



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 02/05/04, by Barbara Flynn Currie

SYNOPSIS AS INTRODUCED:

New Act

750 ILCS 45/2.5 new

750 ILCS 45/6

from Ch. 40, par. 2506

Creates the Gestational Surrogacy Act. Provides guidelines for creating surrogacy contracts. Establishes the eligibility requirements for becoming a surrogate. Amends the Illinois Parentage Act of 1984. Changes the Section concerning the establishment of the parent and child relationship to include the provisions outlined in the Gestational Surrogacy Act.

LRB093 20774 LCB 46675 b

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 "Informed consent" means a voluntary decision to
4 participate in the medical procedures and contractual
5 obligations involved in the surrogacy contract after being
6 fully informed of the medical and psychological risks involved
7 and the legal, financial, and contractual rights,
8 expectations, penalties, and obligations.

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

16 "In vitro fertilization" means all medical and laboratory
17 procedures that are necessary to effectuate the extracorporeal
18 fertilization of egg and sperm.

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

21 "Mental health evaluation" means an evaluation and
22 consultation of a mental health professional meeting the
23 requirements of Section 60.

24 "Pre-embryo" means a fertilized egg prior to 14 days of
25 development.

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

29 Section 15. Rights of Parentage.

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

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

35 (1) the intended mother shall be the mother of the

1 child for purposes of State law immediately upon the birth
2 of the child;

3 (2) the intended father shall be the father of the
4 child for purposes of State law immediately upon the birth
5 of the child;

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

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

11 (5) sole custody of the child shall rest with the
12 intended parent or parents immediately upon the birth of
13 the child; and

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

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

24 (d) The parties to a gestational surrogacy shall assume the
25 rights and obligations of subsections (b) and (c) of this
26 Section if:

27 (1) the gestational surrogate satisfies the
28 eligibility requirements set forth in subsection (a) of
29 Section 20;

30 (2) the intended parent or parents satisfy the
31 eligibility requirements set forth in subsection (b) of
32 Section 20; and

33 (3) the gestational surrogacy occurs pursuant to a
34 gestational surrogacy contract meeting the requirements
35 set forth in Section 25.

1 Section 20. Eligibility.

2 (a) A gestational surrogate shall be deemed to have
3 satisfied the requirements of this Act if she has met the
4 following requirements at the time the gestational surrogacy
5 contract is executed:

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

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

8 (3) she has completed a medical evaluation;

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

10 (5) she has undergone legal consultation with
11 independent legal counsel regarding the terms of the
12 gestational surrogacy contract and the potential legal
13 consequences of the gestational surrogacy; and

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

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

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

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

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

36 (4) he, she, or they have undergone legal consultation

1 with independent legal counsel regarding the terms of the
2 gestational surrogacy contract and the potential legal
3 consequences of the gestational surrogacy.

4 Section 25. Requirements for a gestational surrogacy
5 contract.

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

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

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

12 (b) A gestational surrogacy contract shall meet the
13 following requirements:

14 (1) it shall be in writing;

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

20 (i) by a gestational surrogate meeting the
21 eligibility requirements of subsection (a) of Section
22 20 of this Act and, if married, the gestational
23 surrogate's husband; and

24 (ii) by the intended parent or parents meeting the
25 eligibility requirements of subsection (b) of Section
26 20 of this Act. In the event an intended parent is
27 married, both husband and wife must execute the
28 gestational surrogacy contract;

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

33 (4) if the gestational surrogacy contract provides for
34 the payment of compensation to the gestational surrogate,
35 the compensation shall have been placed in escrow with an

1 independent escrow agent prior to the gestational
2 surrogate's commencement of any medical procedure (other
3 than medical or mental health evaluations necessary to
4 determine the gestational surrogate's eligibility pursuant
5 to subsection (a) of Section 20 of this Act); and

6 (5) it shall be witnessed by 2 competent witnesses.

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

8 (1) the express agreement and informed consent of the
9 gestational surrogate to:

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

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

15 (2) if the gestational surrogate is married, the
16 express agreement and informed consent of her husband to:

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

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

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

27 (4) the express agreement and informed consent of the
28 intended parent or parents to:

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

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

33 (d) A gestational surrogacy contract shall be presumed
34 enforceable for purposes of State law even though it contains
35 one or more of the following provisions:

36 (1) the gestational surrogate's agreement to undergo

1 all medical exams, treatments, and fetal monitoring
2 procedures that the physician deems advisable for the
3 success of the pregnancy;

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

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

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

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

24 Section 30. Duty to support.

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

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

32 (c) A gamete donor may be liable for child support only if
33 he or she fails to enter into a legal agreement with the
34 intended parent or parents in which the intended parent or
35 parents agree to assume all rights and responsibilities for any

1 resulting child, and the gamete donor relinquishes his or her
2 rights to any gametes, resulting embryos, or children.

3 Section 35. Establishment of the parent-child
4 relationship.

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

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

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

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

25 Section 50. Effect of Noncompliance.

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

30 (b) There shall be no specific performance remedy available
31 for a breach by the gestational surrogate of a gestational
32 surrogacy contract term that requires her to be impregnated.

1 Section 55. Damages.

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

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

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

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

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

27 Section 75. Application. The provisions of this Act shall
28 apply only to gestational surrogacy contracts entered into
29 after the effective date of this Act.

30 Section 800. The Illinois Parentage Act of 1984 is amended

1 by changing Section 6 and by adding Section 2.5 as follows:

2 (750 ILCS 45/2.5 new)

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

7 (750 ILCS 45/6) (from Ch. 40, par. 2506)

8 Sec. 6. Establishment of Parent and Child Relationship by
9 Consent of the Parties.

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

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

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

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

34 (C) The intended ~~biological~~ mother certifies that

1 she provided or an egg donor donated the egg from which
2 the child being carried by the gestational surrogate
3 ~~mother~~ was conceived.

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

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

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

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

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

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

18 (c) A judicial or administrative proceeding to ratify
19 paternity established in accordance with subsection (a) is
20 neither required nor permitted.

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

28 (e) Once a parent and child relationship is established in
29 accordance with subsection (a), an order for support may be
30 established pursuant to a petition to establish an order for
31 support by consent filed with the clerk of the circuit court. A
32 copy of the properly completed acknowledgment of parentage form
33 shall be attached to the petition. The petition shall ask that
34 the circuit court enter an order for support. The petition may
35 ask that an order for visitation, custody, or guardianship be
36 entered. The filing and appearance fees provided under the

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

13 (Source: P.A. 91-308, eff. 7-29-99; 91-613, eff. 10-1-99;
14 92-16, eff. 6-28-01)