

HOUSE RESEARCH

Bill Summary

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Overview

This bill creates gestational carrier agreements and sets out the requirements for such agreements, the rights and obligations of the parties, and establishment of the parent and child relationship.

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- 1 Purpose.** Creates §257.86. Provides that the purpose of this act is to establish consistent standards and safeguards to protect all parties to a surrogacy agreement and to confirm the legal status of child born as a result of these arrangements. It is meant to facilitate the use of this form of agreement in accord with the public policy of the state.
- 2 Definitions.** Creates §257.87. Provides definitions of “compensation,” “donor,” “embryo,” “embryo transfer,” “gamete,” “gestational carrier,” “gestational carrier arrangement,” “gestational carrier contract,” “health care provider,” “intended parent,” “in vitro fertilization,” “medical evaluation,” “mental health evaluation,” and “physician.”
- 3 Rights of parentage.** Creates §257.88. Paragraph (a) states that except as the term “mother” is used in this act, a woman who gives birth to a child is presumed to be the mother of the child under state law

Paragraph (b) provides that the intended mother is the mother of the child immediately upon the birth of the child; the intended father is the father of the child immediately upon the birth of the child; the child is the child of the intended parent or parents for purposes of state law; parental rights are vested in the intended parents; sole custody of the child rests solely with the intended parents upon the birth of the child; and neither the gestational carrier or

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her husband is the parent of the child upon the birth of the child.

Paragraph (c) states that in the event of a laboratory error in which the child is not genetically related to either of the intended parents, the intended parents are the parents of the child unless otherwise determined by the court in an action brought by one or more of the genetic parents within 60 days of the child's birth.

Paragraph (d) provides that all parties to the agreement assume the rights and obligations of paragraphs (b) and (c) if they satisfy the eligibility requirements in §257.89 and the arrangement occurs pursuant to a gestational carrier contract meeting the requirements of §257.90.

- 4 **Eligibility.** Creates §257.89. Paragraph (a) lists the eligibility requirements for the gestational carrier: she must be at least 21 years old; have given birth to at least one child; have completed a medical evaluation; have completed a mental health evaluation; have had separate legal counsel; and have health insurance or have a policy obtained by the intended parents.

Paragraph (b) lists the eligibility requirements for the intended parent or parents: the parent or parents must contribute at least one of the gametes for the embryo; there must be a documented medical need for a gestational carrier; the parent or parents must have completed a mental health evaluation; and the parent or parents must have had legal counsel.

- 5 **Requirements for a gestational carrier contract.** Creates §257.90. Paragraph (a) states that a gestational carrier contract is enforceable in Minnesota if it complies with paragraphs (b) and (c).

Paragraph (b) provides that the contract must be in writing; executed prior to the commencement of any medical procedures in furtherance of the gestational carrier arrangement; and be witnessed by two disinterested competent adults. Additionally, the parties must have been represented by separate, independent legal counsel; signed acknowledgement of receipt of specified information; and if the contract provides for compensation to the carrier, the compensation must have been placed in an escrow account.

Paragraph (c) provides that the contract must provide for the express written agreement of the carrier to undergo embryo transfer and surrender custody of all resulting children immediately upon birth; if the carrier is married, the express agreement of the husband to undertake the obligations imposed on the gestational carrier; and surrender custody of all resulting children immediately upon birth. The contract must also allow the carrier to use the physician of her choosing, after consulting with the intended parents. The contract must also contain the express written agreement of the intended parent or parents to accept custody of all resulting children immediately upon birth and assume sole responsibility for the support of the child immediately upon birth.

Paragraph (d) states that a gestational carrier agreement is enforceable even though it contains one or more of the following provisions: the carrier's agreement to undergo all physician recommended medical procedures; the carrier's agreement to forego any activities the intended parent or the physician reasonably believes to be harmful to the pregnancy; an

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agreement to pay reasonable compensation; and an agreement to pay for or reimburse the carrier for reasonable expenses.

- 6** **Duty to support.** Creates §257.91. States that a person considered to be the parent under §257.88 is obligated to support the child. Provides that if the intended parents breach the contract, they are not relieved of their support obligations. Provides that a gamete donor may be responsible for child support only if the donor does not enter into any agreement to relinquish all rights to any gametes.
- 7** **Establishment of the parent-child relationship.** Creates §257.92. Requires the attorneys for the parties to certify that the parties entered into a gestational carrier contracted with respect to the child prior to or within 24 hours of the birth of the child. Provides that the attorney's certifications must establish the parties' compliance with the requirements of the Parentage Act. Instructs hospital and state employees to complete all birth records and the original birth certificate to reflect the intended parent or parents as the child's parents.
- 8** **Effect of gestational carrier's subsequent marriage.** Creates §257.93. States that a carrier's subsequent marriage does not affect the validity of the gestational carrier contract.
- 9** **Immunities.** Creates §257.94. States that except as provided in this act, no person is liable for nonnegligent actions taken pursuant to this act. However, this section does not prevent liability for actions brought by or on behalf of the child for negligent, reckless, willful, or intentional acts that result in damages to any party.
- 10** **Noncompliance.** Creates §257.95. Defines noncompliance as a breach of the gestational carrier contract or failure to comply with any requirement of this act.
- 11** **Effect of noncompliance.** Creates §257.96. States that in the event of noncompliance, the court shall determine the rights and obligations of the parties based solely on evidence of the parties' original intent. Makes clear that specific performance is not available as a remedy for a breach by the carrier of a contract term that requires her to be impregnated.
- 12** **Damages.** Creates §257.97. States that except as provided in the contract, all parties are entitled to all remedies available at law or equity.
- 13** **Irrevocability.** Creates §257.98. Provides that no action to invalidate the gestational carrier agreement meeting the requirements of parentage may be commenced after 12 months from the date of the child's birth.
- 14** **Effective date.** Provides that this act is effective for gestational carrier contracts entered into on or after August 1, 2008 .