

On page 1, line 1, of the House bill, delete " prohibit commercial surrogacy contracts, provide a penalty for facilitating a commercial surrogacy, and establish an interim committee to evaluate surrogacy in the state" and insert " authorize gestational carrier agreements"

On the House bill, delete everything after the enacting clause and insert:

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Section 1. That a NEW SECTION be added:

25-11-1. Definitions.

Terms used in this Act mean:

- (1) "Assisted conception," a pregnancy resulting from the insemination of a woman's egg with the sperm of a man, by means other than sexual intercourse;
- (2) "Donor," an individual who produces eggs or sperm used for assisted conception, whether or not for consideration, provided the term does not include:
 - (a) A husband who provides sperm or a wife who provides eggs, to be used for assisted conception by the wife;
 - (b) A woman who gives birth to a child by means of assisted conception; or
 - (c) An individual whose body produces sperm or egg used for the purpose of conceiving a child for that individual;
- (3) "Gestational carrier," an adult woman who enters into an agreement to bear a child conceived through assisted conception, not using her own egg, for intended parents; and
- (4) "Surrogate," an adult woman who enters into an agreement to bear a child conceived through assisted conception, using her own egg, for intended parents.

Section 2. That a NEW SECTION be added:

25-11-2. Assisted conception.

This Act does not prohibit assisted conception between a husband and wife who are the intended parents.

Section 3. That a NEW SECTION be added:

25-11-3. Surrogacy agreement--Enforceability.

Any agreement in which a woman consents to become a surrogate and to relinquish the woman's rights and duties as the parent of a child conceived through assisted conception is unenforceable. The surrogate is the mother of a resulting child and the surrogate's husband, if a party to the agreement, is the father of the child. If the surrogate's husband is not a party to the agreement or if the surrogate is unmarried, the paternity of the child is governed by applicable law.

Any placement of a child conceived pursuant to a surrogate agreement must follow the requirements of chapter 25-6.

Section 4. That a NEW SECTION be added:

25-11-4. Donors.

Donors have no parental rights.

Section 5. That a NEW SECTION be added:

25-11-5. Child born to gestational carrier.

A child born to a gestational carrier is a child of the intended parents for all purposes and is not a child of the gestational carrier or of the gestational carrier's husband.

Section 6. That a NEW SECTION be added:

25-11-6. Gestational carrier--Agreements.

All gestational carrier agreements must be filed with and approved by the court, prior to conception.

Section 7. That a NEW SECTION be added:

25-11-7. Gestational carrier--Requirements.

A gestational carrier is deemed to have satisfied the requirements of this Act if at the time the gestational carrier agreement is executed the carrier:

- (1) Is at least twenty-one years of age;
- (2) Has given birth to at least one child;

- (3) Has completed a medical evaluation;
- (4) Has completed a mental health evaluation;
- (5) Has undergone consultation with independent counsel regarding the terms of the agreement and the potential legal consequences of a gestational surrogacy; and
- (6) (a) Has obtained a health insurance policy covering major medical treatments and hospitalization and having a term that covers the expected pregnancy plus eight weeks following the birth; or
(b) Has a health insurance policy obtained by the intended parents, in accordance with the gestational carrier agreement.

Section 8. That a NEW SECTION be added:

25-11-8. Intended parent--Requirements.

An intended parent is deemed to have satisfied the requirements of this Act if at the time the gestational carrier agreement is executed the intended parent:

- (1) Contributes either the sperm or the egg, thereby resulting in a pre-embryo that the gestational carrier will attempt to carry to term;
- (2) Has a medical need for the gestational carrier, as evidenced by a physician's affidavit attached to the gestational carrier agreement;
- (3) Has completed a mental health evaluation; and
- (4) Has undergone consultation with independent counsel regarding the terms of the gestational carrier agreement and the potential legal consequences of the gestational surrogacy.

Section 9. That a NEW SECTION be added:

25-11-9. Gestational carrier agreement--Enforceability.

A gestational carrier agreement is presumed to be enforceable if:

- (1) It is in written form;
- (2) It is executed prior to the commencement of any medical procedure other than the medical and mental health evaluations necessary to determine eligibility of the parties pursuant to §§ 25-11-7 and 25-11-8;

- (3) It provides for representation of the gestational carrier and each intended parent by independent counsel in all matters concerning the gestational surrogacy and the gestational carrier agreement;
- (4) It requires the gestational carrier and the intended parent to sign a document acknowledging the receipt of information regarding the legal, financial, and contractual rights, expectations, penalties, and obligations of the gestational carrier agreement;
- (5) It requires that any compensation to be provided to the gestational carrier must be placed in escrow prior to the commencement of any medical procedure; and
- (6) It is witnessed by two competent adults.

Section 10. That a NEW SECTION be added:

25-11-10. Gestational carrier agreement--Content.

A gestational carrier agreement must provide:

- (1) That the gestational carrier expressly agrees in writing to undergo pre-embryo transfer, to attempt to carry and give birth to the child, and to surrender custody of the child to the intended parent or parents immediately upon the birth of the child;
- (2) That if the gestational carrier is married, the husband of the carrier expressly agrees in writing to undertake the obligations imposed on the gestational carrier pursuant to the gestational carrier agreement, and to surrender custody of the child to the intended parent or parents immediately upon the birth of the child;
- (3) That the gestational carrier agrees to utilize the services of a physician, of her choosing, after consultation with the intended parents, to provide care to her during the pregnancy; and
- (4) That the intended parent or parents expressly agree in writing to accept custody of the child immediately upon the child's birth and to assume sole responsibility for the support of the child immediately upon birth.

Section 11. That a NEW SECTION be added:

25-11-11. Gestational carrier agreement--Additional provisions.

A gestational carrier agreement is enforceable for purposes of state law even if it contains any of the following:

- (1) The gestational carrier's agreement to undergo all medical exams, treatments, and fetal monitoring procedures that the physician recommends for the success of the pregnancy;
- (2) The gestational carrier's agreement to abstain from any activities that any intended parent or the physician reasonably believes to be harmful to the pregnancy and future health of the child, including smoking, drinking alcohol, using nonprescribed drugs, using prescription drugs not authorized by a physician aware of the gestational carrier's pregnancy, exposure to radiation, or any other activities prohibited by a health care provider;
- (3) The agreement of the intended parents to pay the gestational carrier reasonable compensation; or
- (4) The agreement of the intended parents to pay for or reimburse the gestational carrier for reasonable expenses including medical, legal, or other professional expenses, related to the gestational surrogacy and the gestational carrier agreement.

Section 12. That a NEW SECTION be added:

25-11-12. Determination of parentage.

If any requirements of this Act are not met, a court of competent jurisdiction shall determine parentage based on the evidence of the parties' intent.

Section 13. That a NEW SECTION be added:

25-11-13. Parental obligation.

Any person who is considered to be the parent of a child under this Act is obligated to support the child. A breach of the gestational carrier agreement by any intended parent does not relieve that intended parent of any support obligation imposed by this Act.

A sperm or egg donor, other than an anonymous sperm or egg donor, may be liable for child support only if the donor fails to enter into a contract with the intended parents under which the intended parents agree to assume all rights and responsibilities for any resulting child, and the sperm or egg donor relinquishes any rights to the resulting embryos or children.

Section 14. That a NEW SECTION be added:

25-11-14. Liability.

Except as otherwise provided in this Act, no person may be held civilly liable for any nonnegligent action taken pursuant to this Act.

Section 15. That a NEW SECTION be added:

25-11-15. Gestational carrier agreement--Breach.

Noncompliance by the gestational carrier or by any intended parent occurs if that party breaches a material provision of the gestational carrier agreement. If there is material noncompliance with this Act, a court of competent jurisdiction shall determine the rights and obligations of the parties.

Section 16. That a NEW SECTION be added:

25-11-16. Gestational carrier agreement--Breach--Remedy.

There is no specific performance remedy available for the breach, by the gestational carrier, of a gestational carrier agreement that requires the carrier to be impregnated.

Section 17. That a NEW SECTION be added:

25-11-17. Entitlement to remedies.

Except as otherwise provided in the gestational carrier agreement:

- (1) Each intended parent is entitled to all remedies available at law or equity; and
- (2) Each gestational carrier is entitled to all remedies available at law or equity.

Section 18. That a NEW SECTION be added:

25-11-18. Action to invalidate agreement--Limitation.

No action to invalidate a gestational carrier agreement that meets the requirements of this Act or to challenge the rights of parentage established pursuant to this Act may be commenced more than twelve months after the birth of the child.

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