

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)