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State of Minnesota

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HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. **3448**

February 25, 2008

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The bill was read for the first time and referred to the Committee on Public Safety and Civil Justice

March 18, 2008

Committee Recommendation and Adoption of Report:

To Pass

Read Second Time

1.1 A bill for an act
1.2 relating to children; regulating gestational carrier arrangements; proposing
1.3 coding for new law in Minnesota Statutes, chapter 257.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. **[257.86] PURPOSE.**

1.6 The purpose of sections 257.86 to 257.98 is to establish consistent standards
1.7 and procedural safeguards for the protection of all parties involved in a surrogacy
1.8 arrangement in this state and to confirm the legal status of children born as a result of these
1.9 arrangements. These standards and safeguards are meant to facilitate the use of this type
1.10 of reproductive arrangement in accord with the public policy of this state.

1.11 Sec. 2. **[257.87] DEFINITIONS.**

1.12 Subdivision 1. **Scope.** The definitions in this section apply to sections 257.86 to
1.13 257.98.

1.14 Subd. 2. **Compensation.** "Compensation" means payment of any valuable
1.15 consideration for time, effort, pain, or health risks in excess of reasonable medical and
1.16 ancillary costs.

1.17 Subd. 3. **Donor.** "Donor" means an individual who is not an intended parent
1.18 and who contributes a gamete or gametes for the purpose of in vitro fertilization or
1.19 implantation in another.

1.20 Subd. 4. **Embryo.** "Embryo" means a fertilized egg prior to 14 days of development.

1.21 Subd. 5. **Embryo transfer.** "Embryo transfer" means all medical and laboratory
1.22 procedures that are necessary to effectuate the transfer of an embryo into the uterine cavity.

1.23 Subd. 6. **Gamete.** "Gamete" means either a sperm or an egg.

2.1 Subd. 7. **Gestational carrier.** "Gestational carrier" means a woman who agrees to
2.2 engage in a gestational carrier arrangement.

2.3 Subd. 8. **Gestational carrier arrangement.** "Gestational carrier arrangement"
2.4 means the process by which a woman attempts to carry and give birth to a child created
2.5 through in vitro fertilization using the gamete or gametes of at least one of the intended
2.6 parents and to which the gestational carrier has made no genetic contribution.

2.7 Subd. 9. **Gestational carrier contract.** "Gestational carrier contract" means a
2.8 written agreement regarding a gestational carrier arrangement.

2.9 Subd. 10. **Health care provider.** "Health care provider" means a person who is
2.10 duly licensed to provide health care, including all medical, psychological, or counseling
2.11 professionals.

2.12 Subd. 11. **Intended parent.** "Intended parent" means a person who enters into a
2.13 gestational carrier contract with a gestational carrier pursuant to which the person will be
2.14 the legal parent of the resulting child. In the case of a married couple, any reference to
2.15 an intended parent includes both husband and wife for all purposes of sections 257.86 to
2.16 257.98. This term includes the intended mother, intended father, or both.

2.17 Subd. 12. **In vitro fertilization.** "In vitro fertilization" means all medical and
2.18 laboratory procedures that are necessary to effectuate the extracorporeal fertilization
2.19 of egg and sperm.

2.20 Subd. 13. **Medical evaluation.** "Medical evaluation" means an evaluation by
2.21 and consultation with a physician conducted in accordance with the recommended
2.22 guidelines published and in effect at the time of the evaluation by the American Society
2.23 for Reproductive Medicine and the American College of Obstetricians and Gynecologists.

2.24 Subd. 14. **Mental health evaluation.** "Mental health evaluation" means an
2.25 evaluation by and consultation with a mental health professional conducted in accordance
2.26 with the recommended guidelines published and in effect at the time of the evaluation
2.27 by the American Society for Reproductive Medicine and the American College of
2.28 Obstetricians and Gynecologists.

2.29 Subd. 15. **Physician.** "Physician" means a person licensed to practice medicine
2.30 in Minnesota.

2.31 Sec. 3. **[257.88] RIGHTS OF PARENTAGE.**

2.32 (a) Except as provided in sections 257.86 to 257.98, the woman who gives birth to a
2.33 child is presumed to be the mother of that child for purposes of state law.

2.34 (b) In the case of a gestational carrier arrangement satisfying the requirements
2.35 set forth in paragraph (d):

- 3.1 (1) the intended mother is the mother of the child for purposes of state law
3.2 immediately upon the birth of the child;
- 3.3 (2) the intended father is the father of the child for purposes of state law immediately
3.4 upon the birth of the child;
- 3.5 (3) the child is considered the child of the intended parent or parents for purposes of
3.6 state law;
- 3.7 (4) parental rights vest in the intended parent or parents;
- 3.8 (5) sole custody, care, and control of the child rests solely with the intended parent
3.9 or parents immediately upon the birth of the child; and
- 3.10 (6) neither the gestational carrier nor her husband, if any, is the parent of the child
3.11 for purposes of state law immediately upon the birth of the child.
- 3.12 (c) In the case of a gestational carrier arrangement complying with paragraph (d),
3.13 in the event of a laboratory error in which the resulting child is not genetically related to
3.14 either of the intended parents, the intended parents are the parents of the child for purposes
3.15 of state law unless otherwise determined by a court of competent jurisdiction in an action
3.16 brought by one or more of the genetic parents within 60 days of the child's birth.
- 3.17 (d) The parties to a gestational carrier arrangement assume the rights and obligations
3.18 of paragraphs (b) and (c) if:
- 3.19 (1) the gestational carrier satisfies the eligibility requirements in section 257.89,
3.20 paragraph (a);
- 3.21 (2) the intended parent or parents satisfy the eligibility requirements in section
3.22 257.89, paragraph (b); and
- 3.23 (3) the gestational carrier arrangement occurs pursuant to a gestational carrier
3.24 contract meeting the requirements in section 257.90.

3.25 **Sec. 4. [257.89] ELIGIBILITY.**

- 3.26 (a) A gestational carrier satisfies the requirements of sections 257.86 to 257.98 if she
3.27 has met the following requirements at the time the gestational carrier contract is executed:
- 3.28 (1) she is at least 21 years of age;
- 3.29 (2) she has given birth to at least one child;
- 3.30 (3) she has completed a medical evaluation related to the anticipated pregnancy;
- 3.31 (4) she has completed a mental health evaluation relating to the anticipated
3.32 gestational carrier arrangement;
- 3.33 (5) she has undergone legal consultation with separate, independent legal counsel
3.34 regarding the terms of the gestational carrier contract and the potential legal consequences
3.35 of the gestational carrier arrangement; and

4.1 (6) she has obtained or obtains prior to the embryo transfer a health insurance policy
4.2 that covers major medical treatments and hospitalization and the health insurance policy
4.3 has a term that extends throughout the duration of the expected pregnancy and for eight
4.4 weeks after the birth of the child; provided, however, that the policy may be procured by
4.5 the intended parents on behalf of the gestational carrier pursuant to the gestational carrier
4.6 contract.

4.7 (b) The intended parent or parents satisfy the requirements of sections 257.86
4.8 to 257.98 if the parent or parents have met the following requirements at the time the
4.9 gestational carrier contract is executed:

4.10 (1) the parent or parents contribute at least one of the gametes that will ultimately
4.11 result in an embryo that the gestational carrier will attempt to carry to term;

4.12 (2) the parent or parents have a medical need for the gestational carrier arrangement
4.13 as evidenced by a qualified physician's affidavit attached to the gestational carrier contract;

4.14 (3) the parent or parents have completed a mental health evaluation relating to the
4.15 anticipated gestational carrier arrangement; and

4.16 (4) the parent or parents have undergone legal consultation with separate,
4.17 independent legal counsel regarding the terms of the gestational carrier contract and the
4.18 potential legal consequences of the gestational carrier arrangement.

4.19 **Sec. 5. [257.90] REQUIREMENTS FOR A GESTATIONAL CARRIER**
4.20 **CONTRACT.**

4.21 (a) A gestational carrier contract is enforceable in Minnesota if:

4.22 (1) it meets the contractual requirements in paragraph (b); and

4.23 (2) it contains at least the terms in paragraph (c).

4.24 (b) A gestational carrier contract must meet the following requirements:

4.25 (1) it must be in writing;

4.26 (2) it must be executed prior to the commencement of any medical procedures in
4.27 furtherance of the gestational carrier arrangement, other than medical or mental health
4.28 evaluations necessary to determine eligibility of the parties under section 257.89:

4.29 (i) by a gestational carrier meeting the eligibility requirements of section 257.89,
4.30 paragraph (a), and if married, the gestational carrier's husband; and

4.31 (ii) by the intended parent or parents meeting the eligibility requirements of section
4.32 257.89, paragraph (b). In the event an intended parent is married, both husband and wife
4.33 must execute the gestational carrier contract;

5.1 (3) each of the gestational carrier and the intended parent or parents must have
5.2 been represented by separate, independent legal counsel in all matters concerning the
5.3 gestational carrier arrangement and the gestational carrier contract;

5.4 (4) each of the gestational carrier and the intended parent or parents must have
5.5 signed a written acknowledgment of their receipt of information about the legal, financial,
5.6 and contractual rights, expectations, penalties, and obligations of the carrier agreement;

5.7 (5) if the gestational carrier contract provides for the payment of compensation
5.8 to the gestational carrier, the compensation must have been placed in escrow with an
5.9 independent escrow agent prior to the gestational carrier's commencement of any medical
5.10 procedure other than medical or mental health evaluations necessary to determine the
5.11 gestational carrier's eligibility under section 257.89, paragraph (a); and

5.12 (6) it must be witnessed by two disinterested competent adults.

5.13 (c) A gestational carrier contract must provide for:

5.14 (1) the express written agreement of the gestational carrier to:

5.15 (i) undergo embryo transfer and attempt to carry and give birth to the child; and

5.16 (ii) surrender custody of all resulting children to the intended parent or parents
5.17 immediately upon the birth of the children;

5.18 (2) if the gestational carrier is married, the express agreement of the gestational
5.19 carrier's husband to:

5.20 (i) undertake the obligations imposed on the gestational carrier pursuant to the
5.21 terms of the gestational carrier contract; and

5.22 (ii) surrender custody of all resulting children to the intended parent or parents
5.23 immediately upon the birth of the resulting children;

5.24 (3) the right of the gestational carrier to use the services of a physician of her
5.25 choosing, after consultation with the intended parents, to provide her care during the
5.26 pregnancy; and

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

5.28 (i) accept custody of all resulting children immediately upon the children's birth
5.29 regardless of number, gender, or mental or physical condition; and

5.30 (ii) assume sole responsibility for the support of the child immediately upon the
5.31 child's birth.

5.32 (d) A gestational carrier contract is enforceable in Minnesota even though it contains
5.33 one or more of the following provisions:

5.34 (1) the gestational carrier's agreement to undergo all medical examinations,
5.35 treatments, and fetal monitoring procedures that the physician recommends for the success
5.36 of the pregnancy;

6.1 (2) the gestational carrier's agreement to abstain from any activities that the intended
6.2 parent or parents or the physician reasonably believes to be harmful to the pregnancy and
6.3 future health of the child, including, without limitation, smoking, drinking alcohol, using
6.4 nonprescribed drugs, using prescription drugs not authorized by a physician aware of the
6.5 gestational carrier's pregnancy, exposure to radiation, or any other activities proscribed
6.6 by a health care provider;

6.7 (3) the agreement of the intended parent or parents to pay the gestational carrier
6.8 reasonable compensation; and

6.9 (4) the agreement of the intended parent or parents to pay for or reimburse the
6.10 gestational carrier for reasonable expenses including, without limitation, medical, legal,
6.11 or other professional expenses related to the gestational carrier arrangement and the
6.12 gestational carrier contract.

6.13 **Sec. 6. [257.91] DUTY TO SUPPORT.**

6.14 (a) A person considered to be the parent of the child under section 257.88 is
6.15 obligated to support the child.

6.16 (b) A breach of the gestational carrier contract by the intended parent or parents
6.17 does not relieve the intended parent or parents of the support obligations imposed by
6.18 sections 257.86 to 257.98.

6.19 (c) A gamete donor may be liable for child support only if the donor fails to enter
6.20 into a legal agreement in which the donor relinquishes rights to any gametes, resulting
6.21 embryos, or children and the intended parent or parents fail to enter into an agreement
6.22 in which the intended parent or parents agree to assume all rights and responsibilities
6.23 for any resulting children.

6.24 **Sec. 7. [257.92] ESTABLISHMENT OF THE PARENT-CHILD RELATIONSHIP.**

6.25 (a) For purposes of the Parentage Act, sections 257.51 to 257.74, the parent-child
6.26 relationship that arises immediately upon the birth of the child pursuant to section
6.27 257.89 is established if, prior to or within 24 hours of the birth of a child born through
6.28 gestational carrier arrangement, the attorneys representing both the gestational carrier and
6.29 the intended parent or parents certify that the parties entered into the gestational carrier
6.30 contract intended to satisfy the requirements of section 257.90 with respect to the child.

6.31 (b) The attorneys' certifications required by paragraph (a) must establish the parties'
6.32 compliance with all of the requirements of the Parentage Act in a manner consistent with
6.33 the requirements of the Parentage Act, if any.

7.1 (c) The attorney certifications required by paragraph (a) are effective for all purposes
7.2 if completed prior to or within 24 hours after the child's birth.

7.3 (d) Upon compliance with the certification provision of this section, all hospital and
7.4 state representatives or employees shall complete all birth records and the original birth
7.5 certificate of the child to reflect the intended parent or parents, and only the intended
7.6 parent or parents, as the child's parent or parents on the records and certificate.

7.7 Sec. 8. **[257.93] EFFECT OF GESTATIONAL CARRIER'S SUBSEQUENT**
7.8 **MARRIAGE.**

7.9 Subsequent marriage of the gestational carrier does not affect the validity of a
7.10 gestational carrier contract, her legal spouse's consent to the contract is not required, and
7.11 her legal spouse is not a presumed parent of the resulting child.

7.12 Sec. 9. **[257.94] IMMUNITIES.**

7.13 Except as provided in sections 257.86 to 257.98, no person is civilly or criminally
7.14 liable for nonnegligent actions taken pursuant to the requirements of sections 257.86 to
7.15 257.98. This provision does not prevent liability or actions between or among the parties,
7.16 including actions brought by or on behalf of the child, based on negligent, reckless,
7.17 willful, or intentional acts that result in damages to any party.

7.18 Sec. 10. **[257.95] NONCOMPLIANCE.**

7.19 Noncompliance by the gestational carrier or the intended parent or parents occurs if
7.20 that party breaches a provision of the gestational carrier contract or fails to comply with
7.21 any requirement in sections 257.86 to 257.98.

7.22 Sec. 11. **[257.96] EFFECT OF NONCOMPLIANCE.**

7.23 (a) In the event of noncompliance, as defined in section 257.95, a court of competent
7.24 jurisdiction shall determine the respective rights and obligations of the parties to any
7.25 surrogacy agreement based solely on evidence of the parties' original intent.

7.26 (b) There is no specific performance remedy available for a breach by the gestational
7.27 carrier of a gestational carrier contract term that requires her to be impregnated.

7.28 Sec. 12. **[257.97] DAMAGES.**

7.29 (a) Except as expressly provided in the gestational carrier contract, the intended
7.30 parent or parents are entitled to all remedies available at law or equity.

8.1 (b) Except as expressly provided in the gestational carrier contract, the gestational
8.2 carrier is entitled to all remedies available at law or equity.

8.3 Sec. 13. **[257.98] IRREVOCABILITY.**

8.4 No action to invalidate a gestational carrier arrangement meeting the requirements
8.5 of section 257.88, paragraph (d), or to challenge the rights of parentage established under
8.6 section 257.88 and the Parentage Act, sections 257.51 to 257.74, may be commenced after
8.7 12 months from the date of birth of a child.

8.8 Sec. 14. **EFFECTIVE DATE.**

8.9 Sections 1 to 13 are effective for gestational carrier contracts entered into on or
8.10 after August 1, 2008.