



New York state, long a holdout against legalizing surrogacy, overturns ban

April 3, 2020, 9:04 PM CEST / Updated April 4, 2020, 3:02 AM CEST
By Elizabeth Chuck

New York state is overturning its long-held ban on paid surrogacy, “a bright spot for New York families in these difficult times,” said the co-sponsor of the bill.

The legislation was approved Thursday and was one of many non-fiscal measures included in the state budget passed amid the [coronavirus pandemic](#), which has [hit New York](#) harder than any state in the United States. The budget included a grim prediction for the effects of the coronavirus, with state tax revenues estimated to fall by at least \$10 billion.

Among the other measures included in the budget were modifications to last year’s bail reform law, enacting paid sick leave and outlawing the “pink tax” — charging more for versions of consumer goods that are specifically marketed at or aimed toward women, such as razors or shampoos.

Commercial gestational surrogacy — the practice of paying a woman to carry a child that is not biologically related to her — is currently legal, or not expressly prohibited, in every state except New York, Louisiana and Michigan. The bill passed on Friday means New York will allow residents to enter into paid surrogacy contracts as of Feb. 15, 2021.

“Today, we bring New York law in line with the needs of modern families, while simultaneously enacting the strongest protections in the nation for surrogates,” said co-sponsor of the bill Assemblywoman Amy Paulin, a Democrat from Westchester County, north of New York City, who first began working on getting New York to legalize surrogacy in 2006 and introduced the first version of the legislation in 2012.

As someone who struggled with infertility when attempting to conceive her second child, Paulin said she knew well the pain of wanting to expand one's family but not being able to.

“This law will allow families to avoid much of that pain by giving them the opportunity to have a family in New York and not travel around the country, incurring exorbitant costs simply because they want to be parents,” Paulin said in a statement.

The law gives the strongest protections in the nation to surrogates, Paulin said. A surrogate must be at least 21 and the intended parents — those who will raise the child — must pay for legal counsel for their surrogate, plus for a surrogate's health and life insurance during the pregnancy and a year after their surrogate gives birth.

Melissa Brisman, a reproductive lawyer in New Jersey who runs one of the largest [gestational surrogacy agencies](#) in the United States, praised New York for finally ending its ban but said some of the law's provisions were unusual. She did not know of another state that required intended parents to continue to pay for insurance for their surrogates for up to a year after birth.

"It's a great step forward, but there are some complicating factors."

"It's a great step forward, but there are some complicating factors," she said. Surrogacy already comes with an eye-popping price tag of \$80,000 to \$250,000, which includes a minimum compensation of \$35,000 for the surrogate, Brisman said. Adding a year's worth of health and life insurance afterward would raise that price, she said.

Still, Brisman said, this law "helps single women, single men, gay couples, unmarried couples. This law does have some limitations but it helps anybody who wants to use a gestational carrier."

New York's long-held resistance stems from a tumultuous surrogacy battle in neighboring New Jersey, known as the Baby M case. In 1985, a woman who was struggling financially, Mary Beth Whitehead, agreed to be a surrogate and be inseminated with sperm from William Stern, a man whose wife had multiple sclerosis, for \$10,000.

When the girl, referred to as Baby M in court papers, was born, Whitehead [changed her mind](#) and decided she wanted to give back the money and keep the baby — half of whose DNA was hers. A protracted legal battle followed and the child was eventually given to the Sterns, with the New Jersey Supreme Court ruling in 1988 that paying women to bear children was illegal and "potentially degrading."

Since then, nearly all surrogacies in America have been gestational, meaning they use a donor egg — either from the woman who will raise the child or from an outside donor — rather than the carrier's egg, to avoid a similar legal quagmire.

While the new surrogacy provision affects a specific subset of women and families, the ban on "pink tax" will have broad-reaching effects. Any business that engages in gender-based price discrimination will be subject to civil penalties.

"Pink tax" is a moniker that is sometimes used interchangeably with "tampon tax," or state taxation on women's menstrual products. But the two are not the same, said Jennifer Weiss-Wolf, vice president for the Brennan Center for Justice at NYU School of Law and co-founder of [Period Equity](#), a menstrual policy organization.

New York state eliminated its tampon tax in 2016; 30 states still tax menstrual products, though another, Utah, is revisiting its 2019 passage of an exemption, according to Weiss-Wolf. Late Friday afternoon, Wash. Gov. Jay Inslee [signed legislation to exempt menstrual products](#) from sales tax in his state, effective July 1.

The "pink tax" is "basically gender-based price gouging," she said, and is not a form of sales tax.

In 2015, the New York City Department of Consumer Affairs [published a study](#) comparing nearly 800 products from 91 brands and found that on average, products for women or girls cost 7 percent more than comparable products for men and boys, including toys and clothing.

"It is a relief to see gender equity being taken seriously in core budgetary and legislative reforms that have long been called for," Weiss-Wolf said, adding that as the coronavirus takes an economic toll on society, banning pricing discrimination will be more important than ever.

"Inequalities are going to be exacerbated in times of crisis," she said. "This is the time to ensure we are doubling down on equality, in this case, gender inequality."



Elizabeth Chuck

Elizabeth Chuck is a reporter for NBC News.