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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 1140

02/14/2019 Authored by Lesch and Youakim The bill was read for the first time and referred to the Judiciary Finance and Civil Law Division

1.1 A bill for an act
1.2 relating to children; establishing requirements for gestational carrier contracts;
1.3 proposing 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 DEFINITIONS.

1.6 Subdivision 1. Scope. The definitions in this section apply to sections 257.86 to 257.97.

1.7 Subd. 2. Donor. "Donor" means an individual who is not an intended parent who
1.8 contributes a gamete or gametes for the purpose of in vitro fertilization or implantation in
1.9 another.

1.10 Subd. 3. Embryo. "Embryo" means a fertilized egg prior to 14 days of development.

1.11 Subd. 4. Embryo transfer. "Embryo transfer" means all medical and laboratory
1.12 procedures that are necessary to effectuate the transfer of an embryo into the uterine cavity.

1.13 Subd. 5. Gamete. "Gamete" means a sperm or an egg.

1.14 Subd. 6. Gestational carrier. "Gestational carrier" means a woman who agrees to engage
1.15 in a gestational carrier arrangement.

1.16 Subd. 7. Gestational carrier arrangement. "Gestational carrier arrangement" means
1.17 the process by which a woman attempts to carry and give birth to a child created through
1.18 in vitro fertilization using one or more gametes procured or provided by the intended parents.

1.19 Subd. 8. Gestational carrier contract. "Gestational carrier contract" means a written
1.20 agreement regarding a gestational carrier arrangement.

2.1 Subd. 9. **Health care provider.** "Health care provider" means a person who is duly
 2.2 licensed to provide health care, including medical, psychological, or counseling professionals.

2.3 Subd. 10. **Intended parent.** "Intended parent" means a person who enters into a
 2.4 gestational carrier contract with a gestational carrier prior to the initiation of the pregnancy
 2.5 pursuant to which the person will be the legal parent of the resulting child. In the case of a
 2.6 married couple, any reference to an intended parent includes both parties to the marriage
 2.7 for all purposes of section 257.86 to 257.97, regardless of gender.

2.8 Subd. 11. **In vitro fertilization.** "In vitro fertilization" means medical and laboratory
 2.9 procedures that are necessary to effectuate the extracorporeal fertilization of egg and sperm.

2.10 Subd. 12. **Medical evaluation.** "Medical evaluation" means an evaluation by and
 2.11 consultation with a physician conducted according to the recommended guidelines published
 2.12 and in effect at the time of the evaluation by the American Society for Reproductive Medicine
 2.13 and the American College of Obstetricians and Gynecologists.

2.14 Subd. 13. **Mental health evaluation.** "Mental health evaluation" means an evaluation
 2.15 by and consultation with a mental health professional conducted according to the
 2.16 recommended guidelines published and in effect at the time of the evaluation by the American
 2.17 Society for Reproductive Medicine and the American College of Obstetricians and
 2.18 Gynecologists.

2.19 Subd. 14. **Physician.** "Physician" means a person licensed to practice medicine.

2.20 **Sec. 2. [257.87] RIGHTS OF PARENTAGE.**

2.21 (a) Except as provided in sections 257.86 to 257.97, a woman who gives birth to a child
 2.22 is presumed to be the mother of that child for purposes of state law.

2.23 (b) In the case of a gestational carrier arrangement satisfying the requirements of
 2.24 paragraph (d):

2.25 (1) the intended parent is the parent of the child for purposes of state law immediately
 2.26 upon the birth of the child;

2.27 (2) the child is considered the child of the intended parent for purposes of state law;

2.28 (3) parental rights vest in the intended parent;

2.29 (4) sole custody, care, and control of the child shall rest solely with the intended parent
 2.30 immediately upon the birth of the child; and

3.1 (5) immediately upon the birth of the child, neither the gestational carrier nor spouse, if
3.2 any, is the parent of the child for purposes of state law.

3.3 (c) If a gestational carrier arrangement complying with paragraph (d) exists and there
3.4 is a laboratory error in which the resulting child is not genetically related to either of the
3.5 intended parents, the intended parent is the parent of the child for purposes of state law
3.6 unless otherwise determined by a court of competent jurisdiction. An action under this
3.7 paragraph can only be brought by a genetic parent within 60 days of the date of the child's
3.8 birth.

3.9 (d) The parties to a gestational carrier arrangement assume the rights and obligations of
3.10 paragraphs (b) and (c) if:

3.11 (1) the gestational carrier satisfies the eligibility requirements in section 257.88, paragraph
3.12 (a);

3.13 (2) the intended parent satisfies the eligibility requirements set forth in section 257.88,
3.14 paragraph (b); and

3.15 (3) the gestational carrier arrangement occurs pursuant to a gestational carrier contract
3.16 meeting the requirements in section 257.89.

3.17 **Sec. 3. [257.88] ELIGIBILITY.**

3.18 (a) A gestational carrier satisfies the requirements of sections 257.86 to 257.97 if, at the
3.19 time the gestational carrier contract is executed, she:

3.20 (1) is at least 21 years of age;

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

3.22 (3) has completed a medical evaluation relating to the anticipated pregnancy and provides
3.23 a written statement from the examining physician that states that it is reasonably likely that
3.24 she can successfully carry a pregnancy to full term without any complications that would
3.25 threaten the health of the gestational carrier or resulting child;

3.26 (4) has completed a mental health evaluation relating to the anticipated gestational carrier
3.27 arrangement;

3.28 (5) has undergone legal consultation with separate, independent legal counsel regarding
3.29 the terms of the gestational carrier contract and the potential legal consequences of the
3.30 gestational carrier arrangement; and

4.1 (6) has obtained, or obtains prior to the embryo transfer, a health insurance policy that
4.2 covers major medical treatments and hospitalization and extends throughout the duration
4.3 of the expected pregnancy and for eight weeks after the birth of the child; the policy may
4.4 be procured by the intended parent on behalf of the gestational carrier pursuant to the
4.5 gestational carrier contract or the intended parent may self-insure by depositing sufficient
4.6 funds into escrow to pay for all reasonably expected medical expenses prior to the date of
4.7 the first embryo transfer.

4.8 (b) The intended parent satisfies the requirements of sections 257.86 to 257.97 if, at the
4.9 time the gestational carrier contract is executed, the parent:

4.10 (1) provides the gametes that will result in an embryo that the gestational carrier will
4.11 attempt to carry to term;

4.12 (2) requires the services of the gestational carrier in order to have a child as evidenced
4.13 by a qualified physician's affidavit attached to the gestational carrier contract;

4.14 (3) has completed a mental health evaluation relating to the anticipated gestational carrier
4.15 arrangement; and

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

4.19 **Sec. 4. [257.89] REQUIREMENTS FOR GESTATIONAL CARRIER CONTRACT.**

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

4.21 (1) it meets the contractual requirements in paragraphs (b) and (c); and

4.22 (2) it contains, at a minimum, the terms in paragraph (d).

4.23 (b) A gestational carrier contract must be:

4.24 (1) in writing;

4.25 (2) executed prior to the commencement of any medical procedures intended to initiate
4.26 a pregnancy in furtherance of the gestational carrier arrangement, other than medical or
4.27 mental health evaluations necessary to determine eligibility of the parties under section
4.28 257.88, by a gestational carrier meeting the eligibility requirements of section 257.88,
4.29 paragraph (a), and, if married, the gestational carrier's spouse; and by the intended parent
4.30 or parents meeting the eligibility requirements of section 257.88, paragraph (b). In the event
4.31 an intended parent is married, both married intended parents must execute the gestational
4.32 carrier contract; and

5.1 (3) notarized or witnessed by two disinterested competent adults.

5.2 (c) A gestational carrier contract under paragraph (b) is not valid unless:

5.3 (1) the gestational carrier and the intended parent have been represented by separate,
5.4 independent legal counsel in all matters concerning the gestational carrier arrangement and
5.5 the gestational carrier contract; and

5.6 (2) the gestational carrier and the intended parent have signed a written acknowledgment
5.7 of their receipt of information about the legal, financial, and contractual rights, expectations,
5.8 penalties, and obligations of the carrier agreement.

5.9 (d) A gestational carrier contract shall include:

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

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

5.12 (ii) surrender custody of all resulting children to the intended parent immediately upon
5.13 the birth of the child or children;

5.14 (2) if the gestational carrier is married, the express agreement of the gestational carrier's
5.15 spouse to:

5.16 (i) support, facilitate, and be jointly bound by the obligations imposed on the gestational
5.17 carrier pursuant to the terms of the gestational carrier contract; and

5.18 (ii) surrender custody of all resulting children to the intended parent immediately upon
5.19 the birth of the resulting child or children;

5.20 (3) the right of the gestational carrier to use the services of a physician of her choosing,
5.21 after consultation with the intended parent, to provide her care during the pregnancy; and

5.22 (4) the express written agreement of the intended parent to:

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

5.25 (ii) assume sole responsibility for the support of the child or children immediately upon
5.26 the birth of the child or children.

5.27 (e) A gestational carrier contract is enforceable in Minnesota even though it contains
5.28 one or more of the following provisions:

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

6.1 (2) the gestational carrier's agreement to abstain from any activities that the intended
6.2 parent or the physician reasonably believes to be harmful to the pregnancy and future health
6.3 of the child, including but not limited to smoking, drinking alcohol, using nonprescribed
6.4 drugs, using prescription drugs not authorized by a physician aware of the gestational carrier's
6.5 pregnancy, exposure to radiation, or any other activities proscribed by a health care provider;
6.6 and

6.7 (3) the agreement of the intended parent to pay for or reimburse the gestational carrier
6.8 for reasonable expenses including but not limited to medical, legal, or other professional
6.9 expenses related to the gestational carrier arrangement and the gestational carrier contract.

6.10 **Sec. 5. [257.90] DUTY TO SUPPORT.**

6.11 (a) A person who is considered to be the parent of the child under section 257.87 is
6.12 obligated to support the child.

6.13 (b) A breach of the gestational carrier contract by the intended parent does not relieve
6.14 the intended parent of the support obligation imposed by sections 257.86 to 257.97.

6.15 (c) A gamete donor is not a parent if the donor has waived any and all rights to the
6.16 donated gametes and any resultant embryos or children, either in a record with or between
6.17 (1) the donor and a medical or other storage facility or (2) the intended parent, whether the
6.18 donor is anonymous or is known to the intended parent. If the requirements of this section
6.19 are met, a donor has no obligation to pay child support for a child born from the donor's
6.20 gamete donation.

6.21 **Sec. 6. [257.91] ESTABLISHMENT OF THE PARENT-CHILD RELATIONSHIP.**

6.22 (a) For purposes of the Parentage Act, sections 257.51 to 257.75, the parent-child
6.23 relationship that arises immediately upon the birth of the child pursuant to section 257.88
6.24 is established if, no later than five business days after the birth of a child born through a
6.25 gestational carrier arrangement, the attorneys representing both the gestational carrier and
6.26 the intended parent provide written certification that the parties entered into the gestational
6.27 carrier contract intending to satisfy the requirements of section 257.89 with respect to the
6.28 child.

6.29 (b) The attorney certifications required by paragraph (a) shall be filed on forms prescribed
6.30 by the Department of Health.

7.1 (c) The attorney certifications required by paragraph (a) must establish the parties'
 7.2 compliance with all of the requirements of the Parentage Act in a manner consistent with
 7.3 the requirements of the Parentage Act, if any.

7.4 (d) The attorney certifications required by paragraph (a) are effective for all purposes
 7.5 if completed no later than five business days after the child's birth.

7.6 (e) When the attorney certifications required by paragraph (a) are completed, all hospital
 7.7 and state representatives or employees shall complete all birth records and the original birth
 7.8 certificate of the child to reflect the intended parent, and only the intended parent, as the
 7.9 child's parent on the records and certificate.

7.10 **Sec. 7. [257.92] ENTRY OF JUDGMENT OF PARENTAGE.**

7.11 (a) A judgment establishing the intended parent's exclusive legal parentage shall be
 7.12 entered by the court administrator within five business days after issuance of a court order to
 7.13 that effect or after the following conditions are met:

7.14 (1) the attorneys representing both parties have complied with all of the certification
 7.15 requirements in section 257.91;

7.16 (2) one of the parties has filed with the court a petition to establish parentage; and

7.17 (3) after the birth of the child or children born through the gestational carrier arrangement,
 7.18 the attorneys for the parties file with the court administrator a joint affidavit of compliance
 7.19 with the certification requirements set forth in section 257.91.

7.20 (b) A judgment entered and docketed under this subdivision has the same effect and is
 7.21 subject to the same procedures, defenses, and proceedings as any other judgment in district
 7.22 court.

7.23 **Sec. 8. [257.93] EFFECT OF GESTATIONAL CARRIER'S SUBSEQUENT**
 7.24 **MARRIAGE.**

7.25 Subsequent marriage of the gestational carrier does not affect the validity of an existing
 7.26 gestational carrier contract, her legal spouse's consent to the contract is not required, and
 7.27 her legal spouse is not a presumed parent of the resulting child.

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

7.29 Except as provided in sections 257.86 to 257.97, no person is civilly or criminally liable
 7.30 for nonnegligent actions taken pursuant to the requirements of sections 257.86 to 257.97.
 7.31 This provision does not prevent liability or actions between or among the parties, including

8.1 actions brought by or on behalf of the child, based on negligent, reckless, willful, or
8.2 intentional acts that result in damages to any party.

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

8.4 Noncompliance by the gestational carrier or the intended parent or parents occurs if that
8.5 party breaches a provision of the gestational carrier contract or fails to comply with any of
8.6 the requirements in sections 257.86 to 257.97.

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

8.8 (a) In the event of noncompliance, as defined in section 257.95, a court of competent
8.9 jurisdiction shall determine the rights and obligations of the parties to any gestational carrier
8.10 agreement based on the other provisions of the Parentage Act, sections 257.51 to 257.75,
8.11 specifically including, but not limited to, the best interests of the child.

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

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

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

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

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

8.20 No action to invalidate a gestational carrier arrangement meeting the requirements of
8.21 section 257.87, paragraph (d), or to challenge the rights of parentage established under
8.22 section 257.87 and the Parentage Act, sections 257.51 to 257.75, may be commenced after
8.23 12 months from the date of birth of the child.

8.24 Sec. 14. **EFFECTIVE DATE.**

8.25 Sections 1 to 13 are effective for gestational carrier contracts entered into on or after
8.26 August 1, 2019.