

SENATE
STATE OF MINNESOTA
EIGHTY-NINTH SESSION

S.F. No. 1704

(SENATE AUTHORS: PAPPAS)

DATE	D-PG	OFFICIAL STATUS
03/12/2015		Introduction and first reading Referred to Health, Human Services and Housing

A bill for an act

relating to health; regulating the practice of gestational carrying; creating rights and duties; providing for damages; proposing coding for new law in Minnesota Statutes, chapter 257.

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

Section 1. **[257.86] DEFINITIONS.**

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

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

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

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

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

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

Subd. 7. **Gestational carrier.** "Gestational carrier" means a woman who enters into a gestational carrier arrangement.

Subd. 8. **Gestational carrier arrangement.** "Gestational carrier arrangement" means the process by which a woman attempts to carry and give birth to a child created through in vitro fertilization using the gamete or gametes procured or provided by the intended parents and to which the gestational carrier has made no genetic contribution.

2.1 Subd. 9. **Gestational carrier contract.** "Gestational carrier contract" means a
2.2 written agreement regarding a gestational carrier arrangement.

2.3 Subd. 10. **Health care provider.** "Health care provider" means a person who is
2.4 licensed to provide health care, including all medical, psychological, or counseling
2.5 professionals.

2.6 Subd. 11. **Intended parent.** "Intended parent" means a person who enters into
2.7 a gestational carrier contract with a gestational carrier prior to the initiation of the
2.8 pregnancy, pursuant to which the person will be the legal parent of the resulting child. In
2.9 the case of a married couple, any reference to an intended parent includes both parties
2.10 to the marriage for all purposes of sections 257.86 to 257.98 regardless of gender. This
2.11 term includes intended mothers, intended fathers, or both.

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

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

2.19 Subd. 14. **Mental health evaluation.** "Mental health evaluation" means an
2.20 evaluation by and consultation with a mental health professional conducted according to
2.21 the recommended guidelines published and in effect at the time of the evaluation by the
2.22 American Society for Reproductive Medicine and the American College of Obstetricians
2.23 and Gynecologists.

2.24 Subd. 15. **Physician.** "Physician" means a person licensed to practice medicine.

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

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

2.28 (b) In the case of a gestational carrier arrangement satisfying the requirements in
2.29 paragraph (d):

2.30 (1) the intended parent or parents are the parents of the child immediately upon the
2.31 birth of the child for purposes of state law;

2.32 (2) the child is considered the child of the intended parent or parents for purposes of
2.33 state law;

2.34 (3) parental rights vest in the intended parent or parents;

3.1 (4) sole custody, care, and control of the child rests solely with the intended parent
3.2 or parents immediately upon the birth of the child; and

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

3.5 (c) For a gestational carrier arrangement complying with paragraph (d), in the event
3.6 of a laboratory error in which the resulting child is not genetically related to either of the
3.7 intended parents, the intended parents are the parents of the child for purposes of state
3.8 law unless otherwise determined by a court of competent jurisdiction. An action under
3.9 this paragraph may only be brought by one or more of the genetic parents within 60
3.10 days of the child's birth.

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

3.13 (1) the gestational carrier satisfies the eligibility requirements in section 257.88,
3.14 subdivision 1;

3.15 (2) the intended parent or parents satisfy the eligibility requirements in section
3.16 257.88, subdivision 2; and

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

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

3.20 Subdivision 1. **Eligibility of gestational carrier.** A gestational carrier satisfies the
3.21 requirements of sections 257.86 to 257.98 if the carrier has met the following requirements
3.22 at the time the gestational carrier contract is executed:

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

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

3.25 (3) she is not genetically related to the child she will carry;

3.26 (4) she has completed a medical evaluation relating to the anticipated pregnancy and
3.27 provides a written statement from the examining physician stating that it is reasonably
3.28 likely that she can successfully carry a pregnancy to full term without any complications
3.29 that would threaten her health or the health of the resulting child;

3.30 (5) she has completed a mental health evaluation relating to the anticipated
3.31 gestational carrier arrangement;

3.32 (6) she has consulted with independent legal counsel regarding the terms of the
3.33 gestational carrier contract and the potential legal consequences of the gestational carrier
3.34 arrangement; and

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

4.9 Subd. 2. **Eligibility of intended parent or parents.** The intended parent or parents
 4.10 satisfy the requirements of sections 257.86 to 257.98 if the parent or parents have met the
 4.11 following requirements at the time the gestational carrier contract is executed:

4.12 (1) the parent or parents procure or provide the gametes that will ultimately result in
 4.13 an embryo that the gestational carrier will attempt to carry to term;

4.14 (2) the parent or parents require the services of the gestational carrier in order to
 4.15 have a child for medical or social reasons as evidenced by a qualified physician's affidavit
 4.16 attached to the gestational carrier contract;

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

4.19 (4) the parent or parents have consulted with independent legal counsel regarding
 4.20 the terms of the gestational carrier contract and the potential legal consequences of the
 4.21 gestational carrier arrangement.

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

4.24 Subdivision 1. **Enforceability.** A gestational carrier contract is enforceable in
 4.25 Minnesota if:

4.26 (1) it meets the contractual requirements in subdivision 2; and

4.27 (2) it contains at a minimum each of the terms in subdivision 3.

4.28 Subd. 2. **Contractual requirements.** A gestational carrier contract shall meet the
 4.29 following requirements:

4.30 (1) it must be in writing;

4.31 (2) it must be executed prior to the commencement of any medical procedures
 4.32 intended to initiate a pregnancy in furtherance of the gestational carrier arrangement,
 4.33 other than medical or mental health evaluations necessary to determine eligibility of
 4.34 the parties under section 257.88:

5.1 (i) by a gestational carrier meeting the eligibility requirements of section 257.88,
5.2 subdivision 1, and, if married, the gestational carrier's spouse; and

5.3 (ii) by the intended parent or parents meeting the eligibility requirements of section
5.4 257.88, subdivision 2. In the event an intended parent is married, both married intended
5.5 parents must execute the gestational carrier contract;

5.6 (3) both the gestational carrier and the intended parent or parents must be
5.7 represented by separate, independent counsel in all matters concerning the gestational
5.8 carrier arrangement and the gestational carrier contract;

5.9 (4) both the gestational carrier and the intended parent or parents must sign a written
5.10 acknowledgment of their receipt of information about the legal, financial, and contractual
5.11 rights, expectations, penalties, and obligations of the carrier agreement;

5.12 (5) if the gestational carrier contract provides for the payment of compensation to
5.13 the gestational carrier, the compensation must be placed in escrow with an independent
5.14 escrow agent prior to the gestational carrier's commencement of any medical procedure
5.15 intended to initiate a pregnancy other than medical or mental health evaluations necessary
5.16 to determine the gestational carrier's eligibility under section 257.88, subdivision 1; and

5.17 (6) it must be notarized or witnessed by two disinterested, competent adults.

5.18 Subd. 3. **Required terms.** A gestational carrier contract shall include the following
5.19 terms:

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

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

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

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

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

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

5.30 (3) the right of the gestational carrier to use the services of a physician of her
5.31 choosing, after consultation with the intended parent or parents, to provide her care during
5.32 the pregnancy subject only to any removal or replacement procedures that the parties
5.33 include in the terms of the gestational carrier contract; and

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

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

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

6.3 Subd. 4. **Enforceability of certain terms.** A gestational carrier contract is
6.4 enforceable in Minnesota even though it contains one or more of the following provisions:

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

6.8 (2) the gestational carrier's agreement to abstain from any activities that the
6.9 intended parent or parents or the physician providing prenatal care reasonably believes
6.10 to be harmful to the pregnancy and future health of the child, including but not limited
6.11 to smoking, drinking alcohol, using nonprescribed drugs, using prescription drugs
6.12 not authorized by a physician aware of the gestational carrier's pregnancy, exposure to
6.13 radiation, or any other activities proscribed by a health care provider;

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

6.16 (4) the agreement of the intended parent or parents to pay for or reimburse the
6.17 gestational carrier for reasonable expenses, including but not limited to medical, legal,
6.18 or other professional expenses related to the gestational carrier arrangement and the
6.19 gestational carrier contract.

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

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

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

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

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

6.32 Subdivision 1. **Establishment of parent-child relationship.** For purposes of the
6.33 Parentage Act in sections 257.51 to 257.75, the parent-child relationship that arises
6.34 immediately upon the birth of the child pursuant to section 257.87 is established if, prior

7.1 to or within three business days of the birth of a child born through a gestational carrier
7.2 arrangement, the attorneys representing both the gestational carrier and the intended
7.3 parent or parents provide their written certification that the parties entered into the
7.4 gestational carrier contract intending to satisfy the requirements of section 257.89 with
7.5 respect to the child.

7.6 Subd. 2. **Attorney certification.** (a) The attorney certifications required by
7.7 subdivision 1 shall be filed as required and on forms prescribed by the Department
7.8 of Health.

7.9 (b) The attorney certifications required by subdivision 1 must establish the parties'
7.10 compliance with the requirements of the Parentage Act in a manner consistent with the
7.11 requirements of the Parentage Act, if any.

7.12 (c) The attorney certifications required by subdivision 1 are effective for all purposes
7.13 if completed prior to or within three business days after the child's birth.

7.14 Subd. 3. **Birth records.** Upon compliance with the certification provisions of
7.15 this section, all hospital and state representatives or employees shall complete all birth
7.16 records and the original birth certificate of the child to reflect the intended parent or
7.17 parents, and only the intended parent or parents, as the child's parent or parents on the
7.18 records and certificate.

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

7.20 (a) A judgment establishing the intended parent's or parents' exclusive legal
7.21 parentage for all purposes shall be entered by the court administrator within five business
7.22 days after issuance of a court order to that effect or after the following conditions are met:

7.23 (1) the attorneys representing both parties have complied with the certification
7.24 requirements in section 257.91;

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

7.26 (3) the attorneys for the parties have filed with the court administrator a joint
7.27 affidavit of compliance with the certification requirements in section 257.91.

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

7.31 **Sec. 8. [257.93] EFFECT OF GESTATIONAL CARRIER'S SUBSEQUENT**
7.32 **MARRIAGE.**

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

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

8.5 Except as provided in sections 257.86 to 257.98, no person is civilly or criminally
8.6 liable for non-negligent actions taken pursuant to sections 257.86 to 257.98. This
8.7 provision does not prevent liability or actions between or among the parties, including
8.8 actions brought by or on behalf of the child, based on negligent, reckless, willful, or
8.9 intentional acts that result in damages to any party.

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

8.11 Noncompliance by the gestational carrier or the intended parent or parents occurs
8.12 if that party breaches a provision of the gestational carrier contract or fails to comply
8.13 with any of the requirements in sections 257.86 to 257.98, including but not limited to a
8.14 gestational carrier who is genetically related to the child.

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

8.16 (a) In the event of noncompliance, as defined in section 257.95, a court of competent
8.17 jurisdiction shall determine the rights and obligations of the parties to any surrogacy
8.18 agreement based solely on the other provisions of the Parentage Act in sections 257.51 to
8.19 257.75, including but not limited to the best interests of the child.

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

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

8.23 Except as expressly provided in the gestational carrier contract, the gestational carrier
8.24 and the intended parent or parents are entitled to all remedies available at law or equity.

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

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

8.30 Sec. 14. **EFFECTIVE DATE.**

9.1 Sections 1 to 13 are effective for gestational carrier contracts entered into on or
9.2 after August 1, 2015.