

PARENTAGE AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kraig Powell

Senate Sponsor: _____

LONG TITLE

General Description:

This bill makes changes regarding birth certificates, parentage, and assisted reproduction.

Highlighted Provisions:

This bill:

- ▶ allows the spouse of the mother to provide information for a birth certificate;
- ▶ makes conforming changes to Title 78B, Chapter 15, Part 7, Assisted Reproduction, and Title 78B, Chapter 15, Part 8, Gestational Agreement, to allow for same gender couples; and
- ▶ makes technical amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 26-2-5**, as last amended by Laws of Utah 2008, Chapter 3
- 62A-4a-602**, as last amended by Laws of Utah 2008, Chapter 3
- 78A-6-307**, as last amended by Laws of Utah 2015, Chapter 142
- 78B-6-114**, as renumbered and amended by Laws of Utah 2008, Chapter 3



- 28 [78B-6-117](#), as enacted by Laws of Utah 2008, Chapter 3
- 29 [78B-15-102](#), as renumbered and amended by Laws of Utah 2008, Chapter 3
- 30 [78B-15-705](#), as renumbered and amended by Laws of Utah 2008, Chapter 3
- 31 [78B-15-706](#), as renumbered and amended by Laws of Utah 2008, Chapter 3
- 32 [78B-15-801](#), as renumbered and amended by Laws of Utah 2008, Chapter 3
- 33 [78B-15-802](#), as renumbered and amended by Laws of Utah 2008, Chapter 3
- 34 [78B-15-803](#), as renumbered and amended by Laws of Utah 2008, Chapter 3
- 35 [78B-15-805](#), as renumbered and amended by Laws of Utah 2008, Chapter 3
- 36 [78B-15-806](#), as renumbered and amended by Laws of Utah 2008, Chapter 3
- 37 [78B-15-807](#), as renumbered and amended by Laws of Utah 2008, Chapter 3
- 38 [78B-15-808](#), as renumbered and amended by Laws of Utah 2008, Chapter 3

39 REPEALS AND REENACTS:

- 40 [78B-15-703](#), as renumbered and amended by Laws of Utah 2008, Chapter 3
- 41 [78B-15-704](#), as renumbered and amended by Laws of Utah 2008, Chapter 3



43 *Be it enacted by the Legislature of the state of Utah:*

44 Section 1. Section **26-2-5** is amended to read:

45 **26-2-5. Birth certificates -- Execution and registration requirements.**

46 (1) As used in this section, "birthing facility" means a general acute hospital or birthing
47 center as defined in Section [26-21-2](#).

48 (2) For each live birth occurring in the state, a certificate shall be filed with the local
49 registrar for the district in which the birth occurred within 10 days following the birth. The
50 certificate shall be registered if it is completed and filed in accordance with this chapter.

51 (3) (a) For each live birth that occurs in a birthing facility, the administrator of the
52 birthing facility, or his designee, shall obtain and enter the information required under this
53 chapter on the certificate, securing the required signatures, and filing the certificate.

54 (b) (i) The date, time, place of birth, and required medical information shall be certified
55 by the birthing facility administrator or his designee.

56 (ii) The attending physician or nurse midwife may sign the certificate, but if the
57 attending physician or nurse midwife has not signed the certificate within seven days of the
58 date of birth, the birthing facility administrator or his designee shall enter the attending

59 physician's or nurse midwife's name and transmit the certificate to the local registrar.

60 (iii) The information on the certificate about the parents shall be provided and certified
61 by the mother [~~or~~], the father, the other spouse, or, in their incapacity or absence, by a person
62 with knowledge of the facts.

63 (4) (a) For live births that occur outside a birthing facility, the birth certificate shall be
64 completed and filed by the physician, nurse, midwife, or other person primarily responsible for
65 providing assistance to the mother at the birth. If there is no such person, either the presumed
66 or declarant father or the spouse of the mother shall complete and file the certificate. In [~~his~~]
67 that person's absence, the mother shall complete and file the certificate, and in the event of her
68 death or disability, the owner or operator of the premises where the birth occurred shall do so.

69 (b) The certificate shall be completed as fully as possible and shall include the date,
70 time, and place of birth, the mother's name, and the signature of the person completing the
71 certificate.

72 (5) (a) For each live birth to an unmarried mother that occurs in a birthing facility, the
73 administrator or director of that facility, or his designee, shall:

74 (i) provide the birth mother and declarant father, if present, with:

75 (A) a voluntary declaration of paternity form published by the state registrar;

76 (B) oral and written notice to the birth mother and declarant father of the alternatives
77 to, the legal consequences of, and the rights and responsibilities that arise from signing the
78 declaration; and

79 (C) the opportunity to sign the declaration;

80 (ii) witness the signature of a birth mother or declarant father in accordance with
81 Section [78B-15-302](#) if the signature occurs at the facility;

82 (iii) enter the declarant father's information on the original birth certificate, but only if
83 the mother and declarant father have signed a voluntary declaration of paternity or a court or
84 administrative agency has issued an adjudication of paternity; and

85 (iv) file the completed declaration with the original birth certificate.

86 (b) If there is a presumed father, the voluntary declaration will only be valid if the
87 presumed father also signs the voluntary declaration.

88 (c) The state registrar shall file the information provided on the voluntary declaration
89 of paternity form with the original birth certificate and may provide certified copies of the

90 declaration of paternity as otherwise provided under Title 78B, Chapter 15, Utah Uniform
91 Parentage Act.

92 (6) (a) The state registrar shall publish a form for the voluntary declaration of paternity,
93 a description of the process for filing a voluntary declaration of paternity, and of the rights and
94 responsibilities established or effected by that filing, in accordance with Title 78B, Chapter 15,
95 Utah Uniform Parentage Act.

96 (b) Information regarding the form and services related to voluntary paternity
97 establishment shall be made available to birthing facilities and to any other entity or individual
98 upon request.

99 (7) The name of a declarant father may only be included on the birth certificate of a
100 child of unmarried parents if:

101 (a) the mother and declarant father have signed a voluntary declaration of paternity; or

102 (b) a court or administrative agency has issued an adjudication of paternity.

103 (8) Voluntary declarations of paternity, adjudications of paternity by judicial or
104 administrative agencies, and voluntary rescissions of paternity shall be filed with and
105 maintained by the state registrar for the purpose of comparing information with the state case
106 registry maintained by the Office of Recovery Services pursuant to Section [62A-11-104](#).

107 Section 2. Section **62A-4a-602** is amended to read:

108 **62A-4a-602. Licensure requirements -- Prohibited acts.**

109 (1) No person, agency, firm, corporation, association, or group children's home may
110 engage in child placing, or solicit money or other assistance for child placing, without a valid
111 license issued by the Office of Licensing, in accordance with Chapter 2, Licensure of Programs
112 and Facilities. When a child placing agency's license is suspended or revoked in accordance
113 with that chapter, the care, control, or custody of any child who has been in the care, control, or
114 custody of that agency shall be transferred to the division.

115 (2) (a) An attorney, physician, or other person may assist a parent in identifying or
116 locating a person interested in adopting the parent's child, or in identifying or locating a child to
117 be adopted. However, no payment, charge, fee, reimbursement of expense, or exchange of
118 value of any kind, or promise or agreement to make the same, may be made for that assistance.

119 (b) An attorney, physician, or other person may not:

120 (i) issue or cause to be issued to any person a card, sign, or device indicating that he is

121 available to provide that assistance;

122 (ii) cause, permit, or allow any sign or marking indicating that he is available to
123 provide that assistance, on or in any building or structure;

124 (iii) announce or cause, permit, or allow an announcement indicating that he is
125 available to provide that assistance, to appear in any newspaper, magazine, directory, or on
126 radio or television; or

127 (iv) advertise by any other means that he is available to provide that assistance.

128 (3) Nothing in this part precludes payment of fees for medical, legal, or other lawful
129 services rendered in connection with the care of a mother, delivery and care of a child, or
130 lawful adoption proceedings; and no provision of this part abrogates the right of procedures for
131 independent adoption as provided by law.

132 (4) In accordance with federal law, only agents or employees of the division and of
133 licensed child placing agencies may certify to the United States Immigration and Naturalization
134 Service that a family meets the division's preadoption requirements.

135 (5) (a) [~~Beginning May 1, 2000, neither~~] Neither a licensed child placing agency nor
136 any attorney practicing in this state may place a child for adoption, either temporarily or
137 permanently, with any individual or individuals that would not be qualified for adoptive
138 placement pursuant to the provisions of Sections [78B-6-117](#), [78B-6-102](#), and [78B-6-137](#).

139 (b) [~~Beginning May 1, 2000, the~~] The division, as a licensed child placing agency, may
140 not place a child in foster care with any individual or individuals that would not be qualified
141 for adoptive placement pursuant to the provisions of Sections [78B-6-117](#), [78B-6-102](#), and
142 [78B-6-137](#). However, nothing in this Subsection (5)(b) limits the placement of a child in foster
143 care with the child's biological or adoptive parent.

144 (c) [~~Beginning May 1, 2000, with~~] With regard to children who are in the custody of
145 the state, the division shall establish a policy providing that priority for foster care and adoptive
146 placement shall be provided to families in which [~~both a man and a woman~~] the prospective
147 parents are legally married under the laws of this state. However, nothing in this Subsection
148 (5)(c) limits the placement of a child with the child's biological or adoptive parent.

149 Section 3. Section **78A-6-307** is amended to read:

150 **78A-6-307. Shelter hearing -- Placement -- DCFS custody.**

151 (1) As used in this section:

- 152 (a) "Friend" means an adult the child knows and is comfortable with.
- 153 (b) (i) "Natural parent," notwithstanding the provisions of Section 78A-6-105, means:
- 154 (A) a biological or adoptive mother;
- 155 (B) an adoptive father; or
- 156 (C) a biological father who:
- 157 (I) was married to the child's biological mother at the time the child was conceived or
- 158 born; or
- 159 (II) has strictly complied with the provisions of Sections 78B-6-120 through
- 160 78B-6-122, prior to removal of the child or voluntary surrender of the child by the custodial
- 161 parent.
- 162 (ii) The definition of "natural parent" described in Subsection (1)(b)(i) applies
- 163 regardless of whether the child has been or will be placed with adoptive parents or whether
- 164 adoption has been or will be considered as a long-term goal for the child.
- 165 (c) "Relative" means:
- 166 (i) an adult who is a grandparent, great grandparent, aunt, great aunt, uncle, great uncle,
- 167 brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, sibling of a child, or a first
- 168 cousin of the child's parent;
- 169 (ii) an adult who is an adoptive parent of the child's sibling; or
- 170 (iii) in the case of a child defined as an "Indian" under the Indian Child Welfare Act, 25
- 171 U.S.C. Sec. 1903, "relative" also means an "extended family member" as defined by that
- 172 statute.
- 173 (2) (a) At the shelter hearing, when the court orders that a child be removed from the
- 174 custody of the child's parent in accordance with the requirements of Section 78A-6-306, the
- 175 court shall first determine whether there is another natural parent with whom the child was not
- 176 residing at the time the events or conditions that brought the child within the court's jurisdiction
- 177 occurred, who desires to assume custody of the child.
- 178 (b) If another natural parent requests custody under Subsection (2)(a), the court shall
- 179 place the child with that parent unless it finds that the placement would be unsafe or otherwise
- 180 detrimental to the child.
- 181 (c) The provisions of this Subsection (2) are limited by the provisions of Subsection
- 182 (18)(b).

183 (d) (i) The court shall make a specific finding regarding the fitness of the parent
184 described in Subsection (2)(b) to assume custody, and the safety and appropriateness of the
185 placement.

186 (ii) The court shall, at a minimum, order the division to visit the parent's home, comply
187 with the criminal background check provisions described in Section 78A-6-308, and check the
188 division's management information system for any previous reports of abuse or neglect
189 received by the division regarding the parent at issue.

190 (iii) The court may order the division to conduct any further investigation regarding the
191 safety and appropriateness of the placement.

192 (iv) The division shall report its findings in writing to the court.

193 (v) The court may place the child in the temporary custody of the division, pending its
194 determination regarding that placement.

195 (3) If the court orders placement with a parent under Subsection (2):

196 (a) the child and the parent are under the continuing jurisdiction of the court;

197 (b) the court may order:

198 (i) that the parent assume custody subject to the supervision of the court; and

199 (ii) that services be provided to the parent from whose custody the child was removed,
200 the parent who has assumed custody, or both; and

201 (c) the court shall order reasonable parent-time with the parent from whose custody the
202 child was removed, unless parent-time is not in the best interest of the child.

203 (4) The court shall periodically review an order described in Subsection (3) to
204 determine whether:

205 (a) placement with the parent continues to be in the child's best interest;

206 (b) the child should be returned to the original custodial parent;

207 (c) the child should be placed in the custody of a relative, pursuant to Subsections (7)
208 through (12); or

209 (d) the child should be placed in the custody of the division.

210 (5) The time limitations described in Section 78A-6-312 with regard to reunification
211 efforts, apply to children placed with a previously noncustodial parent in accordance with
212 Subsection (2).

213 (6) Legal custody of the child is not affected by an order entered under Subsection (2)

214 or (3). In order to affect a previous court order regarding legal custody, the party must petition
215 that court for modification of the order.

216 (7) If, at the time of the shelter hearing, a child is removed from the custody of the
217 child's parent and is not placed in the custody of the child's other parent, the court:

218 (a) shall, at that time, determine whether, subject to Subsections (18)(c) through (e),
219 there is a relative of the child or a friend of a parent of the child who is able and willing to care
220 for the child;

221 (b) may order the division to conduct a reasonable search to determine whether, subject
222 to Subsections (18)(c) through (e), there are relatives of the child or friends of a parent of the
223 child who are willing and appropriate, in accordance with the requirements of this part and
224 Title 62A, Chapter 4a, Part 2, Child Welfare Services, for placement of the child;

225 (c) shall order the parents to cooperate with the division, within five working days, to,
226 subject to Subsections (18)(c) through (e), provide information regarding relatives of the child
227 or friends who may be able and willing to care for the child; and

228 (d) may order that the child be placed in the custody of the division pending the
229 determination under Subsection (7)(a).

230 (8) This section may not be construed as a guarantee that an identified relative or friend
231 will receive custody of the child.

232 (9) Subject to Subsections (18)(c) through (e), preferential consideration shall be given
233 to a relative's or a friend's request for placement of the child, if it is in the best interest of the
234 child, and the provisions of this section are satisfied.

235 (10) (a) If a willing relative or friend is identified under Subsection (7)(a), the court
236 shall make a specific finding regarding:

237 (i) the fitness of that relative or friend as a placement for the child; and

238 (ii) the safety and appropriateness of placement with that relative or friend.

239 (b) In order to be considered a "willing relative or friend" under this section, the
240 relative or friend shall be willing to cooperate with the child's permanency goal.

241 (11) (a) In making the finding described in Subsection (10)(a), the court shall, at a
242 minimum, order the division to:

243 (i) if the child may be placed with a relative of the child, conduct a background check
244 that includes:

- 245 (A) completion of a nonfingerprint-based, Utah Bureau of Criminal Identification
246 background check of the relative;
- 247 (B) a completed search, relating to the relative, of the Management Information System
248 described in Section 62A-4a-1003; and
- 249 (C) a background check that complies with the criminal background check provisions
250 described in Section 78A-6-308, of each nonrelative, as defined in Subsection
251 62A-4a-209(1)(b), of the child who resides in the household where the child may be placed;
- 252 (ii) if the child will be placed with a noncustodial parent of the child, complete a
253 background check that includes:
- 254 (A) the background check requirements applicable to an emergency placement with a
255 noncustodial parent that are described in Subsections 62A-4a-209(5) and (7);
- 256 (B) a completed search, relating to the noncustodial parent of the child, of the
257 Management Information System described in Section 62A-4a-1003; and
- 258 (C) a background check that complies with the criminal background check provisions
259 described in Section 78A-6-308, of each nonrelative, as defined in Subsection
260 62A-4a-209(1)(b), of the child who resides in the household where the child may be placed;
- 261 (iii) if the child may be placed with an individual other than a noncustodial parent or a
262 relative of the child, conduct a criminal background check of the individual, and each adult that
263 resides in the household where the child may be placed, that complies with the criminal
264 background check provisions described in Section 78A-6-308;
- 265 (iv) visit the relative's or friend's home;
- 266 (v) check the division's management information system for any previous reports of
267 abuse or neglect regarding the relative or friend at issue;
- 268 (vi) report the division's findings in writing to the court; and
- 269 (vii) provide sufficient information so that the court may determine whether:
- 270 (A) the relative or friend has any history of abusive or neglectful behavior toward other
271 children that may indicate or present a danger to this child;
- 272 (B) the child is comfortable with the relative or friend;
- 273 (C) the relative or friend recognizes the parent's history of abuse and is committed to
274 protect the child;
- 275 (D) the relative or friend is strong enough to resist inappropriate requests by the parent

276 for access to the child, in accordance with court orders;

277 (E) the relative or friend is committed to caring for the child as long as necessary; and

278 (F) the relative or friend can provide a secure and stable environment for the child.

279 (b) The division may determine to conduct, or the court may order the division to
280 conduct, any further investigation regarding the safety and appropriateness of the placement.

281 (c) The division shall complete and file its assessment regarding placement with a
282 relative or friend as soon as practicable, in an effort to facilitate placement of the child with a
283 relative or friend.

284 (12) (a) The court may place a child described in Subsection (2)(a) in the temporary
285 custody of the division, pending the division's investigation pursuant to Subsections (10) and
286 (11), and the court's determination regarding the appropriateness of that placement.

287 (b) The court shall ultimately base its determination regarding the appropriateness of a
288 placement with a relative or friend on the best interest of the child.

289 (13) When the court awards custody and guardianship of a child with a relative or
290 friend:

291 (a) the court shall order that:

292 (i) the relative or friend assume custody, subject to the continuing supervision of the
293 court; and

294 (ii) any necessary services be provided to the child and the relative or friend;

295 (b) the child and any relative or friend with whom the child is placed are under the
296 continuing jurisdiction of the court;

297 (c) the court may enter any order that it considers necessary for the protection and best
298 interest of the child;

299 (d) the court shall provide for reasonable parent-time with the parent or parents from
300 whose custody the child was removed, unless parent-time is not in the best interest of the child;
301 and

302 (e) the court shall conduct a periodic review no less often than every six months, to
303 determine whether:

304 (i) placement with the relative or friend continues to be in the child's best interest;

305 (ii) the child should be returned home; or

306 (iii) the child should be placed in the custody of the division.

307 (14) No later than 12 months after placement with a relative or friend, the court shall
308 schedule a hearing for the purpose of entering a permanent order in accordance with the best
309 interest of the child.

310 (15) The time limitations described in Section 78A-6-312, with regard to reunification
311 efforts, apply to children placed with a relative or friend pursuant to Subsection (7).

312 (16) (a) If the court awards custody of a child to the division, and the division places
313 the child with a relative, the division shall:

314 (i) conduct a criminal background check of the relative that complies with the criminal
315 background check provisions described in Section 78A-6-308; and

316 (ii) if the results of the criminal background check described in Subsection (16)(a)(i)
317 would prohibit the relative from having direct access to the child under Section 62A-2-120, the
318 division shall:

319 (A) take the child into physical custody; and

320 (B) within three days, excluding weekends and holidays, after taking the child into
321 physical custody under Subsection (16)(a)(ii)(A), give written notice to the court, and all
322 parties to the proceedings, of the division's action.

323 (b) Nothing in Subsection (16)(a) prohibits the division from placing a child with a
324 relative, pending the results of the background check described in Subsection (16)(a) on the
325 relative.

326 (17) When the court orders that a child be removed from the custody of the child's
327 parent and does not award custody and guardianship to another parent, relative, or friend under
328 this section, the court shall order that the child be placed in the temporary custody of the
329 Division of Child and Family Services, to proceed to adjudication and disposition and to be
330 provided with care and services in accordance with this chapter and Title 62A, Chapter 4a,
331 Child and Family Services.

332 (18) (a) Any preferential consideration that a relative or friend is initially granted
333 pursuant to Subsection (9) expires 120 days from the date of the shelter hearing. After that
334 time period has expired, a relative or friend who has not obtained custody or asserted an
335 interest in a child, may not be granted preferential consideration by the division or the court.

336 (b) When the time period described in Subsection (18)(a) has expired, the preferential
337 consideration, which is initially granted to a natural parent in accordance with Subsection (2),

338 is limited. After that time the court shall base its custody decision on the best interest of the
339 child.

340 (c) Prior to the expiration of the 120-day period described in Subsection (18)(a), the
341 following order of preference shall be applied when determining the person with whom a child
342 will be placed, provided that the person is willing, and has the ability, to care for the child:

343 (i) a noncustodial parent of the child;

344 (ii) a relative of the child;

345 (iii) subject to Subsection (18)(d), a friend of a parent of the child, if the friend is a
346 licensed foster parent; and

347 (iv) other placements that are consistent with the requirements of law.

348 (d) In determining whether a friend is a willing and appropriate placement for a child,
349 neither the court, nor the division, is required to consider more than one friend designated by
350 each parent of the child.

351 (e) If a parent of the child is not able to designate a friend who is a licensed foster
352 parent for placement of the child, but is able to identify a friend who is willing to become
353 licensed as a foster parent:

354 (i) the department shall fully cooperate to expedite the licensing process for the friend;
355 and

356 (ii) if the friend becomes licensed as a foster parent within the time frame described in
357 Subsection (18)(a), the court shall determine whether it is in the best interests of the child to
358 place the child with the friend.

359 (19) If, following the shelter hearing, the child is placed with a person who is not a
360 parent of the child, a relative of the child, a friend of a parent of the child, or a former foster
361 parent of the child, priority shall be given to a foster placement with ~~[a man and a woman]~~ two
362 people who are married to each other, unless it is in the best interests of the child to place the
363 child with a single foster parent.

364 (20) In determining the placement of a child, neither the court, nor the division, may
365 take into account, or discriminate against, the religion of a person with whom the child may be
366 placed, unless the purpose of taking religion into account is to place the child with a person or
367 family of the same religion as the child.

368 (21) In determining the placement of a child based on the child's best interests, the

369 court or the division may take into account the gender or genders of the prospective adoptive
370 parent or parents.

371 Section 4. Section **78B-6-114** is amended to read:

372 **78B-6-114. Adoption by married persons -- Consent.**

373 [(+) A married [man] person who is not lawfully separated from his [wife] or her
374 spouse may not adopt a child without the consent of his [wife] or her spouse, if his [wife] or
375 her spouse is capable of giving consent.

376 [~~(2) A married woman who is not lawfully separated from her husband may not adopt a~~
377 ~~child without his consent, if he is capable of giving his consent.]~~

378 Section 5. Section **78B-6-117** is amended to read:

379 **78B-6-117. Who may adopt -- Adoption of minor.**

380 (1) A minor child may be adopted by an adult person, in accordance with the
381 provisions and requirements of this section and this part.

382 (2) A child may be adopted by:

383 (a) adults who are legally married to each other in accordance with the laws of this
384 state, including adoption by a stepparent; or

385 (b) subject to Subsection (4), any single adult, except as provided in Subsection (3).

386 (3) A child may not be adopted by a person who is cohabiting in a relationship that is
387 not a legally valid and binding marriage under the laws of this state.

388 (4) [~~In order to provide a child who is in the custody of the division with the most~~
389 ~~beneficial family structure, when] When a child in the custody of the division is placed for
390 adoption, [~~the division or~~] a child-placing agency, the division, or a court shall place the child
391 with a [~~man and a woman who are married to each other~~] legally married couple, unless:~~

392 (a) there are no qualified married couples who:

393 (i) have applied to adopt a child;

394 (ii) are willing to adopt the child; and

395 (iii) are an appropriate placement for the child;

396 (b) the child is placed with a relative of the child;

397 (c) the child is placed with a person who has already developed a substantial
398 relationship with the child;

399 (d) the child is placed with a person who:

400 (i) is selected by a parent or former parent of the child, if the parent or former parent
401 consented to the adoption of the child; and

402 (ii) the parent or former parent described in Subsection (4)(d)(i):

403 (A) knew the person with whom the child is placed before the parent consented to the
404 adoption; or

405 (B) became aware of the person with whom the child is placed through a source other
406 than the division or the child-placing agency that assists with the adoption of the child; or

407 (e) it is in the best interests of the child to place the child with a single person.

408 (5) In determining whether to place a child who is in the custody of the division for
409 adoption based on the child's best interests, a child-placing agency, the division, or a court may
410 take into account the gender or genders of the prospective adoptive parent or parents.

411 Section 6. Section **78B-15-102** is amended to read:

412 **78B-15-102. Definitions.**

413 As used in this chapter:

414 (1) "Adjudicated father" means a man who has been adjudicated by a tribunal to be the
415 father of a child.

416 (2) "Alleged father" means a man who alleges himself to be, or is alleged to be, the
417 genetic father or a possible genetic father of a child, but whose paternity has not been
418 determined.

419 (3) "Assisted reproduction" means a method of causing pregnancy other than sexual
420 intercourse. The term includes:

421 (a) intrauterine insemination;

422 (b) donation of eggs;

423 (c) donation of embryos;

424 (d) in vitro fertilization and transfer of embryos; and

425 (e) intracytoplasmic sperm injection.

426 (4) "Birth expenses" means all medical costs associated with the birth of a child,
427 including the related expenses for the biological mother during her pregnancy and delivery.

428 (5) "Birth mother" means the biological mother of a child.

429 (6) "Child" means an individual of any age whose parentage may be determined under
430 this chapter.

431 (7) "Commence" means to file the initial pleading seeking an adjudication of parentage
432 in the appropriate tribunal of this state.

433 (8) "Declarant father" means a male who, along with the biological mother claims to be
434 the genetic father of a child, and signs a voluntary declaration of paternity to establish the man's
435 paternity.

436 (9) "Determination of parentage" means the establishment of the parent-child
437 relationship by the signing of a valid declaration of paternity under Part 3, Voluntary
438 Declaration of Paternity Act, or adjudication by a tribunal.

439 (10) "Donor" means an individual who produces eggs or sperm used for assisted
440 reproduction, whether or not for consideration. The term does not include:

441 (a) a ~~husband~~ person who provides sperm~~[, or a wife who provides eggs,]~~ or eggs to
442 be used for assisted reproduction by the ~~wife~~ person's spouse;

443 (b) a woman who gives birth to a child by means of assisted reproduction, except as
444 otherwise provided in Part 8, Gestational Agreement; or

445 (c) a parent under Part 7, Assisted Reproduction, or an intended parent under Part 8,
446 Gestational Agreement.

447 (11) "Ethnic or racial group" means, for purposes of genetic testing, a recognized group
448 that an individual identifies as all or part of the individual's ancestry or that is so identified by
449 other information.

450 (12) "Financial support" means a base child support award as defined in Section
451 [78B-12-102](#), all past-due support which accrues under an order for current periodic payments,
452 and sum certain judgments for past-due support.

453 (13) "Genetic testing" means an analysis of genetic markers to exclude or identify a
454 man as the father or a woman as the mother of a child. The term includes an analysis of one or
455 a combination of the following:

456 (a) deoxyribonucleic acid; or

457 (b) blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes,
458 serum proteins, or red-cell enzymes.

459 (14) "Gestational ~~mother~~ carrier" means an adult woman who gives birth to a child
460 under a gestational agreement.

461 (15) "Man," as defined in this chapter, means a male individual of any age.

462 (16) "Medical support" means a provision in a support order that requires the purchase
463 and maintenance of appropriate insurance for health and dental expenses of dependent children,
464 and assigns responsibility for uninsured medical expenses.

465 (17) "Parent" means an individual who has established a parent-child relationship
466 under Section [78B-15-201](#).

467 (18) "Parent-child relationship" means the legal relationship between a child and a
468 parent of the child. The term includes the mother-child relationship and the father-child
469 relationship.

470 (19) "Paternity index" means the likelihood of paternity calculated by computing the
471 ratio between:

472 (a) the likelihood that the tested man is the father, based on the genetic markers of the
473 tested man and child, conditioned on the hypothesis that the tested man is the father of the
474 child; and

475 (b) the likelihood that the tested man is not the father, based on the genetic markers of
476 the tested man and child, conditioned on the hypothesis that the tested man is not the father of
477 the child and that the father is of the same ethnic or racial group as the tested man.

478 (20) "Presumed father" means a man who, by operation of law under Section
479 [78B-15-204](#), is recognized as the father of a child until that status is rebutted or confirmed as
480 set forth in this chapter.

481 (21) "Probability of paternity" means the measure, for the ethnic or racial group to
482 which the alleged father belongs, of the probability that the man in question is the father of the
483 child, compared with a random, unrelated man of the same ethnic or racial group, expressed as
484 a percentage incorporating the paternity index and a prior probability.

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

487 (23) "Signatory" means an individual who authenticates a record and is bound by its
488 terms.

489 (24) "State" means a state of the United States, the District of Columbia, Puerto Rico,
490 the United States Virgin Islands, any territory, Native American Tribe, or insular possession
491 subject to the jurisdiction of the United States.

492 (25) "Support-enforcement agency" means a public official or agency authorized under

493 Title IV-D of the Social Security Act which has the authority to seek:

494 (a) enforcement of support orders or laws relating to the duty of support;

495 (b) establishment or modification of child support;

496 (c) determination of parentage; or

497 (d) location of child-support obligors and their income and assets.

498 (26) "Tribunal" means a court of law, administrative agency, or quasi-judicial entity

499 authorized to establish, enforce, or modify support orders or to determine parentage.

500 Section 7. Section [78B-15-703](#) is repealed and reenacted to read:

501 **78B-15-703. Parentage of child of assisted reproduction.**

502 (1) A woman who gives birth to a child conceived by means of assisted reproduction is
503 the parent of that child.

504 (2) The husband, or other spouse, of a married woman who gives birth to a child
505 conceived by means of assisted reproduction is the parent of that child if the husband or other
506 spouse:

507 (a) provided the sperm or eggs for the assisted reproduction; or

508 (b) executes and signs a valid record of consent described in Section [78B-15-704](#)
509 within two years, before or after, of the birth of the child.

510 (3) The absence of either of the conditions described in Subsection (2) does not
511 preclude a court from finding that the husband, or other spouse, of a married woman who gives
512 birth to a child by means of assisted reproduction is the parent of that child if, at any time
513 within two years after the birth of the child, both spouses openly treat the child as their own.

514 Section 8. Section [78B-15-704](#) is repealed and reenacted to read:

515 **78B-15-704. Consent to assisted reproduction.**

516 To be valid, a record of consent to assisted reproduction shall:

517 (1) be in writing;

518 (2) contain the signatures of both spouses in a legal marriage;

519 (3) identify, by name, the spouse who utilized, or will utilize, the assisted reproduction;

520 and

521 (4) contain a separate statement by each spouse agreeing to the identified spouse's use
522 of assisted reproduction to conceive and bear a child and agreeing that the two spouses signing
523 the record are the intended parents of the resulting child.

524 Section 9. Section **78B-15-705** is amended to read:

525 **78B-15-705. Limitation on spouse's dispute of parentage.**

526 (1) Except as otherwise provided in Subsection (2), the husband [~~of a wife~~], or other
527 spouse, of a woman who gives birth to a child by means of assisted reproduction may not
528 challenge [~~his paternity~~] the spouse's own parentage of the child unless:

529 (a) within two years after learning of the birth of the child [~~he~~] the spouse commences
530 a proceeding to adjudicate [~~his paternity~~] parentage; and

531 (b) the tribunal finds that [~~he did not consent to the assisted reproduction, before or~~
532 ~~after the birth of the child.~~];

533 (i) the spouse did not provide sperm or eggs for the assisted reproduction;

534 (ii) the spouse did not consent, in writing or by some other means, to the assisted
535 reproduction, either before or after the birth of the child; and

536 (iii) the spouse never openly treated the child as the spouse's own child.

537 [~~(2) A proceeding to adjudicate paternity may be maintained at any time if the tribunal~~
538 ~~determines that:]~~

539 [~~(a) the husband did not provide sperm for, or before or after the birth of the child~~
540 ~~consent to, assisted reproduction by his wife;]~~

541 [~~(b) the husband and the mother of the child have not cohabited since the probable time~~
542 ~~of assisted reproduction; and]~~

543 [~~(c) the husband never openly treated the child as his own.]~~

544 (2) Notwithstanding Subsection (1), the husband, or other spouse, of a woman who
545 gives birth to a child by means of assisted reproduction may, at any time, maintain a
546 proceeding to challenge the spouse's own parentage of the child if the tribunal determines that:

547 (a) the spouse did not provide sperm or eggs for the assisted reproduction;

548 (b) the spouse did not consent, in writing or by some other means, to the assisted
549 reproduction, either before or after the birth of the child;

550 (c) the spouse never openly treated the child as the spouse's own child; and

551 (d) the spouse and the woman who gave birth to the child by means of assisted
552 reproduction have not cohabited since the probable time of assisted reproduction.

553 (3) The limitation provided in this section applies to a marriage declared invalid after
554 assisted reproduction.

555 Section 10. Section **78B-15-706** is amended to read:

556 **78B-15-706. Effect of dissolution of marriage.**

557 (1) If a marriage is dissolved before placement of eggs, sperm, or an embryo, the
558 former spouse is not a parent of the resulting child unless the former spouse consented in a
559 record that if assisted reproduction were to occur after a divorce, the former spouse would be a
560 parent of the child.

561 (2) The consent of the former spouse to assisted reproduction may be revoked by that
562 individual in a record at any time before placement of eggs, sperm, or embryos.

563 (3) A former spouse who revokes consent under this part is not a parent of the resulting
564 child.

565 Section 11. Section **78B-15-801** is amended to read:

566 **78B-15-801. Gestational agreement authorized.**

567 (1) A prospective gestational [~~mother~~] carrier, her husband or other spouse if she is
568 married, a donor or the donors, and the intended parents may enter into a written agreement
569 providing that:

570 (a) the prospective gestational [~~mother~~] carrier agrees to pregnancy by means of
571 assisted reproduction;

572 (b) the prospective gestational [~~mother~~] carrier, her husband or other spouse if she is
573 married, and the donors relinquish all rights and duties as the parents of a child conceived
574 through assisted reproduction; and

575 (c) the intended parents become the parents of the child.

576 (2) The [~~intended~~] prospective gestational [~~mother~~] carrier may not currently be
577 receiving Medicaid or any other state assistance.

578 (3) The intended parents shall be married, and both spouses [~~must~~] shall be parties to
579 the gestational agreement.

580 (4) A gestational agreement is enforceable only if validated as provided in Section
581 **78B-15-803**.

582 (5) A gestational agreement does not apply to the birth of a child conceived by means
583 of sexual intercourse or if neither intended parent is a donor.

584 (6) The parties to a gestational agreement shall be 21 years of age or older.

585 (7) The gestational [~~mother's~~] carrier's eggs may not be used in the assisted

586 reproduction procedure.

587 (8) If the gestational [~~mother~~] carrier is married, her [~~husband's~~] spouse's sperm or eggs
588 may not be used in the assisted reproduction procedure.

589 Section 12. Section **78B-15-802** is amended to read:

590 **78B-15-802. Requirements of petition.**

591 (1) The intended parents and the prospective gestational [~~mother~~] carrier may file a
592 petition in the district tribunal to validate a gestational agreement.

593 (2) A petition to validate a gestational agreement may not be maintained unless either
594 the [~~mother~~] gestational carrier or intended parents have been residents of this state for at least
595 90 days.

596 (3) The prospective gestational [~~mother's husband~~] carrier's husband or other spouse, if
597 she is married, [~~must~~] shall join in the petition.

598 (4) A copy of the gestational agreement [~~must~~] shall be attached to the petition.

599 Section 13. Section **78B-15-803** is amended to read:

600 **78B-15-803. Hearing to validate gestational agreement.**

601 (1) If the requirements of Subsection (2) are satisfied, a tribunal may issue an order
602 validating the gestational agreement and declaring that the intended parents will be the parents
603 of a child born during the term of the agreement.

604 (2) The tribunal may issue an order under Subsection (1) only [~~on~~] upon finding that:

605 (a) the residence requirements of Section **78B-15-802** have been satisfied and the
606 parties have submitted to jurisdiction of the tribunal under the jurisdictional standards of this
607 part;

608 (b) medical evidence shows that the intended [~~mother is~~] parents are unable to jointly
609 conceive or bear a child or [~~is~~] are unable to do so without unreasonable risk to [~~her~~] the
610 physical or mental health of one or both of the intended parents or to the unborn child;

611 (c) unless waived by the tribunal, a home study of the intended parents has been
612 conducted in accordance with Sections **78B-6-128** through **78B-6-131**, and the intended
613 parents meet the standards of fitness applicable to adoptive parents;

614 (d) all parties have participated in counseling with a licensed mental health
615 professional as evidenced by a certificate signed by the licensed mental health professional
616 which affirms that all parties have discussed options and consequences of the agreement and

617 presented to the tribunal;

618 (e) all parties have voluntarily entered into the agreement and understand its terms;

619 (f) the prospective gestational [~~mother~~] carrier has had at least one pregnancy and
620 delivery and her bearing another child will not pose an unreasonable health risk to the unborn

621 child or to the physical or mental health of the prospective gestational [~~mother~~] carrier;

622 (g) adequate provision has been made for all reasonable health-care [~~expense~~] expenses
623 associated with the gestational agreement until the birth of the child, including responsibility
624 for those expenses if the agreement is terminated;

625 (h) the consideration, if any, paid to the prospective gestational [~~mother~~] carrier is
626 reasonable;

627 (i) all the parties to the agreement are 21 years of age or older;

628 (j) the gestational [~~mother's~~] carrier's eggs are not being used in the assisted
629 reproduction procedure; [~~and~~]

630 (k) if the gestational [~~mother~~] carrier is married, her husband's or other spouse's sperm
631 [~~is~~] or eggs are not being used in the assisted reproduction procedure[~~-~~]; and

632 (l) at least one of the intended parents provides sperm or eggs that are used in the
633 assisted reproduction procedure.

634 (3) Whether to validate a gestational agreement is within the discretion of the tribunal,
635 subject only to review for abuse of discretion.

636 Section 14. Section **78B-15-805** is amended to read:

637 **78B-15-805. Exclusive, continuing jurisdiction.**

638 Subject to the jurisdictional standards of Section **78B-13-201**, the tribunal conducting a
639 proceeding under this part has exclusive, continuing jurisdiction of all matters arising out of the
640 gestational agreement until a child born to the gestational [~~mother~~] carrier during the period
641 governed by the agreement attains the age of 180 days.

642 Section 15. Section **78B-15-806** is amended to read:

643 **78B-15-806. Termination of gestational agreement.**

644 (1) After issuance of an order under this part, but before the prospective gestational
645 [~~mother~~] carrier becomes pregnant by means of assisted reproduction, the prospective
646 gestational [~~mother~~] carrier, her husband or other spouse, or either of the intended parents may
647 terminate the gestational agreement only by giving written notice of termination to all other

648 parties.

649 (2) The tribunal for good cause shown also may terminate the gestational agreement.

650 (3) An individual who terminates an agreement shall file notice of the termination with
651 the tribunal. On receipt of the notice, the tribunal shall vacate the order issued under this part.
652 An individual who does not notify the tribunal of the termination of the agreement is subject to
653 appropriate sanctions.

654 (4) Neither a prospective gestational [~~mother~~] carrier nor her husband or other spouse,
655 if any, is liable to the intended parents for terminating an agreement pursuant to this section.

656 Section 16. Section **78B-15-807** is amended to read:

657 **78B-15-807. Parentage under validated gestational agreement.**

658 (1) Upon birth of a child to a gestational [~~mother~~] carrier, the intended parents shall file
659 notice with the tribunal that a child has been born to the gestational [~~mother~~] carrier within 300
660 days after assisted reproduction. Thereupon, the tribunal shall issue an order:

661 (a) confirming that the intended parents are the parents of the child;
662 (b) if necessary, ordering that the child be surrendered to the intended parents; and
663 (c) directing the Office of Vital Records to issue a birth certificate naming the intended
664 parents as parents of the child.

665 (2) If the parentage of a child born to the gestational [~~mother~~] carrier is in dispute as
666 not the result of an assisted reproduction, the tribunal shall order genetic testing to determine
667 the parentage of the child.

668 Section 17. Section **78B-15-808** is amended to read:

669 **78B-15-808. Gestational agreement -- Miscellaneous provisions.**

670 (1) A gestational agreement may provide for payment of consideration.

671 (2) A gestational agreement may not limit the right of the gestational [~~mother~~] carrier
672 to make decisions to safeguard her health or that of the embryo or fetus.

673 (3) After the issuance of an order under this part, subsequent marriage of the
674 gestational [~~mother~~] carrier does not affect the validity of a gestational agreement, and her
675 husband's or other spouse's consent to the agreement is not required, nor is her husband or
676 other spouse a presumed [~~father~~] parent of the resulting child.

Legislative Review Note
Office of Legislative Research and General Counsel