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## Wyoming Has Its First Surrogacy Law, For Better And For Worse

**Huge positive points to Wyoming for recognizing that surrogacy is a viable path to parenthood and that intended mothers to children born by surrogacy should not be in a worse position than intended fathers.**

By [Ellen Trachman](#)

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(Image via Getty)

Janell Donley and her husband are residents of Worland, Wyoming. They faced a tough path to parenthood after learning that Donley was unable to carry a pregnancy. They were grateful when Donley's sister-in-law, also a Wyoming resident, volunteered to be their surrogate.

However, Donley was surprised and frustrated to learn from her attorney that while her husband could be named directly on their child's birth certificate without legal action, Donley herself would need to adopt her own genetic child. It seemed sexist, and more than just a little unfair. Donley describes waking up in the middle of the night thinking that she had to do something to fix the situation. She reached out to her local state legislator Republican [Rep.](#)

[Mike Greear](#). Greear listened to Donley’s story and was in complete agreement. The legal situation in Wyoming wasn’t working for intended mothers who grew their families through surrogacy. He would help.

Greear introduced a bill to make it so that intended mothers in a surrogacy arrangement should be named on the birth certificate; just like intended fathers. After facing a few bumps in the road and a couple of amendments, [HB0073 – Birth certificates-gestational agreements](#) was passed and signed into law on April 5, 2021.

**Complaints.** Greear, an amiable business owner and ex-practicing lawyer himself, generously took the time to talk to me about the law. He even graciously fielded a few of my criticisms:

- **One-Year Wyoming residency requirement.** The new law requires that intended parents “have been residents of the state of Wyoming for not less than one (1) year immediately preceding the date of the gestational agreement.” Meaning that a hopeful couple across the Wyoming border in say, Fort Collins, Colorado, would not be able to enter into a surrogacy arrangement with a friend or family member in Wyoming and rely on the new law. Greear explained that there was a concern voiced that Wyoming could become a destination for non-Wyoming residents to come for surrogacy. Greear’s focus was to protect Wyoming families.

Of course, Wyoming isn’t the first to have the fear of outsiders flocking to the state for surrogacy if a surrogacy-supportive law was passed. When New York’s Child-Parent Security Act went into effect on February 15, 2021, it contained a 6-month residency requirement for at least one of the intended parents. But Wyoming and New York are definitely outliers in the United States to include such a limitation.

- **Old-fashioned requirements.** The new law specifically defines “intended parents” as “two (2) persons who enter into a gestational agreement with a gestational carrier,” and provides that the intended parents of the child born under the gestational agreement “shall be deemed to be the mother and father” of the child. An [amendment](#) was proposed, but rejected, to delete the “two (2)” parent requirement and change “mother and father” to “parents.” Greear explained that, of course, politics shaped the outcome of the proposed amendment, resulting in the ultimate language, which isn’t exactly friendly to same-sex couples or single folks.
- **Inscrutable compensation limitation.** Whether a gestational carrier can or should be permitted to receive compensation for being a surrogate for others has long been a worldwide debate. Some countries, such as Canada, England, and Belgium, permit surrogacy, but prohibit compensation of the surrogate, permitting only reimbursement for expenses in varying degrees of strictness. A number of U.S. states previously prohibited compensation of surrogates (including the states of New York and Washington) but have reversed that stance, now permitting compensation of surrogates by law. The one exception is Michigan. Michigan [advocacy](#) to change the law is alive and well, but, for the time being, compensated surrogacy in Michigan continues to be not just invalid as a contractual matter but actually criminalized.

Wyoming took an interesting route, with the new law requiring that “Compensation is limited to expenses related to prenatal care, delivery of the child and any other costs including the cost of lost opportunity that are directly connected to the pregnancy.” The “any other costs” seems pretty broad, but even Greear was not entirely clear what ultimately would be

considered in or out of bounds. Maternity clothes allowance? Probably safe. Fees for starting medications related to the surrogacy or undergoing an embryo transfer? Maybe. Prenatal child support? Who knows.

**Maybe not so bad?** The new law is specific to birth certificates and those arrangements that fall within narrow particulars described in the law. While the new law does not include single parents, same-sex couples, or intended parents residing outside of Wyoming, it also does not expressly exclude them. And, in fact, provides that this “act is not intended to alter the rights and legal status of any person or unborn child not specifically addressed by the provisions of this act.” So, in theory, that leaves all those families not within the language of the statute just back where they were without the new law — at the discretion of the judiciary, with little statutory guidance.

Huge positive points to Wyoming for recognizing that surrogacy is a viable path to parenthood and that intended mothers to children born by surrogacy in Wyoming should not be in a worse position than intended fathers. Kudos to Donley and Greear for seeing a problem and taking action to fix it. Of course, there is room for (significant) improvement.



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