

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 81

An Act to amend and reenact §§ 20-156 and 20-158 of the Code of Virginia, relating to assisted conception.

[H 2221]

Approved March 2, 1997

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-156 and 20-158 of the Code of Virginia are amended and reenacted as follows:

§ 20-156. Definitions.

As used in this chapter unless the context requires a different meaning:

"Assisted conception" means a pregnancy resulting from any intervening medical technology, ~~other than the pregnancy of a woman resulting from the insemination of her ovum using her husband's sperm,~~ whether in vivo or in vitro, which completely or partially replaces sexual intercourse as the means of conception. Such intervening medical technology includes, but is not limited to, conventional medical and surgical treatment as well as noncoital reproductive technology such as artificial insemination by donor, cryopreservation of gametes and embryos, in vitro fertilization, uterine embryo lavage, embryo transfer, gamete intrafallopian tube transfer, and low tubal ovum transfer.

"Compensation" means payment of any valuable consideration for services in excess of reasonable medical and ancillary costs.

"Cryopreservation" means freezing and storing of gametes and embryos for possible future use in assisted conception.

"Donor" means an individual, other than a surrogate, ~~unrelated by marriage to the recipient~~ who contributes the sperm or egg used in assisted conception.

"Gamete" means either a sperm or an ovum.

"Genetic parent" means an individual who contributes a gamete resulting in a conception.

"Gestational mother" means the woman who gives birth to a child, regardless of her genetic relationship to the child.

"Embryo" means the organism resulting from the union of a sperm and an ovum from first cell division until approximately the end of the second month of gestation.

"Embryo transfer" means the placing of a viable embryo into the uterus of a gestational mother.

"Infertile" means the inability to conceive after one year of unprotected sexual intercourse.

"Intended parents" means a man and a woman, married to each other, who enter into an agreement with a surrogate under the terms of which they will be the parents of any child born to the surrogate through assisted conception regardless of the genetic relationships between the intended parents, the surrogate, and the child.

"In vitro" means any process that can be observed in an artificial environment such as a test tube or tissue culture plate.

"In vitro fertilization" means the fertilization of ova by sperm in an artificial environment.

"In vivo" means any process occurring within the living body.

"Ovum" means the female gamete or reproductive cell prior to fertilization.

"Reasonable medical and ancillary costs" means the costs of the performance of assisted conception, the costs of prenatal maternal health care, the costs of maternal and child health care for a reasonable post partum period, the reasonable costs for medications and maternity clothes, and any additional and reasonable costs for housing and other living expenses attributable to the pregnancy.

"Sperm" means the male gametes or reproductive cells which impregnate the ova.

"Surrogacy contract" means an agreement between intended parents, a surrogate, and her husband, if any, in which the surrogate agrees to be impregnated through the use of assisted conception, to carry any resulting fetus, and to relinquish to the intended parents the custody of and parental rights to any resulting child.

"Surrogate" means any adult woman who agrees to bear a child carried for intended parents.

§ 20-158. Parentage of child resulting from assisted conception.

A. Determination of parentage, generally. — Except as provided in subsections B, C, D, and E of this section, the parentage of any child resulting from the performance of assisted conception shall be determined as follows:

1. The gestational mother of a child is the child's mother.

2. The husband of the gestational mother of a child is the child's father, notwithstanding any declaration of invalidity or annulment of the marriage obtained after the performance of assisted conception, unless he commences an action in which the mother and child are parties within two years after he discovers or, in the exercise of due diligence, reasonably should have discovered the child's

birth and in which it is determined that he did not consent to the performance of assisted conception.

3. A donor is not the parent of a child conceived through assisted conception, *unless the donor is the husband of the gestational mother.*

B. Death of spouse. — Any child resulting from the insemination of a wife's ovum using her husband's sperm, with his consent, is the child of the husband and wife notwithstanding that, during the ten-month period immediately preceding the birth, either party died.

However, any person who dies before in utero implantation of an embryo resulting from the union of his sperm or her ovum with another gamete, whether or not the other gamete is that of the person's spouse, is not the parent of any resulting child unless (i) implantation occurs before notice of the death can reasonably be communicated to the physician performing the procedure or (ii) the person consents to be a parent in writing executed before the implantation.

C. Divorce. — Any child resulting from insemination of a wife's ovum using her husband's sperm, with his consent, is the child of the husband and wife notwithstanding that either party filed for a divorce or annulment during the ten-month period immediately preceding the birth. Any person who is a party to an action for divorce or annulment commenced by filing before in utero implantation of an embryo resulting from the union of his sperm or her ovum with another gamete, whether or not the other gamete is that of the person's spouse, is not the parent of any resulting child unless (i) implantation occurs before notice of the filing can reasonably be communicated to the physician performing the procedure or (ii) the person consents in writing to be a parent, whether the writing was executed before or after the implantation.

D. Birth pursuant to court approved surrogacy contract. — After approval of a surrogacy contract by the court and entry of an order as provided in subsection D of § 20-160, the intended parents are the parents of any resulting child. However, if the court vacates the order approving the agreement pursuant to subsection B of § 20-161, the surrogate is the mother of the resulting child and her husband is the father. The intended parents may only obtain parental rights through adoption as provided in Chapter 11 (§ 63.1-220 et seq.) of Title 63.1.

E. Birth pursuant to surrogacy contract not approved by court. — In the case of a surrogacy contract that has not been approved by a court as provided in § 20-160, the parentage of any resulting child shall be determined as follows:

1. The gestational mother is the child's mother unless the intended mother is a genetic parent, in which case the intended mother is the mother.

2. If either of the intended parents is a genetic parent of the resulting child, the intended father is the child's father. However, if (i) the surrogate is married, (ii) her husband is a party to the surrogacy contract, and (iii) the surrogate exercises her right to retain custody and parental rights to the resulting child pursuant to § 20-162, then the surrogate and her husband are the parents.

3. If neither of the intended parents is a genetic parent of the resulting child, the surrogate is the mother and her husband is the child's father if he is a party to the contract. The intended parents may only obtain parental rights through adoption as provided in Chapter 11 (§ 63.1-220 et seq.) of Title 63.1.

4. After the signing and filing of the surrogate consent and report form in conformance with the requirements of subsection A of § 20-162, the intended parents are the parents of the child and the surrogate and her husband, if any, shall not be the parents of the child.