

1 AN ACT concerning surrogacy.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Gestational Surrogacy Act.

6 Section 5. Purpose. The purpose of this Act is to establish
7 consistent standards and procedural safeguards for the
8 protection of all parties involved in a gestational surrogacy
9 contract in this State and to confirm the legal status of
10 children born as a result of these contracts. These standards
11 and safeguards are meant to facilitate the use of this type of
12 reproductive contract in accord with the public policy of this
13 State.

14 Section 10. Definitions. As used in this Act:

15 "Compensation" means payment of any valuable consideration
16 for services in excess of reasonable medical and ancillary
17 costs.

18 "Donor" means an individual who contributes a gamete or
19 gametes for the purpose of in vitro fertilization or
20 implantation in another.

21 "Gamete" means either a sperm or an egg.

22 "Gestational surrogacy" means the process by which a woman
23 attempts to carry and give birth to a child created through in
24 vitro fertilization using the gamete or gametes of at least one
25 of the intended parents and to which the gestational surrogate
26 has made no genetic contribution.

27 "Gestational surrogate" means a woman who agrees to engage
28 in a gestational surrogacy.

29 "Gestational surrogacy contract" means a written agreement
30 regarding gestational surrogacy.

31 "Health care provider" means a person who is duly licensed

1 to provide health care, including all medical, psychological,
2 or counseling professionals.

3 "Intended parent" means a person or persons who enters into
4 a gestational surrogacy contract with a gestational surrogate
5 pursuant to which he or she will be the legal parent of the
6 resulting child. In the case of a married couple, any reference
7 to an intended parent shall include both husband and wife for
8 all purposes of this Act. This term shall include the intended
9 mother, intended father, or both.

10 "In vitro fertilization" means all medical and laboratory
11 procedures that are necessary to effectuate the extracorporeal
12 fertilization of egg and sperm.

13 "Medical evaluation" means an evaluation and consultation
14 of a physician meeting the requirements of Section 60.

15 "Mental health evaluation" means an evaluation and
16 consultation of a mental health professional meeting the
17 requirements of Section 60.

18 "Physician" means a person licensed to practice medicine in
19 all its branches in Illinois.

20 "Pre-embryo" means a fertilized egg prior to 14 days of
21 development.

22 "Pre-embryo transfer" means all medical and laboratory
23 procedures that are necessary to effectuate the transfer of a
24 pre-embryo into the uterine cavity.

25 Section 15. Rights of Parentage.

26 (a) Except as provided in this Act, the woman who gives
27 birth to a child is presumed to be the mother of that child for
28 purposes of State law.

29 (b) In the case of a gestational surrogacy satisfying the
30 requirements set forth in subsection (d) of this Section:

31 (1) the intended mother shall be the mother of the
32 child for purposes of State law immediately upon the birth
33 of the child;

34 (2) the intended father shall be the father of the
35 child for purposes of State law immediately upon the birth

1 of the child;

2 (3) the child shall be considered the legitimate child
3 of the intended parent or parents for purposes of State law
4 immediately upon the birth of the child;

5 (4) parental rights shall vest in the intended parent
6 or parents immediately upon the birth of the child;

7 (5) sole custody of the child shall rest with the
8 intended parent or parents immediately upon the birth of
9 the child; and

10 (6) neither the gestational surrogate nor her husband,
11 if any, shall be the parents of the child for purposes of
12 State law immediately upon the birth of the child.

13 (c) In the case of a gestational surrogacy meeting the
14 requirements set forth in subsection (d) of this Section, in
15 the event of a laboratory error in which the resulting child is
16 not genetically related to either of the intended parents, the
17 intended parents will be the parents of the child for purposes
18 of State law unless otherwise determined by a court of
19 competent jurisdiction.

20 (d) The parties to a gestational surrogacy shall assume the
21 rights and obligations of subsections (b) and (c) of this
22 Section if:

23 (1) the gestational surrogate satisfies the
24 eligibility requirements set forth in subsection (a) of
25 Section 20;

26 (2) the intended parent or parents satisfy the
27 eligibility requirements set forth in subsection (b) of
28 Section 20; and

29 (3) the gestational surrogacy occurs pursuant to a
30 gestational surrogacy contract meeting the requirements
31 set forth in Section 25.

32 Section 20. Eligibility.

33 (a) A gestational surrogate shall be deemed to have
34 satisfied the requirements of this Act if she has met the
35 following requirements at the time the gestational surrogacy

1 contract is executed:

2 (1) she is at least 21 years of age;

3 (2) she has given birth to at least one child;

4 (3) she has completed a medical evaluation;

5 (4) she has completed a mental health evaluation;

6 (5) she has undergone legal consultation with
7 independent legal counsel regarding the terms of the
8 gestational surrogacy contract and the potential legal
9 consequences of the gestational surrogacy; and

10 (6) she has obtained a health insurance policy that
11 covers major medical treatments and hospitalization and
12 the health insurance policy has a term that extends
13 throughout the duration of the expected pregnancy and for 8
14 weeks after the birth of the child; provided, however, that
15 the policy may be procured by the intended parents on
16 behalf of the gestational surrogate pursuant to the
17 gestational surrogacy contract.

18 (b) The intended parent or parents shall be deemed to have
19 satisfied the requirements of this Act if he, she, or they have
20 met the following requirements at the time the gestational
21 surrogacy contract is executed:

22 (1) he, she, or they contribute at least one of the
23 gametes resulting in a pre-embryo that the gestational
24 surrogate will attempt to carry to term;

25 (2) he, she, or they have a medical need for the
26 gestational surrogacy as evidenced by a qualified
27 physician's affidavit attached to the gestational
28 surrogacy contract and as required by the Illinois
29 Parentage Act of 1984;

30 (3) he, she, or they have completed a mental health
31 evaluation; and

32 (4) he, she, or they have undergone legal consultation
33 with independent legal counsel regarding the terms of the
34 gestational surrogacy contract and the potential legal
35 consequences of the gestational surrogacy.

1 Section 25. Requirements for a gestational surrogacy
2 contract.

3 (a) A gestational surrogacy contract shall be presumed
4 enforceable for purposes of State law only if:

5 (1) it meets the contractual requirements set forth in
6 subsection (b) of this Section; and

7 (2) it contains at a minimum each of the terms set
8 forth in subsection (c) of this Section.

9 (b) A gestational surrogacy contract shall meet the
10 following requirements:

11 (1) it shall be in writing;

12 (2) it shall be executed prior to the commencement of
13 any medical procedures (other than medical or mental health
14 evaluations necessary to determine eligibility of the
15 parties pursuant to Section 20 of this Act) in furtherance
16 of the gestational surrogacy:

17 (i) by a gestational surrogate meeting the
18 eligibility requirements of subsection (a) of Section
19 20 of this Act and, if married, the gestational
20 surrogate's husband; and

21 (ii) by the intended parent or parents meeting the
22 eligibility requirements of subsection (b) of Section
23 20 of this Act. In the event an intended parent is
24 married, both husband and wife must execute the
25 gestational surrogacy contract;

26 (3) each of the gestational surrogate and the intended
27 parent or parents shall have been represented by separate
28 counsel in all matters concerning the gestational
29 surrogacy and the gestational surrogacy contract;

30 (3.5) each of the gestational surrogate and the
31 intended parent or parents shall have signed a written
32 acknowledgement that he or she received information about
33 the legal, financial, and contractual rights,
34 expectations, penalties, and obligations of the surrogacy
35 agreement;

36 (4) if the gestational surrogacy contract provides for

1 the payment of compensation to the gestational surrogate,
2 the compensation shall have been placed in escrow with an
3 independent escrow agent prior to the gestational
4 surrogate's commencement of any medical procedure (other
5 than medical or mental health evaluations necessary to
6 determine the gestational surrogate's eligibility pursuant
7 to subsection (a) of Section 20 of this Act); and

8 (5) it shall be witnessed by 2 competent adults.

9 (c) A gestational surrogacy contract shall provide for:

10 (1) the express written agreement of the gestational
11 surrogate to:

12 (i) undergo pre-embryo transfer and attempt to
13 carry and give birth to the child; and

14 (ii) surrender custody of the child to the intended
15 parent or parents immediately upon the birth of the
16 child;

17 (2) if the gestational surrogate is married, the
18 express agreement of her husband to:

19 (i) undertake the obligations imposed on the
20 gestational surrogate pursuant to the terms of the
21 gestational surrogacy contract;

22 (ii) surrender custody of the child to the intended
23 parent or parents immediately upon the birth of the
24 child;

25 (3) the right of the gestational surrogate to utilize
26 the services of a physician of her choosing, after
27 consultation with the intended parents, to provide her care
28 during the pregnancy; and

29 (4) the express written agreement of the intended
30 parent or parents to:

31 (i) accept custody of the child immediately upon
32 his or her birth; and

33 (ii) assume sole responsibility for the support of
34 the child immediately upon his or her birth.

35 (d) A gestational surrogacy contract shall be presumed
36 enforceable for purposes of State law even though it contains

1 one or more of the following provisions:

2 (1) the gestational surrogate's agreement to undergo
3 all medical exams, treatments, and fetal monitoring
4 procedures that the physician recommended for the success
5 of the pregnancy;

6 (2) the gestational surrogate's agreement to abstain
7 from any activities that the intended parent or parents or
8 the physician reasonably believes to be harmful to the
9 pregnancy and future health of the child, including,
10 without limitation, smoking, drinking alcohol, using
11 nonprescribed drugs, using prescription drugs not
12 authorized by a physician aware of the gestational
13 surrogate's pregnancy, exposure to radiation, or any other
14 activities proscribed by a health care provider;

15 (3) the agreement of the intended parent or parents to
16 pay the gestational surrogate reasonable compensation; and

17 (4) the agreement of the intended parent or parents to
18 pay for or reimburse the gestational surrogate for
19 reasonable expenses (including, without limitation,
20 medical, legal, or other professional expenses) related to
21 the gestational surrogacy and the gestational surrogacy
22 contract.

23 (e) In the event that any of the requirements of this
24 Section are not met, a court of competent jurisdiction shall
25 determine parentage based on evidence of the parties' intent.

26 Section 30. Duty to support.

27 (a) Any person who is considered to be the parent of a
28 child pursuant to Section 15 of this Act shall be obligated to
29 support the child.

30 (b) The breach of the gestational surrogacy contract by the
31 intended parent or parents shall not relieve such intended
32 parent or parents of the support obligations imposed by this
33 Act.

34 (c) A gamete donor may be liable for child support only if
35 he or she fails to enter into a legal agreement with the

1 intended parent or parents in which the intended parent or
2 parents agree to assume all rights and responsibilities for any
3 resulting child, and the gamete donor relinquishes his or her
4 rights to any gametes, resulting embryos, or children.

5 Section 35. Establishment of the parent-child
6 relationship.

7 (a) For purposes of the Illinois Parentage Act of 1984, a
8 parent-child relationship shall be established prior to the
9 birth of a child born through gestational surrogacy if, in
10 addition to satisfying the requirements of Sections 5 and 6 of
11 the Illinois Parentage Act of 1984, the attorneys representing
12 both the gestational surrogate and the intended parent or
13 parents certify that the parties entered into a gestational
14 surrogacy contract intended to satisfy the requirements of
15 Section 25 of this Act with respect to the child.

16 (b) The attorneys' certifications required by subsection
17 (a) of this Section shall be filed on forms prescribed by the
18 Illinois Department of Public Health and in a manner consistent
19 with the requirement of the Illinois Parentage Act of 1984.

20 Section 40. Immunities. Except as provided in this Act, no
21 person shall be civilly or criminally liable for non-negligent
22 actions taken pursuant to the requirements of this Act.

23 Section 45. Noncompliance. Noncompliance by the
24 gestational surrogate or the intended parent or parents occurs
25 when that party breaches a provision of the gestational
26 surrogacy contract.

27 Section 50. Effect of Noncompliance.

28 (a) Except as otherwise provided in this Act, in the event
29 of noncompliance with the requirements of subsection (d) of
30 Section 15 of this Act, a court of competent jurisdiction shall
31 determine the respective rights and obligations of the parties.

32 (b) There shall be no specific performance remedy available

1 for a breach by the gestational surrogate of a gestational
2 surrogacy contract term that requires her to be impregnated.

3 Section 55. Damages.

4 (a) Except as expressly provided in the gestational
5 surrogacy contract, the intended parent or parents shall be
6 entitled to all remedies available at law or equity.

7 (b) Except as expressly provided in the gestational
8 surrogacy contract, the gestational surrogate shall be
9 entitled to all remedies available at law or equity.

10 Section 60. Rulemaking. The Department of Public Health may
11 adopt rules pertaining to the required medical and mental
12 health evaluations for a gestational surrogacy contract. Until
13 the Department of Public Health adopts such rules, medical and
14 mental health evaluations and procedures shall be conducted in
15 accordance with the recommended guidelines published by the
16 American Society for Reproductive Medicine and the American
17 College of Obstetricians and Gynecologists. The rules may adopt
18 these guidelines or others by reference.

19 Section 65. Severability. If any provision of this Act or
20 its application to any person or circumstance is held invalid,
21 the invalidity of that provision or application does not affect
22 other provisions or applications of this Act that can be given
23 effect without the invalid provision or application.

24 Section 70. Irrevocability. No action to invalidate a
25 gestational surrogacy meeting the requirements of subsection
26 (d) of Section 15 of this Act or to challenge the rights of
27 parentage established pursuant to Section 15 of this Act and
28 the Illinois Parentage Act of 1984 shall be commenced after 12
29 months from the date of birth of the child.

30 Section 75. Application. The provisions of this Act shall
31 apply only to gestational surrogacy contracts entered into

1 after the effective date of this Act.

2 Section 800. The Illinois Parentage Act of 1984 is amended
3 by changing Section 6 and by adding Section 2.5 as follows:

4 (750 ILCS 45/2.5 new)

5 Sec. 2.5. Definitions. As used in this Act, the terms
6 "gestational surrogacy", "gestational surrogate", and
7 "intended parent" have the same meanings as the terms are
8 defined in Section 10 of the Gestational Surrogacy Act.

9 (750 ILCS 45/6) (from Ch. 40, par. 2506)

10 Sec. 6. Establishment of Parent and Child Relationship by
11 Consent of the Parties.

12 (a) A parent and child relationship may be established
13 voluntarily by the signing and witnessing of a voluntary
14 acknowledgment of parentage in accordance with Section 12 of
15 the Vital Records Act, ~~or~~ Section 10-17.7 of the Illinois
16 Public Aid Code, or the provisions of the Gestational Surrogacy
17 Act. The voluntary acknowledgment of parentage shall contain
18 the social security numbers of the persons signing the
19 voluntary acknowledgment of parentage; however, failure to
20 include the social security numbers of the persons signing a
21 voluntary acknowledgment of parentage does not invalidate the
22 voluntary acknowledgment of parentage.

23 (1) A parent-child relationship may be established in
24 the event of gestational surrogacy if all of the following
25 conditions are met prior to the birth of the child:

26 (A) The gestational surrogate ~~mother~~ certifies
27 that she is not the biological mother of the child, and
28 that she is carrying the child for ~~of~~ the intended
29 parents ~~biological father (sperm donor) and of the~~
30 ~~biological mother (egg donor).~~

31 (B) The husband, if any, of the gestational
32 surrogate ~~mother~~ certifies that he is not the
33 biological father of the child ~~and that the child is~~

1 ~~that of the biological father (sperm donor) and of the~~
2 ~~biological mother (egg donor).~~

3 (C) The intended ~~biological~~ mother certifies that
4 she provided or an egg donor donated the egg from which
5 the child being carried by the gestational surrogate
6 ~~mother~~ was conceived.

7 (D) The intended ~~biological~~ father certifies that
8 he provided or a sperm donor donated the sperm from
9 which the child being carried by the gestational
10 surrogate ~~mother~~ was conceived.

11 (E) A physician licensed to practice medicine in
12 all its branches in the State of Illinois certifies
13 that the child being carried by the gestational
14 surrogate ~~mother~~ is the biological child of the
15 intended ~~biological~~ mother ~~(egg donor)~~ and intended
16 ~~biological~~ father ~~(sperm donor)~~, and that neither the
17 gestational surrogate ~~mother~~ nor the gestational
18 surrogate's ~~surrogate mother's~~ husband, if any, is a
19 biological parent of the child being carried by the
20 gestational surrogate ~~mother~~.

21 (E-5) The attorneys for the intended parents and
22 the gestational surrogate each certifies that the
23 parties entered into a gestational surrogacy contract
24 intended to satisfy the requirements of Section 25 of
25 the Gestational Surrogacy Act with respect to the
26 child.

27 (F) All certifications shall be in writing and
28 witnessed by 2 competent adults who are not the
29 gestational surrogate ~~mother~~, gestational surrogate's
30 ~~surrogate mother's~~ husband, if any, intended
31 ~~biological~~ mother, or intended ~~biological~~ father.
32 Certifications shall be on forms prescribed by the
33 Illinois Department of Public Health, shall be
34 executed prior to the birth of the child, and shall be
35 placed in the medical records of the gestational
36 surrogate ~~mother~~ prior to the birth of the child.

1 Copies of all certifications shall be delivered to the
2 Illinois Department of Public Health prior to the birth
3 of the child.

4 (2) Unless otherwise determined by order of the Circuit
5 Court, the child shall be presumed to be the child of the
6 gestational surrogate ~~mother~~ and of the gestational
7 surrogate's ~~surrogate mother's~~ husband, if any, if all
8 requirements of subdivision (a) (1) are not met prior to the
9 birth of the child. This presumption may be rebutted by
10 clear and convincing evidence. The circuit court may order
11 the gestational surrogate ~~mother~~, gestational surrogate's
12 ~~surrogate mother's~~ husband, intended biological mother,
13 intended biological father, and child to submit to such
14 medical examinations and testing as the court deems
15 appropriate.

16 (b) Notwithstanding any other provisions of this Act,
17 paternity established in accordance with subsection (a) has the
18 full force and effect of a judgment entered under this Act and
19 serves as a basis for seeking a child support order without any
20 further proceedings to establish paternity.

21 (c) A judicial or administrative proceeding to ratify
22 paternity established in accordance with subsection (a) is
23 neither required nor permitted.

24 (d) A signed acknowledgment of paternity entered under this
25 Act may be challenged in court only on the basis of fraud,
26 duress, or material mistake of fact, with the burden of proof
27 upon the challenging party. Pending outcome of the challenge to
28 the acknowledgment of paternity, the legal responsibilities of
29 the signatories shall remain in full force and effect, except
30 upon order of the court upon a showing of good cause.

31 (e) Once a parent and child relationship is established in
32 accordance with subsection (a), an order for support may be
33 established pursuant to a petition to establish an order for
34 support by consent filed with the clerk of the circuit court. A
35 copy of the properly completed acknowledgment of parentage form
36 shall be attached to the petition. The petition shall ask that

1 the circuit court enter an order for support. The petition may
2 ask that an order for visitation, custody, or guardianship be
3 entered. The filing and appearance fees provided under the
4 Clerks of Courts Act shall be waived for all cases in which an
5 acknowledgment of parentage form has been properly completed by
6 the parties and in which a petition to establish an order for
7 support by consent has been filed with the clerk of the circuit
8 court. This subsection shall not be construed to prohibit
9 filing any petition for child support, visitation, or custody
10 under this Act, the Illinois Marriage and Dissolution of
11 Marriage Act, or the Non-Support Punishment Act. This
12 subsection shall also not be construed to prevent the
13 establishment of an administrative support order in cases
14 involving persons receiving child support enforcement services
15 under Article X of the Illinois Public Aid Code.

16 (Source: P.A. 91-308, eff. 7-29-99; 91-613, eff. 10-1-99;
17 92-16, eff. 6-28-01)