

1.1 ..... moves to amend H.F. No. 3567, the delete everything amendment  
1.2 (H3567DE1), as follows:

1.3 Page 2, line 6, delete everything after "means" and insert "a woman who participates in  
1.4 a gestational surrogacy arrangement as the woman who carries the child to term and gives  
1.5 birth to the child that is the subject of the surrogacy arrangement."

1.6 Page 2, delete lines 7 to 9

1.7 Page 2, line 10, delete everything after "means" and insert "a married couple, at least  
1.8 one of whom contributes his or her own gamete to create the embryo implanted in the  
1.9 gestational surrogate, who enters into an enforceable gestational surrogacy contract as  
1.10 defined in this chapter, under which the married couple consents to be the legal parents of  
1.11 the child or children resulting from in vitro fertilization."

1.12 Page 2, delete lines 11 and 12

1.13 Page 2, before line 13, insert:

1.14 "Subd. 10. **Medical evaluation.** "Medical evaluation" means an evaluation by and in  
1.15 consultation with a physician conducted according to the recommended guidelines published  
1.16 and in effect at the time of the evaluation by the American Society for Reproductive Medicine  
1.17 and the American College of Obstetricians and Gynecologists.

1.18 Subd. 11. **Mental health evaluation.** "Mental health evaluation" means an evaluation  
1.19 by and consultation with a mental health professional, as defined in section 245.462,  
1.20 subdivision 18, conducted according to the recommended guidelines published and in effect  
1.21 at the time of the evaluation by the American Society for Reproductive Medicine and the  
1.22 American College of Obstetricians and Gynecologists."

1.23 Page 2, line 21, delete "Surrogacy agreement" and insert "Gestational surrogacy  
1.24 arrangement and contract" and delete ""Surrogacy agreement" means an agreement between"

2.1 and insert "Gestational surrogacy arrangement" means the process by which a woman who  
2.2 is not the intended parent attempts to carry and give birth to a child created through in vitro  
2.3 fertilization using one or more gametes provided by the intended parents. "Gestational  
2.4 surrogacy contract" means a written agreement regarding a gestational surrogacy  
2.5 arrangement."

2.6 Page 2, delete lines 22 to 24

2.7 Page 2, after line 26, insert:

2.8 "Subd. 17. **Physician.** "Physician" means a person currently licensed in good standing  
2.9 as a physician under chapter 147.

2.10 Subd. 18. **Surrogacy agent.** "Surrogacy agent" means any person or entity who provides  
2.11 the service of bringing together intended parents and potential gestational surrogates to  
2.12 create gestational surrogacy arrangements. The term "surrogacy agent" does not include  
2.13 licensed attorneys whose services are limited to the representation of the parties during the  
2.14 creation and performance of the gestational surrogacy contract.

2.15 Subd. 19. **Traditional surrogacy arrangement.** "Traditional surrogacy arrangement"  
2.16 means the process by which a woman attempts to carry and give birth to a child using her  
2.17 own gametes and either the gametes of a person who intends to parent the child, or donor  
2.18 gametes, when there is an agreement to relinquish the custody of and all rights and obligations  
2.19 to the child upon the child's birth."

2.20 Renumber the subdivisions in sequence

2.21 Page 5, delete subdivision 1 and insert:

2.22 "(a) A woman is eligible to serve as a gestational surrogate if, at the time the gestational  
2.23 surrogacy contract is executed, the woman:

2.24 (1) is a United States citizen or legal resident;

2.25 (2) is at least 21 years of age;

2.26 (3) has given birth to a live child prior to the surrogacy arrangement;

2.27 (4) has completed a medical evaluation relating to the anticipated pregnancy and provides  
2.28 a written statement from the examining physician that states that it is reasonably likely that  
2.29 she can successfully carry a pregnancy to full term without any complications that would  
2.30 threaten the health of the gestational surrogate or resulting child;

2.31 (5) is represented by independent legal counsel regarding the terms of the gestational  
2.32 surrogacy contract and the potential legal consequences of the gestational surrogacy contract;

3.1 (6) has completed a mental health evaluation relating to the anticipated gestational  
3.2 surrogacy arrangement and provided a written summary by the examining psychological  
3.3 professional to the intended parents;

3.4 (7) has completed a criminal background check and provided the results to the intended  
3.5 parents;

3.6 (8) is financially secure, meaning the gestational surrogate's household, excluding a  
3.7 homestead mortgage and automobile loan payments, has less than \$10,000 of debt at the  
3.8 time of the creation of the gestational surrogacy contract;

3.9 (9) is not on any form of public assistance; and

3.10 (10) has obtained, or obtains prior to the embryo transfer, a health insurance policy that  
3.11 covers major medical treatments and hospitalization and extends throughout the duration  
3.12 of the expected pregnancy and for eight weeks after the birth of the child; the policy may  
3.13 be procured by the intended parents on behalf of the gestational surrogate pursuant to the  
3.14 gestational surrogate contract or the intended parents may self-insure by depositing sufficient  
3.15 funds into escrow to pay for all reasonably expected medical expenses prior to the date of  
3.16 the first embryo transfer.

3.17 (b) To be eligible to participate in a gestational surrogacy arrangement and execute a  
3.18 gestational surrogacy contract, the intended parents must:

3.19 (1) be United States citizens or legal residents;

3.20 (2) be at least 21 years of age;

3.21 (3) have been married at least two years prior to the execution of the gestational surrogacy  
3.22 contract;

3.23 (4) require the services of the gestational surrogate to have a child as evidenced by a  
3.24 qualified physician's affidavit attached to the gestational surrogacy contract that the intended  
3.25 parents are unable to conceive or carry a child to term;

3.26 (5) have provided a gamete for the child from at least one of the intended parents;

3.27 (6) have completed a mental health evaluation relating to the anticipated gestational  
3.28 surrogacy arrangement and provided a written summary by the examining psychological  
3.29 professional to the gestational surrogate;

3.30 (7) be represented by independent legal counsel regarding the terms of the gestational  
3.31 surrogacy contract and the potential legal consequences of the gestational surrogacy contract;

4.1 (8) have completed a criminal background check and provided the results to the  
4.2 gestational surrogate; and

4.3 (9) have an estate planning document prior to the embryo transfer providing for custody  
4.4 and care of the child in the event the intended parents predecease the child."

4.5 Page 6, delete lines 1 to 6

4.6 Page 6, delete subdivision 1 and insert:

4.7 "(a) A gestational surrogacy contract consistent with the requirements of this section  
4.8 shall be enforceable.

4.9 (b) A gestational surrogacy contract is not valid unless:

4.10 (1) the gestational surrogate and the intended parents are represented by separate legal  
4.11 counsel in all matters concerning the gestational surrogacy arrangement and the gestational  
4.12 surrogacy contract; and

4.13 (2) the gestational surrogate and the intended parents have signed a written  
4.14 acknowledgment of their receipt of information about the legal, financial, and contractual  
4.15 rights, expectations, penalties, and obligations of the surrogacy agreement.

4.16 (c) A gestational surrogacy contract must be:

4.17 (1) in writing;

4.18 (2) executed prior to the commencement of any medical procedures intended to initiate  
4.19 a pregnancy in furtherance of the gestational surrogacy arrangement, other than medical or  
4.20 mental health evaluations necessary to determine eligibility of the parties under section  
4.21 257.94;

4.22 (3) signed by both intended parents, the gestational surrogate, and the gestational  
4.23 surrogate's spouse, if any; and

4.24 (4) notarized or witnessed by two disinterested competent adults.

4.25 (d) A gestational surrogacy contract must include:

4.26 (1) the express written agreement of the intended parents to accept custody of the resulting  
4.27 child or children upon the child's or children's birth regardless of number, sex, or mental or  
4.28 physical condition, and to assume sole responsibility for the support of the child or children  
4.29 upon the birth of the child or children;

5.1 (2) estate planning documents executed by the intended parents providing for care and  
5.2 custody of the child or children in the event the intended parents predecease the child or  
5.3 children;

5.4 (3) information disclosing how each intended parent will cover the expenses of the  
5.5 surrogate and the medical expenses of the child, and if health care coverage is used to cover  
5.6 the medical expenses, the disclosure must include a summary of the health care policy  
5.7 provisions related to coverage for surrogate pregnancy, including any possible liability of  
5.8 the surrogate, third-party liability liens, other insurance coverage, and any notice requirement  
5.9 that could affect coverage or liability of the surrogate;

5.10 (4) a requirement that the embryo transfer be a single-embryo transfer;

5.11 (5) the express written agreement of the gestational surrogate to undergo embryo transfer,  
5.12 attempt to carry and give birth to the child, and surrender custody of all resulting children  
5.13 to the intended parents upon the birth of the child or children;

5.14 (6) if the gestational surrogate is married, the express agreement of the gestational  
5.15 surrogate's spouse to support, facilitate, and be jointly bound by the obligations imposed  
5.16 on the gestational surrogate pursuant to the terms of the gestational surrogacy contract and  
5.17 to surrender custody of all resulting children to the intended parents upon the birth of the  
5.18 resulting child or children, except as provided in paragraph (g);

5.19 (7) the right of the gestational surrogate to choose her own physician;

5.20 (8) a requirement that the gestational surrogate be provided a list of potential risks and  
5.21 side effects for hormone treatment and pregnancy with a nongenetically related child; and

5.22 (9) that a right created under a surrogacy agreement is not assignable and there is no  
5.23 third-party beneficiary of the agreement other than the child.

5.24 (e) A gestational surrogacy contract is enforceable in Minnesota even though it contains  
5.25 one of the following provisions:

5.26 (1) the gestational surrogate's agreement to undergo all medical examinations, treatments,  
5.27 and fetal monitoring that her physician recommends for the success of the pregnancy;

5.28 (2) the gestational surrogate's agreement to abstain from any activities that her physician  
5.29 reasonably believes to be harmful to the pregnancy and future health of the child, including  
5.30 but not limited to smoking, drinking alcohol, using drugs not prescribed or illegal drugs,  
5.31 using prescription drugs not authorized by a physician aware of the gestational surrogate's  
5.32 pregnancy, exposure to radiation, or any other activities prescribed by a licensed physician,  
5.33 mental health professional, physician assistant, or midwife; and

6.1 (3) the agreement of the intended parents to pay for or reimburse the gestational surrogate  
6.2 for reasonable expenses incurred related to the gestational surrogacy arrangement and the  
6.3 gestational surrogacy contract.

6.4 (f) Gestational surrogacy contracts that include the following terms are invalid and  
6.5 unenforceable, and the gestational surrogate is not liable for damage:

6.6 (1) limits on the gestational surrogate's ability to make medical decisions during the  
6.7 pregnancy;

6.8 (2) a requirement that the gestational surrogate consent to the termination of a pregnancy  
6.9 or selective reduction of a fetus or fetuses during pregnancy;

6.10 (3) a limit on the recovery of expenses for the gestational surrogate based on the live  
6.11 birth, or terms that prevent a gestational surrogate from recovering costs when a pregnancy  
6.12 is not successful; or

6.13 (4) terms that provide for compensation of the gestational surrogate beyond actual  
6.14 expenses.

6.15 (g) For the purposes of this section, "compensation" means payment of money, objects,  
6.16 services, or anything else with monetary value in exchange for participating in the gestational  
6.17 surrogacy arrangement. Compensation shall not include reimbursement of actual expenses  
6.18 incurred by the gestational surrogate related to the gestational surrogacy arrangement,  
6.19 including medical insurance, life insurance, cost of medical care, legal expenses, travel  
6.20 expenses, cost of clothing, and payment provided to the gestational surrogate or her family  
6.21 in the event of the gestational surrogate's death or permanent disability.

6.22 (h) If the gestational surrogate marries after the gestational surrogacy contract has been  
6.23 signed, there is no effect on an existing gestational surrogate contract, the gestational  
6.24 surrogate's spouse's consent to the contract is not required, and the gestational surrogate's  
6.25 spouse is not a presumed parent of the resulting child.

6.26 (i) Any party to the gestational surrogacy contract may invalidate the contract at any  
6.27 time prior to implantation of the embryo for any reason or no reason and is not liable for  
6.28 damages. Except in cases involving fraud, neither a gestational surrogate nor the surrogate's  
6.29 spouse or former spouse, if any, is liable to the intended parent or parents for a penalty or  
6.30 liquidated damages, for terminating a gestational surrogacy agreement under this section."

6.31 Page 6, delete lines 29 to 31

6.32 Page 7, delete lines 1 to 27

7.1 Page 7, delete subdivisions 3 and 4

7.2 Page 11, after line 25, insert:

7.3 "Sec. 20. [257E.40] PROHIBITIONS.

7.4 Subdivision 1. **Traditional surrogacy.** Traditional surrogacy arrangements and contracts  
7.5 related to traditional surrogacy arrangements are invalid and parentage and custody shall  
7.6 remain with the woman who gave birth to the child or children, regardless of any surrogacy  
7.7 arrangement, until she chooses to terminate her parental rights.

7.8 Subd. 2. **Compensation.** (a) It shall be unlawful for any individual or unincorporated  
7.9 association to accept compensation for recruiting or procuring surrogates, or to accept  
7.10 compensation for otherwise arranging or inducing intended parents and surrogates to enter  
7.11 into surrogacy contracts in this state. All surrogacy agents operating in Minnesota and  
7.12 formed as corporations must be formed as nonprofit corporations under chapter 317A.  
7.13 Surrogacy agencies formed as nonprofit corporations shall be licensed by the Department  
7.14 of Human Services. Surrogacy agents formed as corporations under chapter 317A may  
7.15 receive compensation for facilitating a gestational surrogacy arrangement.

7.16 (b) A violation of this section shall be punishable as a felony with a prison sentence of  
7.17 up to two years and a fine of \$25,000.

7.18 (c) Any person who acts as a surrogacy agent in violation of this section shall also be  
7.19 liable to all the parties to the gestational surrogacy contract in an amount equal to three  
7.20 times the amount of compensation to have been paid to the agent pursuant to the contract.  
7.21 One-half of the damages under this paragraph shall be due to (1) the gestational surrogate,  
7.22 and (2) the gestational surrogate's spouse, if any, if the spouse is a party to the contract.  
7.23 One-half of the damages under this paragraph shall be due to the intended parents. An action  
7.24 under this section must be brought within five years of the date of the contract.

7.25 (d) This section does not apply to the services of an attorney who gives legal advice  
7.26 relating to a surrogacy contract or prepares a surrogacy contract, provided that the attorney  
7.27 does not also serve as a surrogacy agent."

7.28 Page 13, line 33, after the period, insert "The Department of Health shall collect aggregate  
7.29 data related to surrogacy, as described in section 257.95. Health care professionals who  
7.30 perform in vitro fertilization and embryo transfer procedures for gestational surrogacy  
7.31 arrangements shall report to the Department of Health data on the use of gestational  
7.32 surrogacy, including the number of in vitro procedures, embryo transfers, and live births

- 8.1 connected to surrogacy arrangements, as well as the health of children born via surrogacy
- 8.2 arrangements."
- 8.3       Renumber the sections in sequence and correct the internal references
- 8.4       Amend the title accordingly