

Subject Surrogacy contracts; gestational carrier agreements

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Date March 12, 2019

Overview

This bill creates statutory requirements for surrogacy contracts, and provides requirements for parties entering into those agreements.

Summary

Section	Description
1	<p>Definitions.</p> <p>This section provides definitions to a number of terms including:</p> <ul style="list-style-type: none">▪ “gestational carrier,” which means a woman who agrees to carry and give birth to a child through IVF using the egg or sperm or both from others;▪ “intended parents,” which means the persons who enter into a contract with a woman to carry a baby, and who wish to be the legal parents of the child or children born to the gestational carrier;▪ “medical evaluation,” which means an evaluation by a physician according to recommended guidelines by health organizations; and▪ “mental health evaluation,” which means an evaluation and consultation with a mental health professional that is consistent with guidelines by health organizations.
2	<p>Rights of Parentage.</p> <p>Provides that when a gestational carrier agreement is in place and valid under the eligibility requirements in sections 3 and 4, then the intended parents are the parents of the child immediately on the child’s birth and they have sole custody and care of the child, and no other party has rights to the child, including when the child is not related to either intended parent due to a medical error.</p>
3	<p>Eligibility.</p> <p>Requires gestational surrogates to:</p> <ul style="list-style-type: none">▪ be 21 years old;▪ have given birth to one child;▪ complete a medical evaluation related to the pregnancy;

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	<ul style="list-style-type: none">▪ complete a mental health evaluation;▪ have a separate and independent legal consultation; and▪ obtain a health insurance policy to cover the pregnancy and 2 months after the birth of the child.
	<p>The intended parents to a contract must provide the egg and sperm for the gestational carrier to use for the child; need the use of a gestational carrier and have a doctor document that need; complete a mental health evaluation related to the agreement; and have a separate and independent meeting with an attorney about the surrogacy agreement.</p>
4	<p>Requirements for gestational carrier contracts.</p> <p>A surrogacy contract is valid in Minnesota if it meets the following requirements:</p> <ul style="list-style-type: none">▪ the contract is in writing;▪ it is signed before any medical procedures are done to begin the process of fertilization;▪ it is notarized by two disinterested witnesses;▪ the parties to the contract are represented by separate, independent attorneys;▪ the parties have signed a written acknowledgement of the receipt of information about the legal, financial, and contractual rights, expectations, and penalties and obligations in the agreement;▪ the gestational carrier must agree in the contract to undergo embryo transfer and carry the child to birth, surrender custody of the child or children born from the embryo transfer, get their spouse’s approval if they are married, and allow the gestational carrier to use the doctor they want; and▪ the intended parents must agree to accept custody the child or children born to the gestational carrier and assume responsibility for the children.
	<p>The contract for a gestational carrier may also require the woman carrying the baby to follow the doctor’s recommendations and medical treatments necessary for a successful pregnancy, abstain from harmful activities, and allow the intended parents to pay for the surrogate’s medical, legal or other costs associated with the pregnancy.</p>
5	<p>Duty to support.</p> <p>Requires an intended parent to support the child, even when they have breached the contract, and releases donors of egg or sperm from support obligations.</p>
6	<p>Establishment of the parent-child relationships.</p> <p>Requires the attorneys of both the gestational carrier and the intended parents to file a certification with the Department of Health that the contract satisfies the statutory requirements and is filed with the Department of Health no later than 5 days after the</p>

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7	<p>birth of the child. This section also requires the intended parents to be listed on the birth certificate.</p> <p>Entry of judgment of parentage. After the intended parents file a petition to establish parentage, with a joint affidavit of compliance with the certification requirements required in section 6, then the court can enter a judgment establishing the intended parent's rights.</p>
8	<p>Effect of gestational carrier's subsequent marriage. Marriages of the gestational carrier while the carrier is pregnant does not affect the existing gestational carrier agreement and the new spouse's approval is not required.</p>
9	<p>Immunities. No person is civilly or criminally liable for actions taken to meet the requirements of the sections this bill, if those actions are not negligent actions, but does allow actions based on negligent, grossly negligent, or intentional acts that result in damage to another party.</p>
10	<p>Noncompliance. Provides that noncompliance occurs when a party fails to comply with the requirements of the agreement signed between the parties or fails to comply with the statutes related to gestational carrier agreements.</p>
11	<p>Effect of noncompliance. Provides that in the event of noncompliance, the Parentage Act, which are the existing laws on how a parent-child relationship is established and how custody is determined, are the laws the court should apply when the court needs to determine the rights and obligations of the parties to an agreement.</p>
12	<p>Damages. Provides that the gestational carrier and the intended parents are entitled to all remedies available at law or equity, except where the contract prohibits a remedy.</p>
13	<p>Irrevocability. Actions to invalidate a contract or challenge parental rights cannot be commenced after the child is 12 months old.</p>
14	<p>Effective date. The sections in this bill would apply to gestational carrier contracts entered into on or after August 1, 2019.</p>



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