 **the parties' interests:**

20 (1) The intended use of the preembryos by any party wishing
21 to preserve them.

22 (2) A party's reason for wanting to procreate with the
23 cryopreserved preembryos.

24 (3) The reason for the cryopreservation of the preembryos.

25 (4) Each party's ability to have genetic children through other
26 means.

27 (5) The existence of a party's need to preserve fertility.

28 (6) Any burden or hardship that may be placed on a party
29 wishing to avoid procreation.

30 (7) Any prior verbal discussions that the party wishing to
31 procreate may have relied upon.

32 (8) Any bad faith attempt, by either party, to use the
33 cryopreserved preembryos as leverage during a divorce
34 proceeding.

35 (9) Any other consideration or occurrence deemed relevant by
36 the court.

37 **(c) A party opposed to the use of a cryopreserved preembryo for**
38 **the purpose of procreation is not considered a legal parent to any**
39 **child created from the use of a cryopreserved preembryo unless the**
40 **party agrees, in writing, to be a legal parent to the child.**

41 **Sec. 27. (a) A proceeding under this chapter may be brought in**
42 **an Indiana county:**



- 1 **(1) in which the gamete donor resides;**
 2 **(2) in which the intended parent resides;**
 3 **(3) in which a:**
 4 **(A) medical evaluation or procedure; or**
 5 **(B) mental health evaluation or consultation;**
 6 **occurred under this chapter; or**
 7 **(4) to which all parties agree in the gamete donation**
 8 **agreement, if the gamete donor or intended parent is a**
 9 **resident of Indiana or the donation took place in Indiana.**
 10 **(b) An Indiana court conducting a proceeding under this**
 11 **chapter has exclusive, continuing jurisdiction over all matters**
 12 **arising out of a gamete donation agreement during the period:**
 13 **(1) beginning with the execution of the gamete donation**
 14 **agreement; and**
 15 **(2) ending ninety (90) days after the birth of the child**
 16 **conceived by assisted reproduction under the gamete donation**
 17 **agreement.**
 18 SECTION 21. IC 35-46-5-3, AS AMENDED BY P.L.113-2018,
 19 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2020]: Sec. 3. (a) As used in this section, "lethal fetal
 21 anomaly" means a fetal condition diagnosed before birth that, if the
 22 pregnancy results in a live birth, will with reasonable certainty result
 23 in the death of the child not more than three (3) months after the child's
 24 birth.
 25 (b) As used in this section, "physician" means an individual who:
 26 (1) is licensed to practice medicine in:
 27 (A) Indiana under IC 25-22.5; or
 28 (B) another state in the United States in which the individual
 29 is providing medical services;
 30 (2) is board certified in obstetrics and gynecology; and
 31 (3) oversees medical services related to ovum cryopreservation.
 32 (c) As used in this section, "qualified egg bank" means:
 33 (1) a fertility clinic or similar medical facility that:
 34 (A) is located in the United States;
 35 (B) is accredited by an entity approved by:
 36 (i) the medical licensing board, if the fertility clinic or
 37 facility is located in Indiana; or
 38 (ii) the authorizing state agency or licensing board in the
 39 state in which the fertility clinic or facility is located;
 40 (C) is registered under 21 CFR 1271 with the United States
 41 Food and Drug Administration; and
 42 (D) is owned by, employs, contracts with, or is affiliated with



- 1 at least one (1) physician who performs medical services
 2 related to ovum cryopreservation at the fertility clinic or
 3 facility; or
 4 (2) an entity whose primary business purpose includes the
 5 facilitation of in vitro fertilization using cryopreserved ova and
 6 that is registered under 21 CFR 1271 with the United States Food
 7 and Drug Administration.
- 8 (d) Except as provided in subsection (e), a person who knowingly
 9 or intentionally purchases or sells a human ovum, zygote, embryo, or
 10 fetus commits unlawful transfer of a human organism, a Level 5 felony.
- 11 (e) This section does not apply to the following:
- 12 (1) The payment to or receipt by a woman donor of an ovum of an
 13 amount for:
- 14 (A) earnings lost due to absence from employment;
 15 (B) travel expenses;
 16 (C) hospital expenses; **and**
 17 (D) medical expenses; **and**
 18 ~~(E) recovery time in an amount not to exceed four thousand~~
 19 ~~dollars (\$4,000);~~
- 20 concerning a treatment or procedure, including ovum
 21 cryopreservation, to enhance human reproductive capability
 22 through in vitro fertilization, gamete intrafallopian transfer, or
 23 zygote intrafallopian transfer.
- 24 **(2) The payment of compensation to a donor, if the following**
 25 **conditions are met:**
- 26 **(A) The payment is not contingent upon the quantity of the**
 27 **gametes retrieved.**
 28 **(B) The payment is not contingent upon the purported**
 29 **quality or genome related traits of the gamete donor.**
 30 **(C) The payment is not contingent upon actual genotypic**
 31 **or phenotypic characteristics of the gamete donor or of the**
 32 **child.**
 33 **(D) The payment is reasonable as determined by industry**
 34 **standards and has been negotiated in good faith between**
 35 **the parties, if applicable.**
- 36 ~~(3)~~ **(3)** The payment to or receipt by a qualified egg bank of an
 37 amount for:
- 38 (A) the retrieval of a human ovum;
 39 (B) the cryopreservation of a human ovum;
 40 (C) the transportation of a human ovum; or
 41 (D) any other aspect of performing or facilitating services
 42 related to a treatment or procedure to enhance human



- 1 reproductive capability through in vitro fertilization.
- 2 (3) (4) The following types of stem cell research:
- 3 (A) Adult stem cell.
- 4 (B) Fetal stem cell (as defined in IC 16-18-2-128.5), as long as
- 5 the biological parent has given written consent for the use of
- 6 the fetal stem cells.
- 7 (4) (5) The transfer or receipt of a fetus if:
- 8 (A) the fetus was diagnosed with a lethal fetal anomaly and
- 9 written medical documentation verifies the diagnosis; and
- 10 (B) a biological parent has requested, in writing, the transfer
- 11 of the fetus for purposes of an autopsy.
- 12 (f) Any person who recklessly, knowingly, or intentionally ~~uses~~
- 13 **creates** a human embryo created with an ovum provided to a qualified
- 14 egg bank under this section for purposes of embryonic stem cell
- 15 research commits unlawful use of an embryo, a Level 5 felony.

