

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 440*
Judiciary I Committee Substitute Adopted 5/12/09

Short Title: Establish Gestational Surrogacy Agreements.

(Public)

Sponsors:

Referred to:

March 9, 2009

1 A BILL TO BE ENTITLED
2 AN ACT ESTABLISHING LAWS PERTAINING TO GESTATIONAL SURROGACY
3 AGREEMENTS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. The North Carolina General Statutes are amended by adding a new
6 Chapter to read:

7 **"Chapter 52D.**

8 **"Gestational Surrogacy Agreements.**

9 **"§ 52D-1. Definitions.**

10 The following definitions apply in this Chapter:

- 11 (1) Assisted reproduction. – A method of causing pregnancy through a medical
12 procedure, including intrauterine insemination, in vitro fertilization and
13 transfer of embryos, and intracytoplasmic sperm injection. The term does not
14 include pregnancy caused by sexual intercourse.
15 (2) Donor. – An individual who produces eggs or sperm used for assisted
16 reproduction, whether or not for consideration. The term does not include a
17 gestational carrier or an intended parent.
18 (3) Gestational carrier. – A woman, not an intended parent, who enters into a
19 gestational surrogacy agreement to bear a child, whether or not she has any
20 genetic relationship to the resulting child. The gestational carrier must be at
21 least 21 years of age and have given birth to at least one child. For purposes
22 of this definition, both a traditional surrogate and a gestational surrogate are
23 gestational carriers.
24 (4) Gestational surrogacy agreement. – A contract between the intended parents
25 and a gestational carrier that complies with G.S. 52D-2.
26 (5) Gestational surrogate. – A woman into whom an embryo, formed using eggs
27 other than her own, is transferred.
28 (6) Intended parents. – The married couple who manifest the intent in a
29 gestational surrogacy agreement to be legally bound as the mother and father
30 of a child resulting from assisted reproduction.
31 (7) Traditional surrogate. – A woman who undergoes fertilization and
32 insemination of her own eggs.

33 **"§ 52D-2. Gestational surrogacy agreement authorized.**

34 (a) A gestational carrier, her spouse if she is married, and the intended parents may
35 enter into a written agreement for gestational surrogacy if all of the following apply:

- 36 (1) The gestational carrier agrees to pregnancy by means of assisted
37 reproduction.



- 1 (2) The gestational carrier and her spouse, if she is married, agree to relinquish
2 all rights and duties as the parents of a child conceived through assisted
3 reproduction at the time the order is entered under G.S. 52D-4.
- 4 (3) All donors agree to relinquish all rights and duties as the parent of a child
5 conceived through assisted reproduction at the time the order is entered
6 under G.S. 52D-4.
- 7 (4) The intended parents will become the parents of the child conceived through
8 assisted reproduction immediately upon the birth of that child.
- 9 (b) A gestational surrogacy agreement shall be in writing and acknowledged by all
10 parties before a notary public.
- 11 (c) A gestational surrogacy agreement is enforceable only if validated by a court as
12 provided in G.S. 52D-3 before the gestational carrier becomes pregnant.
- 13 (d) A gestational surrogacy agreement may provide for payment of reasonable
14 consideration, subject to the limitations of G.S. 52D-9.
- 15 (e) A gestational surrogacy agreement may not limit the right of the gestational carrier
16 to make decisions to safeguard her health or the health of the embryo or fetus. However, a
17 gestational surrogacy agreement may include either or both of the following provisions:
- 18 (1) An agreement by the gestational carrier to undergo all medical examinations,
19 treatments, and fetal monitoring procedures that a physician recommends for
20 the success of the pregnancy.
- 21 (2) An agreement by the gestational carrier to abstain from activities that the
22 intended parents or the physician believes to be harmful to the pregnancy
23 and future health of the child, including smoking, drinking alcohol, using
24 drugs not authorized by a physician aware of the pregnancy, exposure to
25 radiation, or any other activity proscribed by a health care provider.

26 **"§ 52D-3. Petition to validate agreement.**

- 27 (a) The intended parents and the gestational carrier may commence a proceeding in
28 district court to validate a gestational surrogacy agreement if at least one of the petitioners has
29 been a resident of this State for at least 90 days immediately preceding the filing of the petition.
- 30 (b) If the gestational carrier is married, her spouse shall be joined in the proceeding.
- 31 (c) The district court proceeding is commenced by the filing of a verified petition by the
32 intended parents and the gestational carrier. A copy of the gestational surrogacy agreement
33 shall be attached to the petition. Civil court costs shall be assessed against the petitioners.
- 34 (d) Upon the filing of the petition, the clerk of court shall schedule a hearing before a
35 district court judge as soon as possible. At least 10 days' notice of hearing shall be given to all
36 persons, if any, who are parties to the gestational agreement but are not joined as petitioners in
37 the proceeding. The notice of hearing shall be in accordance with G.S. 1A-1, Rule 5 of the
38 North Carolina Rules of Civil Procedure. No service of process or notice of hearing is
39 otherwise required.

40 **"§ 52D-4. Hearing to validate gestational surrogacy agreement.**

- 41 (a) The court may issue an order validating the gestational surrogacy agreement if, after
42 hearing testimony from each party to the gestational surrogacy agreement and considering any
43 other relevant evidence, the court finds:
- 44 (1) The requirements of G.S. 52D-2 and G.S. 52D-3 have been satisfied and the
45 parties have submitted to the jurisdiction of the court.
- 46 (2) Both the intended parents and the gestational carrier, independently, have
47 consulted legal counsel and been advised regarding the terms of the
48 gestational surrogacy agreement and the potential legal consequences of the
49 gestational surrogacy agreement.

1 (3) All parties have voluntarily entered into the agreement and understand its
2 terms and all parties continue to agree to all the terms of the gestational
3 surrogacy agreement.

4 (4) All donors, if any, have relinquished all rights and duties as parents of the
5 child to be conceived through assisted reproduction.

6 (5) Adequate provision has been made for all health care expenses associated
7 with the gestational surrogacy agreement until the birth of the child and for a
8 reasonable time thereafter, including responsibility for those expenses if the
9 agreement is terminated.

10 (6) The consideration, if any, paid or to be paid to the gestational carrier is
11 reasonable, in accordance with G.S. 52D-9.

12 (7) Each party understands the procedure for termination of the gestational
13 surrogacy agreement pursuant to G.S. 52D-5 and the consequences of
14 terminating the agreement.

15 (b) If the requirements of subsection (a) of this section are satisfied, a court shall issue
16 an order validating the gestational surrogacy agreement and declaring that the intended parents
17 will be the only parents of a child born as a result of the agreement.

18 (c) A judicial hearing held pursuant to this Chapter of the General Statutes shall be in
19 closed court.

20 **"§ 52D-5. Termination of gestational surrogacy agreement.**

21 (a) After issuance of an order under G.S. 52D-4, but before the gestational carrier
22 becomes pregnant by means of assisted reproduction, the gestational carrier, her spouse if she is
23 married, or an intended parent may terminate the gestational surrogacy agreement by giving
24 notice of termination in writing to all other parties and the court.

25 (b) An individual who terminates a gestational surrogacy agreement shall file with the
26 court a copy of the written notice of the termination and certification that the termination has
27 been served on all other parties to the agreement. Service of notice shall be in accordance with
28 G.S. 1A-1, Rule 5 of the North Carolina Rules of Civil Procedure. Upon receipt of the notice,
29 the court shall vacate the order issued under G.S. 52D-4.

30 (c) No party to a gestational surrogacy agreement nor the spouse of any party is liable
31 for damages resulting from termination of the agreement unless liability is expressly assumed
32 in the gestational surrogacy agreement. Under no circumstances shall a gestational carrier or
33 her spouse be liable to the intended parents for terminating the agreement in accordance with
34 this section.

35 (d) On motion of any party to the agreement, the court may terminate the gestational
36 surrogacy agreement at any time before the birth of the child if the court finds that termination
37 is appropriate under the circumstances. However, the court shall not terminate the agreement
38 after the court has validated the agreement and the gestational carrier has become pregnant,
39 except upon terms expressly agreed upon by the parties in the validated gestational surrogacy
40 agreement. If the court terminates the agreement after the gestational carrier becomes pregnant,
41 parentage of the child born to the gestational carrier shall be determined as if the gestational
42 surrogacy agreement had not been validated and in accordance with G.S. 52D-8.

43 **"§ 52D-6. Parentage under validated gestational surrogacy agreement.**

44 (a) Any time after 30 weeks of gestation and after the agreement has been validated by
45 the court and no later than 10 days after the birth, the intended parents shall file notice with the
46 court that a child will be or has been born to the gestational carrier within 300 days after
47 assisted reproduction. The court shall issue an order:

48 (1) Confirming that the intended parents are the only mother and father of the
49 child;

50 (2) Ordering that the child be surrendered to the intended parents, if necessary;
51 and

1 (3) Directing that the birth certificate of the child name the intended parents as
2 the only mother and father of the child.

3 (b) If the parentage of a child born to a gestational carrier is alleged not to be the result
4 of assisted reproduction, the court shall order genetic testing to determine whether the child is
5 the result of assisted reproduction. If the child's birth is not the result of assisted reproduction,
6 parentage of the child shall be determined as if the surrogacy agreement had not been validated
7 and in accordance with G.S. 52D-8. However, no action to challenge the rights of parentage
8 established pursuant to this Chapter of the General Statutes shall be commenced after 12
9 months from the date of birth of the child.

10 (c) If an intended parent fails to file notice required under subsection (a) of this section,
11 the gestational carrier, any interested person, or a county department of social services may file
12 notice with the court that a child has been born to the gestational carrier within 300 days after
13 assisted reproduction. Upon proof of a court order issued pursuant to G.S. 52D-3 validating the
14 gestational surrogacy agreement, the court shall order that the intended parents are the only
15 parents of the child and are financially responsible for the child. The court shall direct that the
16 birth certificate of the child name the intended parents as the only parents of the child.

17 **"§ 52D-7. Gestational surrogacy agreement; effect of subsequent marriage.**

18 After the court has issued an order under this Chapter of the General Statutes, the
19 subsequent marriage of the gestational carrier shall not affect the validity of a gestational
20 surrogacy agreement. Notwithstanding G.S. 130A-101, the gestational surrogacy agreement
21 shall not require the consent of the gestational carrier's legal spouse, nor shall her legal spouse
22 be presumed the father of the resulting child.

23 **"§ 52D-8. Effect of nonvalidated gestational surrogacy agreement.**

24 (a) A gestational surrogacy agreement that is not judicially validated pursuant to this
25 Chapter is not enforceable and shall not create parentage rights in any party.

26 (b) If a birth results under a gestational surrogacy agreement that is not judicially
27 validated pursuant to G.S. 52D-4, the gestational carrier shall be the mother of the child and
28 paternity shall be determined in accordance with State law.

29 (c) Any intended parent who is a party to a nonvalidated gestational surrogacy
30 agreement may be held liable for support of the resulting child, with the amount of support to
31 be set in accordance with Chapter 50 of the General Statutes.

32 **"§ 52D-9. Compensation.**

33 (a) The consideration, if any, paid to a gestational carrier shall be reasonable and
34 negotiated in good faith between the parties.

35 (b) Compensation may not be conditioned upon the health or characteristics of any
36 fetus, embryo, or child produced as the result of assisted reproduction.

37 **"§ 52D-10. Confidentiality of court records.**

38 (a) All court records created or filed pursuant to a court proceeding under this Chapter
39 of the General Statutes are confidential and may not be disclosed, except upon order of the
40 court finding that disclosure is necessary to protect the interest of any child born as a result of
41 the gestational surrogacy agreement or otherwise necessary in the interest of justice. For
42 purposes of this section, 'court records' mean any petition, affidavit, transcript or notes of
43 testimony, deposition, written or recorded response to discovery request, report, decree, order,
44 judgment, correspondence, or document of any kind relating to a court proceeding under this
45 Chapter of the General Statutes.

46 (b) When an order issued pursuant to G.S. 52D-6 becomes final, all records and indices
47 of records on file with the court shall be retained permanently and sealed. The sealed records
48 shall not be open for inspection to any person, except upon order of the court after finding
49 inspection is necessary to protect the interest of any child born as a result of the gestational
50 surrogacy agreement or otherwise necessary in the interest of justice.

1 (c) Within 10 days following the entry of an order pursuant to G.S. 52D-6, the clerk of
2 superior court shall transmit a copy of the order to the State Registrar if the child was born in
3 this State. If the child was born in another state, the petitioner shall forward the order to the
4 appropriate official responsible for issuing birth certificates in that state. The clerk of court
5 shall retain all original court orders entered pursuant to this Chapter of the General Statutes.

6 (d) Nothing in this section shall be construed to prevent a court official or a court
7 employee or State employee from inspecting permanent, confidential records or sealed records
8 for the purpose of discharging an obligation related to his or her official duties or
9 responsibilities."

10 **SECTION 2.** G.S. 48-3-701 reads as rewritten:

11 **"§ 48-3-701. Individuals who may relinquish minor; timing.**

12 (a) A parent or guardian may relinquish all parental rights or guardianship powers,
13 including the right to consent to adoption, to an agency. If both parents are married to each
14 other and living together, both parents must act jointly in relinquishing a child to an agency.

15 (b) The mother of a minor child may execute a relinquishment at any time after the
16 child is born but not sooner. A man whose consent is required under G.S. 48-3-601 may
17 execute a relinquishment either before or after the child is born.

18 (c) A guardian may execute a relinquishment at any time.

19 (d) A donor, as defined in G.S. 52D-1, and a gestational carrier, as defined in
20 G.S. 52D-1, relinquish any and all parental rights to the resulting child at the time the court
21 enters its order under G.S. 52D-4."

22 **SECTION 3.** This act becomes effective October 1, 2009, and applies to
23 gestational surrogacy agreements entered into on or after that date.