

# HOUSE RESEARCH

## Bill Summary

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### Overview

This bill authorizes gestational surrogacy agreements, and specifies various requirements relating to the terms of the agreements. The bill also includes requirements relating to the parentage and inheritance rights of a child born pursuant to a gestational surrogacy agreement.

#### Section

**1 Title.** Adds § 257D.01. Adds title to the act.

**2 Definitions.** Adds § 257D.02. Defines anonymous donor, assisted reproduction, assisted reproductive technology, collaborative reproduction, embryo transfer, gametes, gestational surrogacy agreement, gestational surrogate, intended parent, known donor, and provider.

**3 Gamete donation.** Adds § 257D.03. Authorizes compensation for gamete donation.

**Subd. 1. Compensation authorized.** Authorizes reasonable compensation to a donor for undergoing evaluation for, and creating and obtaining, gametes.

**Subd. 2. Compensation amount.** Specifies that donor compensation may vary depending upon a number of factors. Requires that compensation not be dependent upon the quality of the gamete donated or conditioned upon the donor's genotypic or phenotypic characteristics.

**Subd. 3. Payment of expenses.** Requires the intended parent to pay for the full costs of evaluating, testing, and storing a known donor's gametes, unless the parties agree in writing otherwise.

**Subd. 4. Donor's social and medical history.** Requires an anonymous or known

gamete donor to provide a detailed social and medical history at the time of donation. This provision is comparable to a requirement under current law that birth parents provide a detailed social and medical history to a prospective adoptive parent.

- 4 Gestational surrogacy mental health evaluation and counseling.** Adds § 257D.05. Requires a prospective gestational surrogate and intended parents to have a mental health evaluation and counseling before entering into a gestational surrogacy agreement.

**Subd. 1. Definitions.** Defines counseling, counselor, and evaluation for purposes of this section.

**Subd. 2. Qualification for practice in assisted reproduction counseling.** Specifies a counselor's qualifications to practice in assisted reproduction counseling.

**Subd. 3. Gestational surrogacy mental health evaluation and counseling requirement.** Prohibits a provider from initiating an assisted reproductive technology procedure until:

- ▶ the gestational surrogate has an evaluation and is offered additional counseling, at the intended parent's expense, for up to 180 days after the child's birth;
- ▶ each intended parent has an evaluation by a counselor; and
- ▶ a counselor who meets with a gestational surrogate or intended parent prepares a written recommendation regarding whether the individual is suitable for participation in assisted reproduction.

Also provides that a gestational surrogate or intended parent may meet with a counselor of his or her own choosing.

**Subd. 4. Evidence of meeting counseling requirements.** Specifies the conditions that must be met to satisfy the counseling requirements under subdivision 3.

**Subd. 5. Written summary of evaluation available to participants in counseling.** Provides that a counselor may make a written summary of the counselor's recommendations available to the parties to a gestational surrogacy agreement. Also requires that a provider give notice to the parties, before the parties enter a gestational surrogacy agreement, that they may receive copies of the written summaries.

**Subd. 6. Confidentiality.** Requires that the counselor's written summary only state the conclusion and not the detailed reasons for the counselor's recommendations. Also provides that access to all other counseling records is governed by section 144.335 (provision governing access to health records).

- 5 Gestational surrogacy agreement.** Adds § 257D.06. Specifies requirements for gestational surrogacy agreements.

**Subd. 1. Parties; terms.** (a) Requires a prospective gestational surrogate and spouse, if any; a known donor; and each intended parent to enter into a written agreement providing that:

- ▶ at least one intended parent agrees to provide his or her own gametes to create a child through assisted reproduction;
- ▶ the prospective gestational surrogate may not provide her own gametes to

create a child through assisted reproduction, unless the gestational surrogate is a sister of an intended mother and the court waives this prohibition;

- ▶ the prospective gestational surrogate agrees to attempt to achieve pregnancy through assisted reproduction;
  - ▶ the prospective gestational surrogate can attempt to achieve pregnancy for no more than 18 months from the date of court approval of the agreement;
  - ▶ the prospective gestational surrogate and spouse, if any, and a known donor relinquish all parental rights and duties to any child conceived through assisted reproduction; and
  - ▶ the intended parent becomes the parent of any children conceived through assisted reproduction, regardless of the number, health, or physical condition of the resulting children.
- (b) Requires an intended parent's spouse, if any, to be a party to the gestational surrogacy agreement.
- (c) Requires the intended parent or parents to bear the cost of a gestational surrogate's mental health evaluation and counseling.
- (d) Requires the intended parent or parents to notify the gestational surrogate of her right to separate legal counsel of her own choosing at the sole expense of the intended parent or parents at least 14 days before entering an agreement. Also requires the intended parent or parents to pay for the gestational surrogate's legal counsel and any court filing fees or other costs associated with the agreement.
- (e) Permits the intended parent or parents to reasonably compensate a gestational surrogate for her time, effort, and health risks in an amount not to exceed \$25,000. Also provides that the \$25,000 amount under this paragraph increases by 5 percent on January 1 of each year beginning January 1, 2005.
- (f) Provides that a gestational surrogate agreement may not limit a gestational surrogate's right to make decisions to safeguard her mental or physical health or the health of the embryo or fetus.
- (g) Requires the agreement to address whether and to what extent the intended parents will have access to gestational surrogate's medical records related to the pregnancy.
- (h) Permits the intended parent or parents to obtain an anonymous or known donor's social and medical history.

**Subd. 2. Pregestational determination of parentage.** (a) Requires judicial approval of a gestational surrogacy agreement before embryo transfer.

(b) Requires the following for judicial approval of the agreement:

- ▶ the gestational surrogate and intended parent or parents are residents of Minnesota for at least 90 days;
- ▶ the prospective gestational surrogate's husband, if any, is joined in the proceeding;

- ▶ all parties to the gestational surrogacy agreement are at least 21 years old;
- ▶ all parties voluntarily entered into the agreement and understand its terms;
- ▶ the gestational surrogate gives her consent to collaborative reproduction after receiving a full explanation of her role in collaborative reproduction;
- ▶ adequate provision is made for all reasonable health care expenses associated with the gestational surrogacy agreement until the child's birth;
- ▶ the parties understand that they have a right to separate legal counsel and any waiver of counsel is knowing and voluntary;
- ▶ the gestational surrogate and intended parent or parents complete the mental health evaluation and counseling requirements and are identified as suitable participants in collaborative reproduction.
- ▶ the female intended parent's reproductive history indicates she is physically unable to safely bear a healthy child;
- ▶ the gestational surrogate has had at least one previous successful pregnancy and delivery and bearing another child will not present an unreasonable health risk. Permits the court to waive this requirement if the surrogate is a sister of an intended parent;
- ▶ the original copies of the gestational surrogacy agreement and all other related agreements are received and reviewed by the court; and
- ▶ all parties agree that the Minnesota district court in the county where the agreement is approved has exclusive and continuing jurisdiction over any disputes that arise for 180 days after the birth of the child.

**Subd. 3. Proceeding for pregestational determination of parentage.** Requires the court to issue an order approving the gestational surrogacy agreement and declaring the intended parent or parents to be the parent or parents of the child born during the term of the agreement on finding that:

- ▶ all of the requirements in subdivision 1, paragraph (a), and subdivision 2, paragraph (b) are met; and
- ▶ the consideration, if any, paid to the prospective gestational surrogate is reasonable.

**Subd. 4. Pregestational determination of parentage without representation.**

Specifies the procedure for court approval of a gestational surrogacy agreement when either or both the gestational surrogate or an intended parent are not represented by legal counsel.

**Subd. 5. Pregestational determination of parentage with representation.** Specifies the procedure for court approval of a gestational surrogacy agreement when both the gestational surrogate and intended parents are represented by legal counsel.

**Subd. 6. Enforceability of pregestational determination of parentage.** Provides that a gestational surrogacy agreement is enforceable pursuant to the terms of the agreement if a court reviews and approves it before embryo transfer.

**Subd. 7. Enforceability of pregestational determination that is not court-**

**approved.** Provides that a gestational surrogacy agreement that is not approved by a court under this section is not enforceable under the act. Also specifies requirements regarding the parentage and support of a child born pursuant to an agreement that is not court approved.

**Subd. 8. Proceedings and records, confidential.** Provides that the proceedings, records, and identities of the parties to a gestational surrogacy agreement are subject to the confidentiality standards applicable to adoption proceedings.

**Subd. 9. Exclusive, continuing jurisdiction.** Provides that the court conducting a proceeding under this section has exclusive, continuing jurisdiction over the matter until a child born to the gestational surrogate during the term of the agreement reaches the age of 180 days.

**Subd. 10. Prohibition.** Prohibits parties from entering into gestational surrogacy agreements regarding the birth of a child conceived by sexual intercourse.

**Subd. 11. Termination of gestational surrogacy agreement.** Specifies timing and notice requirements for terminating a gestational surrogacy agreement.

**Subd. 12. Gestational surrogate; effect of subsequent marriage.** Provides that a gestational surrogate's marriage after a court issues an order under this section does not affect the validity of the agreement; her husband's consent is not required; and her husband is not the presumed father of the resulting child.

**6 Rights and responsibilities of parties.** Adds § 257D.07. Specifies parental rights and responsibilities arising out of gestational surrogacy agreements.

**Subd. 1. Intended parent.** Specifies that an intended parent is the parent of a child born within 300 days of the last procedure using assisted reproduction pursuant to a court-approved gestational surrogacy agreement. Also specifies procedures relating to the birth record of a child born pursuant to a gestational surrogacy agreement.

**Subd. 2. Anonymous or known donor.** Specifies that an anonymous or known donor relinquishes all parental rights, responsibilities, and control over retrieved gametes, embryos created, and any resulting child, and that the donor is not the parent of a child conceived using the donor's gametes.

**Subd. 3. Gestational surrogate.** Specifies that the gestational surrogate and her spouse, if any, are not the parents of a child conceived through assisted reproduction pursuant to a court-approved gestational surrogacy agreement.

**7 Inheritance.** Adds § 257D.08. Specifies inheritance rights under gestational surrogacy agreements.

**Subd. 1. Inheritance rights under gestational surrogacy agreements.** Specifies inheritance rights of a child in the absence of a testamentary document executed by an intended parent.

**Subd. 2. Anonymous or known donors.** Specifies inheritance rights relating to a donor.

**8 Revisor's instruction.** Instructs the revisor to renumber the current law relating to artificial insemination (section 257.56) so that it is included in chapter 257D.

**9**            **Effective date.** Makes sections 1 to 8 effective August 1, 2003.