

SENATE BILL No. 1082

September 5, 2018, Introduced by Senators WARREN, ANANICH, CONYERS and YOUNG and referred to the Committee on Families, Seniors and Human Services.

A bill to establish gestational surrogate parentage contracts; to allow gestational surrogate parentage contracts for compensation; to provide for a child conceived, gestated, and born according to a gestational surrogate parentage contract; to prescribe the duties of certain state departments; to provide for penalties and remedies; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "gestational surrogate parentage act".

3 Sec. 3. As used in this act:

4 (a) "Compensation" means a payment of any valuable
5 consideration for service in excess of expense.

6 (b) "Developmental disability" means that term as defined in
7 section 100a of the mental health code, 1974 PA 258, MCL 330.1100a.

1 (c) "Expense" includes, but is not limited to, medical, legal,
2 and other professional and incidental cost or fee related to the
3 surrogate gestation or the gestational surrogate parentage
4 contract.

5 (d) "Gestational carrier" means, in a surrogate gestation, the
6 female in whom an embryo, that is not procreated from her own egg,
7 is transferred into her uterus by a physician.

8 (e) "Gestational surrogate parentage contract" or "contract"
9 means a contract, agreement, or arrangement, with or without
10 compensation, in which a female does both of the following:

11 (i) Agrees to gestate a child conceived through assisted
12 reproduction, by the transfer of an embryo that may or may not be
13 genetically related to the intended parent, but is not procreated
14 by the gestational carrier's own egg.

15 (ii) Agrees that the intended parent is the legal parent and
16 agrees that the intended parent assumes full legal and physical
17 custody of the resulting child by operation of law.

18 (f) "Intellectually disabled" means intellectual disability as
19 that term is defined in section 100b of the mental health code,
20 1974 PA 258, MCL 330.1100b.

21 (g) "Intended parent" means an individual who intends to
22 become the legal parent and assumes full legal and physical custody
23 by operation of law of the child that results from a gestational
24 surrogate parentage contract.

25 (h) "Mental health professional" means that term as defined in
26 section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.

27 (i) "Mental illness" means that term as defined in section 400

1 of the mental health code, 1974 PA 258, MCL 330.1400.

2 (j) "Physician" means an individual licensed under part 170 or
3 175 of the public health code, 1978 PA 368, MCL 333.17001 to
4 333.17084 and 333.17501 to 333.17556, to engage in the practice of
5 medicine or osteopathic medicine and surgery.

6 (k) "Surrogate gestation" means the transfer, by a physician,
7 into the female's uterus, of an embryo that was not procreated from
8 the female's own egg.

9 (l) "Transfer" means placement of an embryo inside the uterus
10 of a gestational carrier by a physician.

11 Sec. 5. (1) In order to enter into a gestational surrogate
12 parentage contract, a gestational carrier must meet all of the
13 following requirements:

14 (a) Be 21 years of age or older.

15 (b) Have previously given birth to at least 1 child.

16 (c) Have completed a medical evaluation by a physician.

17 (d) Have completed a mental health evaluation by a mental
18 health professional.

19 (e) Have consulted with independent legal counsel about the
20 terms of the contract.

21 (2) In order to enter into a gestational surrogate parentage
22 contract, an intended parent must meet both of the following
23 requirements:

24 (a) Have completed a mental health evaluation by a mental
25 health professional.

26 (b) Have consulted with independent legal counsel about the
27 terms of the contract.

1 Sec. 7. (1) In addition to the requirements under section 5
2 for a gestational carrier and an intended parent, the gestational
3 surrogate parentage contract must meet all of the following
4 requirements:

5 (a) Be in writing and signed by all parties to the contract.

6 (b) Specify that all evaluations, medical procedures, and
7 treatment must be conducted in accordance with the guidelines
8 published by the American Society for Reproductive Medicine or the
9 American Congress of Obstetricians and Gynecologists, or a
10 successor organization.

11 (c) Specify that a party to a gestational surrogate parentage
12 contract may withdraw consent to an evaluation, medical procedure,
13 or treatment and may terminate the contract no later than 24 hours
14 before an embryo transfer or implantation by giving written notice
15 of the termination to all parties to the contract.

16 (d) Specify that a gestational carrier does not have any
17 parental or custodial rights to the resulting child and that legal
18 and physical custody are automatically vested in the intended
19 parent by operation of the law.

20 (e) Specify that the intended parent has legal and physical
21 custody of and assumes responsibility for the resulting child
22 immediately upon birth.

23 (f) Specify that, if the gestational surrogate parentage
24 contract provides for payment of compensation to the gestational
25 carrier, the compensation must be placed in an escrow account with
26 an independent escrow agent before the gestational carrier begins
27 any medical procedure or treatment related to the contract.

1 (2) At least 1 of the parties to the gestational surrogate
2 parentage contract must be a resident of this state.

3 (3) The gestational surrogate parentage contract must
4 expressly provide that if the gestational carrier is married, her
5 spouse must acknowledge and agree to abide by the obligations
6 imposed on the gestational carrier by the terms of the contract;
7 that the spouse of the gestational carrier has no claim to parental
8 rights or legal or physical custody of a resulting child; and that
9 the spouse of the gestational carrier must acknowledge the
10 exclusive parental rights of the intended parent of the resulting
11 child.

12 (4) A marriage of the gestational carrier subsequent to
13 executing the gestational surrogate parentage contract does not
14 affect the validity of that contract or the exclusive parental
15 rights of the intended parent.

16 Sec. 9. (1) If the attorneys representing both the gestational
17 carrier and the intended parent certify that the parties entered
18 into a gestational surrogate parentage contract that meets the
19 requirements of sections 5 and 7, that contract is valid and
20 enforceable under the provisions of this act.

21 (2) The certification required of the attorneys under
22 subsection (1) shall be filed on forms prescribed by the department
23 of health and human services.

24 (3) A certification form required under this section is
25 sufficient documentation for the state registrar to issue a birth
26 certificate naming the intended parent as the parent of the
27 resulting child.

1 (4) If the provisions of sections 5 and 7 are met, a person
2 may enter into, arrange, procure, or otherwise assist in the
3 formation of a gestational surrogate parentage contract, with or
4 without compensation or payment of expenses.

5 Sec. 11. If a gestational surrogate parentage contract
6 satisfies the requirements of this act, all of the following apply:

7 (a) The gestational surrogate and her spouse, if any, by
8 operation of law, do not have any parental or custodial rights to
9 the resulting child.

10 (b) The intended parent, by operation of law, is the parent of
11 the resulting child. A resulting child is the child of the intended
12 parent. Parental rights and responsibilities vest exclusively in
13 the intended parent. The intended parent is entitled to receive a
14 birth certificate naming the intended parent as the parent of the
15 resulting child.

16 (c) A person who is the parent of a resulting child under this
17 act is obligated to support the resulting child. Breach of a
18 gestational surrogate parentage contract by the intended parent
19 does not relieve the intended parent of the obligation to support
20 the resulting child.

21 Sec. 13. (1) The family division of the circuit court has
22 jurisdiction if the gestational surrogate parentage contract
23 specifies that the parties to the contract intend for the birth of
24 the resulting child to take place in this state.

25 (2) If there is a dispute over the terms of the gestational
26 surrogate parentage contract or if there is noncompliance with a
27 term of the contract, a party to that contract may petition the

1 court to construe the terms of the contract or to compel the
2 noncompliant party to comply with the terms of the contract. There
3 is no specific performance remedy available for a breach of a
4 gestational surrogate parentage contract that requires a
5 gestational carrier to be impregnated.

6 Sec. 15. (1) A person shall not enter into, induce, arrange,
7 procure, or otherwise assist in the formation of a gestational
8 surrogate parentage contract under which a minor female or a female
9 diagnosed as being intellectually disabled or as having a mental
10 illness or developmental disability is the gestational carrier.

11 (2) A person other than a minor female or a female diagnosed
12 as being intellectually disabled or as having a mental illness or
13 developmental disability who enters into, induces, arranges,
14 procures, or otherwise assists in the formation of a contract
15 described in subsection (1) is guilty of a felony punishable by a
16 fine of not more than \$50,000.00 or imprisonment for not more than
17 5 years, or both.

18 Sec. 17. (1) If a provision of this act or its application to
19 a person or circumstance is held invalid, the invalidity of that
20 provision or application does not affect other provisions or
21 applications of this act that can be given effect without the
22 invalid provision or application.

23 (2) The provisions of this act apply only to a gestational
24 surrogate parentage contract entered into after the effective date
25 of this act.

26 Enacting section 1. The surrogate parenting act, 1988 PA 199,
27 MCL 722.851 to 722.863, is repealed.

1 Enacting section 2. This act takes effect 90 days after the
2 date it is enacted into law.

3 Enacting section 3. This act does not take effect unless all
4 of the following bills of the 99th Legislature are enacted into
5 law:

6 (a) Senate Bill No. 1084.

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8 (b) Senate Bill No. 1083.

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