SB 264-FN - AS AMENDED BY THE SENATE

03/30/2023 1262s

2023 SESSION

23-0973
06/05

SENATE BILL ***264-FN***

AN ACT relative to parentage.

SPONSORS: Sen. Perkins Kwoka, Dist 21; Sen. Soucy, Dist 18; Sen. Rosenwald, Dist 13; Sen. Fenton, Dist 31; Sen. Altschiller, Dist 24; Sen. Watters, Dist 4; Sen. Whitley, Dist 15; Sen. Prentiss, Dist 5; Sen. Chandley, Dist 1; Rep. Simpson, Rock. 23; Rep. Grote, Rock. 24

COMMITTEE: Judiciary

ANALYSIS

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

This bill makes several technical changes to the surrogacy chapter.

- -

Explanation: Matter added to current law appears ***bold italics.***
Matter removed from current law appears [bracketed and struckthrough.]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
03/30/2023 1262s 23-0973
06/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to parentage.

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

1 Surrogacy. Amend the chapter title preceding RSA 168-B:1 to read as follows:
CHAPTER 168-B
[SURROGACY] ***PARENTAGE***

2 Parentage; Definitions. Amend RSA 168-B:1 to read as follows:
168-B:1 Definitions. In this chapter:
I. "Artificial insemination" means the introduction of semen into a female's vagina, cervical canal, or uterus through extracorporeal or intracorporeal means.
II. "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse. The term includes, but is not limited to:
(a) Artificial insemination.
(b) Donation of [eggs] ***gametes.***
(c) Donation of embryos.
(d) In-vitro fertilization and transfer of embryos.
(e) Intracytoplasmic sperm injection.

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

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

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

VI. "Embryo" means the fertilized egg.

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

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

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

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

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

XII. "Health care provider" means a person who is duly licensed, certified, authorized, or registered under the laws of the state to provide health care, and includes all physicians, psychologists, clinical social workers, and professional counselors

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

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

XV. "Mental health consultations" means ***an evaluation by a licensed mental health*** professional for the purposes of ***determining the patient's*** participation in a gestational carrier arrangement, and of any potential psychological issues possessed by a party to a gestational carrier arrangement, including, but not limited to, the intended parents, the gestational carrier, her spouse, if any, and any minor children of the gestational carrier's household, and to determine, to a reasonable degree of psychological certainty, the potential attachment issues, if any, and clarity to [~~each party~~] ***his or her*** obligations, rights, and duties under a gestational carrier arrangement.

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

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

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

3 Parentage; Parent-Child Relationship. Amend RSA 168-B:2, I-II as follows:

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

II. A person is the parent of a child conceived by assisted reproduction if the person, except when capacity or a court order to the contrary is established, consented in a record to assisted reproduction ***with the intent to be the parent of the resulting child***

child or provides a gamete or gametes or an embryo or embryos for use in the assisted reproduction ***with the intent to parent the resulting child***.

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

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

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

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

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

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

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

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

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

I. She is at least 21 years of age.

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

III. She has completed a physical and psychological evaluation, including testing for infectious diseases, substantially in conformance with the guidelines set forth by the American Society for Reproductive Medicine, relating to the anticipated pregnancy.

IV. She has completed a mental health consultation.

V. She and her spouse or partner, if any, have each had independent legal counsel with respect to the terms of the gestational carrier agreement and have been advised of the potential legal consequences of the gestational carrier agreement.

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

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

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

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

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

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

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

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

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

V. A breach of a provision of this chapter or of the gestational carrier agreement by the gestational carrier or the gestational carrier's spouse or partner shall not be a defense to the obligations imposed by this chapter.

VI. A breach of a provision of this chapter or of the gestational carrier agreement by the gestational carrier, or the gestational carrier's spouse or partner, shall not deprive the intended parents or parent of parental rights and responsibilities with respect to the child, unless it is genetically impossible that the child is the child of the gestational carrier.

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

VIII. Nothing in this chapter is intended to abrogate any rights of the resulting child or the resulting child's legally authorized representative.

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

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

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

LBA
23-0973
Revised 1/30/23

SB 264-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to parentage.

FISCAL IMPACT: [X] State [ ] County [ ] Local [ ] None

	Estimated Increase / (Decrease)			
STATE:	**FY 2023**	**FY 2024**	**FY 2025**	**FY 2026**
Appropriation	**$0**	**$0**	**$0**	**$0**
Revenue	**$0**	**$0**	**$0**	**$0**
Expenditures	**$0**	**Indeterminable Increase**	**Indeterminable Increase**	**Indeterminable Increase**
Funding Source:	[X] General	[ ] Education	[ ] Highway	[ ] Other

METHODOLOGY:

This bill changes the name of the surrogacy chapter from "Surrogacy" to "Parentage" and makes technical changes to the chapter. The Judicial Branch indicates the amendments to RSA 168-B:2, III would a new type of claim that may be brought by a court to affirm that the parent and the person conceived via assisted reproduction. The Branch indicates this would result in an increase in superior court cases but is unable to predict how many additional cases will be filed. The Branch ass of the other changes contained in the bill will have a fiscal impact.

It is assumed that any fiscal impact would occur after FY 2023.

AGENCIES CONTACTED:

Judicial Branch

CONSENT CALENDAR

May 3, 2023

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on Judiciary to which was referred SB 264-FN,

AN ACT relative to parentage. Having considered the same, report the same with the recommendation that the bill OUGHT TO PASS.

Rep. Zoe Manos

FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

Committee:	**Judiciary**
Bill Number:	**SB 264-FN**
Title:	**relative to parentage.**
Date:	**May 3, 2023**
Consent Calendar:	**CONSENT**
Recommendation:	**OUGHT TO PASS**

STATEMENT OF INTENT

This is both a housekeeping and a substantive bill. The title change to the existing statute, RSA 168-B, from Surrogacy to Parentage, acknowledges that the statute is comprehensive and addresses parentage as well as surrogacy. RSA 168-B, which was originally enacted in 2014 and then amended in 2015 and 2020, needs the substantive updates contained in this bill to reflect and incorporate current medical and legal practices.

Vote 20-0.

Rep. Zoe Manos
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Judiciary

SB 264-FN, relative to parentage. **OUGHT TO PASS.**

Rep. Zoe Manos for Judiciary. This is both a housekeeping and a substantive bill. The title change to the existing statute, RSA 168- B, from Surrogacy to Parentage, acknowledges that the statute is comprehensive and addresses parentage as well as surrogacy. RSA 168-B, which was originally enacted in 2014 and then amended in 2015 and 2020, needs the substantive updates contained in this bill to reflect and incorporate current medical and legal practices. **Vote 20-0.**

Original: House Clerk
Cc: Committee Bill File

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill #: SB 264-FN Date: 4/19/23

Committee: JUDICIARY

**** Please Print All Information ****

Name	Address	Phone	Representing	Pro	Con
Catherine Tucker	37 Becky LN CONCORD NH	617 388 4565	Resolve New England	X	
Christine Hanisco	~~Dunbo~~ 12 Oxalis Way Concord	603 233 1869	self	X	

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON SB 264-FN

BILL TITLE: **relative to parentage.**

DATE: **April 19, 2023**

LOB ROOM: **206-208** **Time Public Hearing Called to Order:** **3:01 p.m.**

Time Adjourned: **3:04 p.m.**

Committee Members: Reps. Alexander Jr., Andrus, Testerman, Stapleton, Tripp, Greeson, K. Perez, M. Smith, Horrigan, DiLorenzo, Kenney, M. Paige, McBeath, Devine, Lanza, Manos and Turer

Bill Sponsors:

Sen. Perkins Kwoka	**Sen. Soucy**	**Sen. Rosenwald**
Sen. Fenton	**Sen. Altschiller**	**Sen. Watters**
Sen. Whitley	**Sen. Prentiss**	**Sen. Chandley**
Rep. Simpson	**Rep. Grote**	

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Sen Perkins-Kwoka, Sponsor - Bill addresses updates to the assisted reproductive statue. - Her and her wife are a same-sex couple and had to go through confirmatory adoption hearing. - Language updates provide assurance to a wider audience and makes our statue more inclusive of same-sex couples and the many ways families come to be in NH. - Creating certainty around assisted reproductive rights, donor rights, surrogate rights, gestational carrier agreements is the intent of this bill.

Respectfully Submitted,
Rep. Katelyn Kuttab, Clerk

House Remote Testify

Judiciary Committee Testify List for Bill SB264 on 2023-04-19

Support: 7 Oppose: 1 Neutral: 0 Total to Testify: 0

Export to Excel

Name	City, State Email Address	Title	Representing	Position	Testifying	Non-Germane	Signed Up
Soucy, Donna	manchester, NH donna.soucy@leg.state.nh.us	An Elected Official	SD 18	Support	No	No	4/14/2023 1:46 PM
Rosenwald, Cindy	Nashua, NH cindy.rosenwald@leg.state.nh.us	An Elected Official	SD 13	Support	No	No	4/14/2023 3:49 PM
Watters, David	Dover, NH david.watters@leg.state.nh.us	An Elected Official	Myself	Support	No	No	4/18/2023 10:24 AM
LeBlanc, Kate	Waltham, MA kwleblanc@resolvenewengland.org	A Member of the Public	Myself	Support	No	No	4/19/2023 8:08 AM
Hanisco, Chrissy	Concord, NH chrissy.hanisco@gmail.com	A Member of the Public	Myself	Support	No	No	4/19/2023 10:59 AM
Altschiller, Senator Debra	SD24, NH kevin.condict@leg.state.nh.us	An Elected Official	Myself	Support	No	No	4/19/2023 11:44 AM
Richardson, Daniel	Nashua, NH daniel6_22@comcast.net	A Member of the Public	Myself	Oppose	No	No	4/19/2023 12:10 PM
Tucker, Catherine	Concord, NH Catherine@tuckerfertilitylaw.com	A Member of the Public	Myself	Support	No	No	4/19/2023 4:55 PM

The Stein Law Firm PLLC

Robert A. Stein
Diane L. Perin
Christine M. Hanisco

April 19, 2023

New Hampshire House
Judiciary Committee
107 North Main Street
Concord, NH 03301

RE: SB 264-FN An Act Relative to Parentage, as Amended by the Senate

Dear Chair Lynn, Vice Chair Wallace and Committee Members:

I am writing to urge you to recommend SB 264-FN as "ought to pass." This legislation further strengthens RSA 168-B by making the statute more inclusive for all New Hampshire families. The current version of this law is 10 years old, in which time changes in technology and medicine necessitate some of the amendments we are seeking.

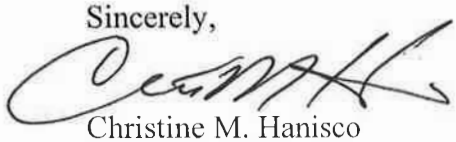
About one-half of my law practice is focused on assisting individuals and couples with becoming parents through either surrogacy or donor conception. RSA 168-B guides my work from drafting and negotiating contracts to obtaining parentage orders. Although the current statute allows me to effectively assist my clients, there are some aspects of the statute that need improvement and other areas that need slight tweaking. SB 264 resolve these primarily technical issues and eliminate inconsistencies in the current law.

For example, as currently enacted, RSA 168-B is titled "Surrogacy" and although there is heavy emphasis on gestational surrogacy several sections address parentage in other forms, including *de facto* and donor conception. In addition, third party assisted reproduction often includes multiple appointments with medical and mental health professionals. Advances in telehealth make these appointments more accessible, but the current statute requires the mental health consultation to be in person.

Senator Perkins Kwoka has been extremely welcoming of input from New Hampshire practitioners who practice assisted reproductive technology law and has ensured that we all had a voice at the table and that the legislation reflects those conversations. We worked collaboratively in the Senate to address concerns of the Senate Judiciary Committee, which is reflected in the current bill as amended by the Senate.

I thank you for your time and ask you to please recommend this bill out of committee to the full House as "ought to pass."

Sincerely,



Christine M. Hanisco
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Concord, NH 03301
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Daniel Richardson

Bill is silent on the male's relationship to the child. At best, it refers to him as donor. It provides no definition as to his parental status, regardless of being spouse of embryo donor and regardless of being spermatozoa donor.

Ambiguity is unacceptable. Please correct this because the remainder of bill is supportable.

Catherine Tucker

I practice assisted reproduction law. This bill makes some updates to the parentage laws which will better protect intended parents, donors, surrogates and, the resulting children. Thank you.

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on SB 264-FN

BILL TITLE: relative to parentage.

DATE: May 3, 2023

LOB ROOM: 206-208

MOTIONS: OUGHT TO PASS

Moved by Rep. Manos Seconded by Vote: 20-0

CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Katelyn Kuttab, Clerk

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

2023 SESSION

1/10/2023 9:53:34 AM
Roll Call Committee Registers Report

Judiciary

Bill #: SB264 **Motion:** OTP **AM #:** N/A **Exec Session Date:** 3May23

Members	YEAS	Nays	NV
Lynn, Bob J. Chairman	20		
Wallace, Scott Vice Chairman	1		
Alexander, Joe H.	2		
Andrus, Louise	3		
Testerman, Dave	4		
Stapleton, Walter A.	5		
Tripp, Richard P.	6		
Greeson, Jeffrey	7		
Kuttab, Katelyn Clerk	8		
Perez, Kristine	9		
Smith, Marjorie K.	10		
Horrigan, Timothy O.	11		
DiLorenzo, Charlotte I.	12		
Kenney, Cam E.	13		
Paige, Mark	14		
~~McBeath, Rebecca Susan~~ Eaton, Daniel	15		
Devine, Shelley	16		
Lanza, Judi	17		
Manos, Zoe R	18		
Turer, Eric S	19		
TOTAL VOTE:	20	0	