

SENATE
STATE OF MINNESOTA
NINETY-FIRST SESSION

S.F. No. 1152

(SENATE AUTHORS: BENSON, Hoffman, Anderson, B., Ruud and Jensen)

DATE	D-PG	OFFICIAL STATUS
02/14/2019	373	Introduction and first reading
		Referred to Health and Human Services Finance and Policy
04/04/2019	2159	Author added Jensen

- 1.1 A bill for an act
- 1.2 relating to children; regulating traditional and gestational surrogacy arrangements;
- 1.3 creating a crime to operate a for-profit surrogacy agency; proposing coding for
- 1.4 new law in Minnesota Statutes, chapter 257.
- 1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.6 Section 1. **[257.90] DEFINITIONS.**
- 1.7 Subdivision 1. **Scope.** The definitions in this section apply to sections 257.90 to 257.98.
- 1.8 Subd. 2. **Donor.** "Donor" means an individual who is not an intended parent who
- 1.9 contributes a gamete or gametes for the purpose of in vitro fertilization or implantation in
- 1.10 another.
- 1.11 Subd. 3. **Embryo.** "Embryo" means a fertilized egg prior to 14 days of development.
- 1.12 Subd. 4. **Embryo transfer.** "Embryo transfer" means all medical and laboratory
- 1.13 procedures that are necessary to effectuate the transfer of an embryo into the uterine cavity.
- 1.14 Subd. 5. **Gamete.** "Gamete" means either a sperm or an egg.
- 1.15 Subd. 6. **Gestational surrogacy arrangement.** "Gestational surrogacy arrangement"
- 1.16 means the process by which a woman who is not the intended parent attempts to carry and
- 1.17 give birth to a child created through in vitro fertilization using one or more gametes provided
- 1.18 by the intended parents.
- 1.19 Subd. 7. **Gestational surrogacy contract.** "Gestational surrogacy contract" means a
- 1.20 written agreement regarding a gestational surrogacy arrangement.

2.1 Subd. 8. **Gestational surrogate.** "Gestational surrogate" means a woman who
2.2 participates in a gestational surrogacy arrangement as the woman who carries the child to
2.3 term and gives birth to the child that is the subject of the surrogacy arrangement.

2.4 Subd. 9. **Intended parents.** "Intended parents" means a married couple, at least one of
2.5 whom contributes his or her own gamete to create the embryo implanted in the gestational
2.6 surrogate, who enters into an enforceable gestational surrogacy contract as defined in
2.7 subdivision 7, under which the married couple consents to be the legal parents of the child
2.8 or children resulting from in vitro fertilization.

2.9 Subd. 10. **In vitro fertilization.** "In vitro fertilization" means medical and laboratory
2.10 procedures that are necessary to effectuate the extracorporeal fertilization of egg and sperm.

2.11 Subd. 11. **Medical evaluation.** "Medical evaluation" means an evaluation by and in
2.12 consultation with a physician conducted according to the recommended guidelines published
2.13 and in effect at the time of the evaluation by the American Society for Reproductive Medicine
2.14 and the American College of Obstetricians and Gynecologists.

2.15 Subd. 12. **Mental health evaluation.** "Mental health evaluation" means an evaluation
2.16 by and consultation with a mental health professional, as defined in section 245.462,
2.17 subdivision 18, conducted according to the recommended guidelines published and in effect
2.18 at the time of the evaluation by the American Society for Reproductive Medicine and the
2.19 American College of Obstetricians and Gynecologists.

2.20 Subd. 13. **Physician.** "Physician" means a person currently licensed in good standing
2.21 as a physician under chapter 147.

2.22 Subd. 14. **Surrogacy agent.** "Surrogacy agent" means any person or entity who provides
2.23 the service of bringing together intended parents and potential gestational surrogates to
2.24 create gestational surrogacy arrangements. The term "surrogacy agent" does not include
2.25 licensed attorneys whose services are limited to the representation of the parties during the
2.26 creation and performance of the gestational surrogacy contract.

2.27 Subd. 15. **Traditional surrogacy arrangement.** "Traditional surrogacy arrangement"
2.28 means the process by which a woman attempts to carry and give birth to a child using her
2.29 own gametes and either the gametes of a person who intends to parent the child, or donor
2.30 gametes, when there is an agreement to relinquish the custody of and all rights and obligations
2.31 to the child upon the child's birth.

3.1 Sec. 2. [257.91] TRADITIONAL SURROGACY.

3.2 Traditional surrogacy arrangements and contracts related to traditional surrogacy
3.3 arrangements are invalid and parentage and custody shall remain with the woman who gave
3.4 birth to the child or children, regardless of any surrogacy arrangement, until she chooses to
3.5 terminate her parental rights.

3.6 Sec. 3. [257.92] GESTATIONAL SURROGACY.

3.7 (a) A gestational surrogacy contract consistent with the requirements of this section shall
3.8 be enforceable.

3.9 (b) A gestational surrogacy contract is not valid unless:

3.10 (1) the gestational surrogate and the intended parents are represented by separate legal
3.11 counsel in all matters concerning the gestational surrogacy arrangement and the gestational
3.12 surrogacy contract; and

3.13 (2) the gestational surrogate and the intended parents have signed a written
3.14 acknowledgment of their receipt of information about the legal, financial, and contractual
3.15 rights, expectations, penalties, and obligations of the surrogacy agreement.

3.16 (c) A gestational surrogacy contract must be:

3.17 (1) in writing;

3.18 (2) executed prior to the commencement of any medical procedures intended to initiate
3.19 a pregnancy in furtherance of the gestational surrogacy arrangement, other than medical or
3.20 mental health evaluations necessary to determine eligibility of the parties under section
3.21 257.94;

3.22 (3) signed by both intended parents, the gestational surrogate, and the gestational
3.23 surrogate's spouse, if any; and

3.24 (4) notarized or witnessed by two disinterested competent adults.

3.25 (d) A gestational surrogacy contract must include:

3.26 (1) the express written agreement of the intended parents to accept custody of the resulting
3.27 child or children upon the child's or children's birth regardless of number, sex, or mental or
3.28 physical condition, and to assume sole responsibility for the support of the child or children
3.29 upon the birth of the child or children;

4.1 (2) estate planning documents executed by the intended parents providing for care and
4.2 custody of the child or children in the event the intended parents predecease the child or
4.3 children;

4.4 (3) information disclosing how each intended parent will cover the expenses of the
4.5 surrogate and the medical expenses of the child, and if health care coverage is used to cover
4.6 the medical expenses, the disclosure must include a summary of the health care policy
4.7 provisions related to coverage for surrogate pregnancy, including any possible liability of
4.8 the surrogate, third-party liability liens, other insurance coverage, and any notice requirement
4.9 that could affect coverage or liability of the surrogate;

4.10 (4) a requirement that the embryo transfer be a single-embryo transfer;

4.11 (5) the express written agreement of the gestational surrogate to undergo embryo transfer,
4.12 attempt to carry and give birth to the child, and surrender custody of all resulting children
4.13 to the intended parents upon the birth of the child or children;

4.14 (6) if the gestational surrogate is married, the express agreement of the gestational
4.15 surrogate's spouse to support, facilitate, and be jointly bound by the obligations imposed
4.16 on the gestational surrogate pursuant to the terms of the gestational surrogacy contract and
4.17 to surrender custody of all resulting children to the intended parents upon the birth of the
4.18 resulting child or children, except as provided in paragraph (g);

4.19 (7) the right of the gestational surrogate to choose her own physician;

4.20 (8) a requirement that the gestational surrogate be provided a list of potential risks and
4.21 side effects for hormone treatment and pregnancy with a nongenetically related child; and

4.22 (9) that a right created under a surrogacy agreement is not assignable and there is no
4.23 third-party beneficiary of the agreement other than the child.

4.24 (e) A gestational surrogacy contract is enforceable in Minnesota even though it contains
4.25 one of the following provisions:

4.26 (1) the gestational surrogate's agreement to undergo all medical examinations, treatments,
4.27 and fetal monitoring that her physician recommends for the success of the pregnancy;

4.28 (2) the gestational surrogate's agreement to abstain from any activities that her physician
4.29 reasonably believes to be harmful to the pregnancy and future health of the child, including
4.30 but not limited to smoking, drinking alcohol, using drugs not prescribed or illegal drugs,
4.31 using prescription drugs not authorized by a physician aware of the gestational surrogate's
4.32 pregnancy, exposure to radiation, or any other activities prescribed by a licensed physician,
4.33 mental health professional, physician assistant, or midwife; and

5.1 (3) the agreement of the intended parents to pay for or reimburse the gestational surrogate
5.2 for reasonable expenses incurred related to the gestational surrogacy arrangement and the
5.3 gestational surrogacy contract.

5.4 (f) Gestational surrogacy contracts that include the following terms are invalid and
5.5 unenforceable, and the gestational surrogate is not liable for damage:

5.6 (1) limits on the gestational surrogate's ability to make medical decisions during the
5.7 pregnancy;

5.8 (2) a requirement that the gestational surrogate consent to the termination of a pregnancy
5.9 or selective reduction of a fetus or fetuses during pregnancy;

5.10 (3) a limit on the recovery of expenses for the gestational surrogate based on the live
5.11 birth, or terms that prevent a gestational surrogate from recovering costs when a pregnancy
5.12 is not successful; or

5.13 (4) terms that provide for compensation of the gestational surrogate beyond actual
5.14 expenses.

5.15 (g) For the purposes of this section, "compensation" means payment of money, objects,
5.16 services, or anything else with monetary value in exchange for participating in the gestational
5.17 surrogacy arrangement. Compensation shall not include reimbursement of actual expenses
5.18 incurred by the gestational surrogate related to the gestational surrogacy arrangement,
5.19 including medical insurance, life insurance, cost of medical care, legal expenses, travel
5.20 expenses, cost of clothing, and payment provided to the gestational surrogate or her family
5.21 in the event of the gestational surrogate's death or permanent disability.

5.22 (h) If the gestational surrogate marries after the gestational surrogacy contract has been
5.23 signed, there is no effect on an existing gestational surrogate contract, the gestational
5.24 surrogate's spouse's consent to the contract is not required, and the gestational surrogate's
5.25 spouse is not a presumed parent of the resulting child.

5.26 (i) Any party to the gestational surrogacy contract may invalidate the contract at any
5.27 time prior to implantation of the embryo for any reason or no reason and is not liable for
5.28 damages. Except in cases involving fraud, neither a gestational surrogate nor the surrogate's
5.29 spouse or former spouse, if any, is liable to the intended parent or parents for a penalty or
5.30 liquidated damages, for terminating a gestational surrogacy agreement under this section.

5.31 **EFFECTIVE DATE.** This section is effective August 1, 2019, and applies to all
5.32 gestational surrogacy contracts entered into on or after that date.

6.1 Sec. 4. [257.93] ELIGIBILITY.

6.2 Subdivision 1. Surrogate. A woman is eligible to serve as a gestational surrogate if, at
6.3 the time the gestational surrogacy contract is executed, the woman:

6.4 (1) is a United States citizen or legal resident;

6.5 (2) is at least 21 years of age;

6.6 (3) has given birth to a live child prior to the surrogacy arrangement;

6.7 (4) has completed a medical evaluation relating to the anticipated pregnancy and provides
6.8 a written statement from the examining physician that states that it is reasonably likely that
6.9 she can successfully carry a pregnancy to full term without any complications that would
6.10 threaten the health of the gestational surrogate or resulting child;

6.11 (5) is represented by independent legal counsel regarding the terms of the gestational
6.12 surrogacy contract and the potential legal consequences of the gestational surrogacy contract;

6.13 (6) has completed a mental health evaluation relating to the anticipated gestational
6.14 surrogacy arrangement and provided a written summary by the examining psychological
6.15 professional to the intended parents;

6.16 (7) has completed a criminal background check and provided the results to the intended
6.17 parents;

6.18 (8) is financially secure, meaning the gestational surrogate's household, excluding a
6.19 homestead mortgage and automobile loan payments, has less than \$10,000 of debt at the
6.20 time of the creation of the gestational surrogacy contract;

6.21 (9) is not on any form of public assistance; and

6.22 (10) has obtained, or obtains prior to the embryo transfer, a health insurance policy that
6.23 covers major medical treatments and hospitalization and extends throughout the duration
6.24 of the expected pregnancy and for eight weeks after the birth of the child; the policy may
6.25 be procured by the intended parents on behalf of the gestational surrogate pursuant to the
6.26 gestational surrogate contract or the intended parents may self-insure by depositing sufficient
6.27 funds into escrow to pay for all reasonably expected medical expenses prior to the date of
6.28 the first embryo transfer.

6.29 Subd. 2. Intended parent. To be eligible to participate in a gestational surrogacy
6.30 arrangement and execute a gestational surrogacy contract, the intended parents must:

6.31 (1) be United States citizens or legal residents;

- 7.1 (2) be at least 21 years of age;
- 7.2 (3) have been married at least two years prior to the execution of the gestational surrogacy
7.3 contract;
- 7.4 (4) require the services of the gestational surrogate to have a child as evidenced by a
7.5 qualified physician's affidavit attached to the gestational surrogacy contract that the intended
7.6 parents are unable to conceive or carry a child to term;
- 7.7 (5) have provided a gamete for the child from at least one of the intended parents;
- 7.8 (6) have completed a mental health evaluation relating to the anticipated gestational
7.9 surrogacy arrangement and provided a written summary by the examining psychological
7.10 professional to the gestational surrogate;
- 7.11 (7) be represented by independent legal counsel regarding the terms of the gestational
7.12 surrogacy contract and the potential legal consequences of the gestational surrogacy contract;
- 7.13 (8) have completed a criminal background check and provided the results to the
7.14 gestational surrogate; and
- 7.15 (9) have an estate planning document prior to the embryo transfer providing for custody
7.16 and care of the child in the event the intended parents predecease the child.

7.17 **Sec. 5. [257.94] RIGHTS OF PARENTAGE.**

- 7.18 (a) When a gestational surrogacy arrangement satisfies the requirements of sections
7.19 257.92 and 257.93, then:
- 7.20 (1) the intended parents are the parents of the child for purposes of state law upon the
7.21 birth of the child;
- 7.22 (2) the child is considered the child of the intended parents for purposes of state law;
- 7.23 (3) parental rights vest in the intended parents;
- 7.24 (4) sole custody, care, and control of the child shall rest solely with the intended parents
7.25 upon the birth of the child; and
- 7.26 (5) upon the birth of the child, neither the gestational surrogate nor spouse, if any, is the
7.27 parent of the child for purposes of state law.
- 7.28 (b) In gestational surrogacy arrangements in which the gestational surrogacy contract
7.29 is invalid and unenforceable, parentage and custody shall remain with the woman who gave
7.30 birth to the child or children until she chooses to terminate her parental rights.

8.1 **EFFECTIVE DATE.** This section is effective August 1, 2019, and applies to all
8.2 gestational surrogacy contracts entered into on or after that date.

8.3 Sec. 6. **[257.95] PARENTAGE; DUTY TO SUPPORT.**

8.4 Subdivision 1. **Parentage.** (a) For purposes of the Parentage Act, sections 257.51 to
8.5 257.75, the parent-child relationship that arises upon the birth of the child under section
8.6 257.94 is established if, no later than five business days after the birth of a child born through
8.7 a gestational surrogacy arrangement, the attorneys representing both the gestational surrogate
8.8 and the intended parents provide joint written certification that:

8.9 (1) the parties entered into a valid gestational surrogacy contract under this chapter; and

8.10 (2) the provisions of the gestational surrogacy contract have been satisfactorily performed
8.11 by the parties.

8.12 (b) The attorney certifications required by paragraph (a) shall be filed on a form prescribed
8.13 by the Department of Health, which shall include the names of the parties to the surrogacy
8.14 arrangement, including the child, as well as demographic data regarding the intended parents
8.15 and the gestational surrogate so that (1) the department may conduct studies of gestational
8.16 surrogacy arrangements, and (2) the department may release to children born of surrogacy
8.17 the identity of the gestational surrogate when the child reaches the age of maturity. The
8.18 personal data of the parties is considered private for the purposes of public records requests.
8.19 The attorney certifications required by paragraph (a) must establish the parties' compliance
8.20 with all of the requirements of sections 257.51 to 257.75 in a manner consistent with the
8.21 requirements of sections 257.51 to 257.75, if any.

8.22 (c) The attorney certifications required by paragraph (a) must be completed no later than
8.23 five business days after the child's or children's birth. When the attorney certifications
8.24 required by paragraph (a) are completed, all hospital and state representatives or employees
8.25 shall complete the original birth certificate of the child or children to reflect the intended
8.26 parents, and only the intended parents, as the child's or children's parents. Health and birth
8.27 records related to the surrogacy arrangement, other than the birth certificate, shall contain
8.28 the identity of the gestational surrogate.

8.29 Subd. 2. **Duty to support.** (a) A person who is considered to be the parent of the child
8.30 under this section is obligated to support the child. A breach of the gestational surrogacy
8.31 contract by the intended parents does not relieve the intended parents of the support obligation
8.32 imposed by section 257.94.

9.1 (b) A gamete donor is not a parent if the donor has waived any and all rights to the
9.2 donated gametes and any resultant embryos or children, in a record between the donor and:

9.3 (1) a medical or other storage facility; or

9.4 (2) the intended parents, whether the donor is anonymous or is known to the intended
9.5 parents.

9.6 (c) If the requirements of this section are met, a donor is not obligated to pay child
9.7 support for a child born from the donor's gamete donation.

9.8 Subd. 3. **Entry of judgment of parentage.** (a) A judgment establishing the intended
9.9 parents' exclusive legal parentage shall be entered by the court administrator within five
9.10 business days after issuance of a court order to that effect or after the following conditions
9.11 are met:

9.12 (1) the attorneys representing both parties have complied with the certification
9.13 requirements in subdivision 1;

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

9.15 (3) after the birth of the child or children born through the gestational surrogacy
9.16 arrangement, the attorneys for the parties file with the court administrator a joint affidavit
9.17 of compliance with the certification requirements set forth in subdivision 1.

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

9.21 Subd. 4. **Parentage of deceased intended parent.** This section applies to an intended
9.22 parent even if the intended parent died during the period between the transfer of a gamete
9.23 or embryo and the birth of the child. An intended parent is not a parent of a child conceived
9.24 by assisted reproduction under a gestational surrogacy agreement if the intended parent dies
9.25 before the transfer of a gamete or embryo.

9.26 **EFFECTIVE DATE.** This section is effective August 1, 2019, and applies to all
9.27 gestational surrogacy contracts entered into on or after that date.

9.28 Sec. 7. **[257.96] BREACH; DAMAGES.**

9.29 Subdivision 1. **Breach of surrogacy contract.** A breach of the surrogacy contract occurs
9.30 if the gestational surrogate or the intended parent or parents fails to comply with a provision
9.31 of the surrogacy contract or the requirements in sections 257.92 to 257.95.

10.1 Subd. 2. **Specific performance prohibited.** If the surrogacy contract is breached, a
10.2 court of competent jurisdiction shall determine the rights and obligations of the parties to
10.3 any gestational surrogacy contract based on the other provisions of the Parentage Act,
10.4 sections 257.51 to 257.75, specifically including but not limited to the best interests of the
10.5 child. The remedy of specific performance is not available for a breach of a gestational
10.6 surrogacy contract by the gestational surrogate.

10.7 Subd. 3. **Damages.** Except as expressly provided in the gestational surrogacy contract
10.8 or sections 257.92 to 257.95, the intended parents and the gestational surrogate are entitled
10.9 to all remedies available at law or equity. Any action arising from a surrogacy contract must
10.10 be brought within two years from the date of the birth of the child that was the result of the
10.11 surrogacy arrangement.

10.12 Subd. 4. **Immunity; negligence.** Except as provided in sections 257.90 to 257.98, no
10.13 person is civilly or criminally liable for nonnegligent actions taken pursuant to the
10.14 requirements of sections 257.90 to 257.97. This provision does not prevent liability or
10.15 actions between or among the parties, including actions brought by or on behalf of the child,
10.16 based on negligent, reckless, willful, or intentional acts that result in damages to any party.

10.17 **EFFECTIVE DATE.** This section is effective August 1, 2019, and applies to all
10.18 gestational surrogacy contracts entered into on or after that date.

10.19 Sec. 8. **[257.97] FOR-PROFIT SURROGACY AGENTS PROHIBITED.**

10.20 (a) It shall be unlawful for any individual or unincorporated association to accept
10.21 compensation for recruiting or procuring surrogates, or to accept compensation for otherwise
10.22 arranging or inducing intended parents and surrogates to enter into surrogacy contracts in
10.23 this state. All surrogacy agents operating in Minnesota and formed as corporations must be
10.24 formed as nonprofit corporations under chapter 317A. Surrogacy agencies formed as
10.25 nonprofit corporations shall be licensed by the Department of Human Services. Surrogacy
10.26 agents formed as corporations under chapter 317A may receive compensation for facilitating
10.27 a gestational surrogacy arrangement.

10.28 (b) A violation of this section shall be punishable as a felony with a prison sentence of
10.29 up to two years and a fine of \$25,000.

10.30 (c) Any person who acts as a surrogacy agent in violation of this section shall also be
10.31 liable to all the parties to the gestational surrogacy contract in an amount equal to three
10.32 times the amount of compensation to have been paid to the agent pursuant to the contract.
10.33 One-half of the damages under this paragraph shall be due to (1) the gestational surrogate

11.1 and (2) the gestational surrogate's spouse, if any, if the spouse is a party to the contract.

11.2 One-half of the damages under this paragraph shall be due to the intended parents. An action

11.3 under this section must be brought within five years of the date of the contract.

11.4 (d) This section does not apply to the services of an attorney who gives legal advice

11.5 relating to a surrogacy contract or prepares a surrogacy contract, provided that the attorney

11.6 does not also serve as a surrogacy agent.

11.7 **Sec. 9. [257.98] GESTATIONAL SURROGACY DATA COLLECTION.**

11.8 The Department of Health shall collect aggregate data related to surrogacy, as described

11.9 in section 257.95. Health care professionals who perform in vitro fertilization and embryo

11.10 transfer procedures for gestational surrogacy arrangements shall report to the Department

11.11 of Health data on the use of gestational surrogacy, including the number of in vitro

11.12 procedures, embryo transfers, and live births connected to surrogacy arrangements, as well

11.13 as the health of children born via surrogacy arrangements.

11.14 **EFFECTIVE DATE.** This section is effective August 1, 2019, and applies to all

11.15 gestational surrogacy contracts entered into on or after that date.