

JAN 17 2025

A BILL FOR AN ACT

RELATING TO ASSISTED REPRODUCTION.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 **"CHAPTER**

5 **ASSISTED REPRODUCTION AGREEMENTS**

6 § -1 **Definitions.** As used in this chapter, unless the
7 context otherwise requires:

8 "Assisted reproduction" means conception by any means other
9 than sexual intercourse.

10 "Assisted reproduction agreements" means a written contract
11 that includes a person who intends to be the legal parent of a
12 child or children born through assisted reproduction and that
13 defines the terms of the relationship between the parties to the
14 contract.

15 "Donor" means a woman who provides oocytes for use by
16 another for the purpose of assisting the recipient of the
17 oocytes in having a child or children.



1 "Gestational carrier" means a woman who is not an intended
2 parent and who agrees to gestate a genetically unrelated embryo
3 pursuant to an assisted reproduction agreement.

4 "Intended parent" means an individual, married or
5 unmarried, who manifests the intent to be legally bound as the
6 parent of a child resulting from assisted reproduction.

7 "Surrogate" means a woman who bears and carries a child for
8 another through medically assisted reproduction and pursuant to
9 a written agreement, as set forth in this chapter. "Surrogate"
10 includes gestational carriers and traditional surrogates.

11 "Traditional surrogate" means a woman who agrees to gestate
12 an embryo, in which the woman is the gamete donor and the embryo
13 was created using the sperm of the intended father or another
14 arranged by the intended parent or parents.

15 § -2 **Assisted reproduction agreements.** (a) An assisted
16 reproduction agreement for gestational carriers shall include
17 but not be limited to all of the following information:

18 (1) The date on which the assisted reproduction agreement
19 for gestational carriers was executed;

20 (2) The persons from whom the gametes originated, unless
21 donated gametes were used, in which case the assisted



1 reproduction agreement shall not need to specify the
2 name of the donor but shall specify whether the
3 donated gamete or gametes were eggs, sperm, or
4 embryos, or all;

5 (3) The identity of the intended parent or parents; and

6 (4) Disclosure of how the intended parents will cover the
7 medical expenses of the gestational carrier and of the
8 newborn or newborns. If health care coverage is used
9 to cover those medical expenses, the disclosure shall
10 include a review of the health care policy provisions
11 related to coverage for surrogate pregnancy, including
12 any possible liability of the gestational carrier,
13 third-party liability liens or other insurance
14 coverage, and any notice requirements that could
15 affect coverage or liability of the gestational
16 carrier. The review and disclosure shall not
17 constitute legal advice. If coverage of liability is
18 uncertain, a statement of that fact shall be
19 sufficient to meet the requirements of this section.

20 (b) Prior to executing the written assisted reproduction
21 agreement for gestational carriers, a surrogate and the intended



1 parent or intended parents shall be represented by separate
2 independent licensed attorneys of their choosing.

3 (c) The assisted reproduction agreement for gestational
4 carriers shall be executed by the parties and the signatures on
5 the assisted reproduction agreement for gestational carriers
6 shall be notarized or witnessed by an equivalent method of
7 affirmation as required in the jurisdiction where the assisted
8 reproduction agreement for gestational carriers is executed.

9 (d) The parties to an assisted reproduction agreement for
10 gestational carriers shall not undergo an embryo transfer
11 procedure, or commence injectable medication in preparation for
12 an embryo transfer for assisted reproduction purposes, until the
13 assisted reproduction agreement for gestational carriers has
14 been fully executed as required by subsections (b) and (c).

15 **§ -3 Establishment of parentage.** (a) An action to
16 establish the parent and child relationship between the intended
17 parent or parents and the child as to a child conceived pursuant
18 to an assisted reproduction agreement for gestational carriers
19 may be filed before the child's birth and may be filed in the
20 circuit where the child is anticipated to be born, circuit where
21 the intended parent or intended parents reside, circuit where



1 the surrogate resides, circuit where the assisted reproduction
2 agreement for gestational carriers is executed, or circuit where
3 medical procedures pursuant to the agreement are to be
4 performed. A copy of the assisted reproduction agreement for
5 gestational carriers shall be lodged in the court action filed
6 for the purpose of establishing the parent and child
7 relationship. The parties to the assisted reproduction
8 agreement for gestational carriers shall attest, under penalty
9 of perjury, and to the best of their knowledge and belief, as to
10 the parties' compliance with this chapter in entering into the
11 assisted reproduction agreement for gestational carriers.
12 Submitting those declarations shall not constitute a waiver of
13 the lawyer-client privilege.

14 (b) A notarized assisted reproduction agreement for
15 gestational carriers signed by all the parties, with the
16 attached declarations of independent attorneys, and lodged with
17 the family court in accordance with this section, shall rebut
18 any presumptions of parentage under sections 584-1, 584-3(1),
19 and 584-4 as to the gestational carrier surrogate, or the
20 gestational carrier surrogate's spouse or partner, being a
21 parent of the child or children.



1 (c) Upon petition of any party to a properly executed
2 assisted reproduction agreement for gestational carriers, the
3 family court shall issue a judgment or an order establishing a
4 parent and child relationship, whether pursuant to section 584-6
5 or otherwise. The judgment or order may be issued before or
6 after the child's or children's birth subject to the limitation
7 that the enforcement of the judgment or order shall be stayed
8 until the birth of the child. Subject to proof of compliance
9 with this chapter, the judgment or order shall establish the
10 parent and child relationship of the intended parent or intended
11 parents identified in the surrogacy agreement and shall
12 establish that the surrogate, and the surrogate's spouse or
13 partner, is not a parent of, and has no parental rights or
14 duties with respect to, the child or children. The judgment or
15 order shall be issued without further hearing or evidence,
16 unless the family court or a party to the assisted reproduction
17 agreement for gestational carriers has a good faith, reasonable
18 belief that the assisted reproduction agreement for gestational
19 carriers or attorney declarations were not executed in
20 accordance with this chapter. Upon motion by a party to the
21 assisted reproduction agreement for gestational carriers, the



1 matter shall be scheduled for hearing before a judgment or an
2 order is issued. This chapter shall not prevent a court from
3 finding and declaring that the intended parent is, or intended
4 parents are, the parent or parents of the child where compliance
5 with this chapter has not been met; however, the court shall
6 require sufficient proof entitling the parties to the relief
7 sought.

8 (d) The petition, relinquishment or consent, agreement,
9 order, report to the court from any investigating agency, and
10 any power of attorney and deposition filed in the office of the
11 clerk of the court pursuant to this chapter shall not be open to
12 inspection by any person other than the parties to the
13 proceeding and their attorneys and the department of human
14 services, except upon the written authority of a judge of the
15 family court. A judge of the family court shall not authorize
16 anyone to inspect the petition, relinquishment or consent,
17 agreement, order, report to the court from any investigating
18 agency, or power of attorney or deposition, or any portion of
19 those documents, except in exceptional circumstances and where
20 necessary. The petitioner may be required to pay the expense of
21 preparing the copies of the documents to be inspected.



1 (e) Upon the written request of any party to the
2 proceeding and the order of any judge of the family court, the
3 clerk of the court shall not provide any documents referred to
4 in subsection (d) for inspection or copying to any other person,
5 unless the name of the gestational carrier or any information
6 tending to identify the gestational carrier is deleted from the
7 documents or copies thereof.

8 (f) An assisted reproduction agreement for gestational
9 carriers executed in accordance with this chapter is
10 presumptively valid and shall not be rescinded or revoked
11 without a court order. For purposes of this chapter, any
12 failure to comply with the requirements of this chapter shall
13 rebut the presumption of the validity of the assisted
14 reproduction agreement for gestational carriers."

15 SECTION 2. This Act shall take effect upon its approval.
16

INTRODUCED BY: 



S.B. NO. 1151

Report Title:

Equality Caucus; Assisted Reproduction Agreements;
Determinations of Parentage; Procedure

Description:

Establishes a streamlined procedure for determining parentage in cases of assisted reproduction.

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