

SENATE BILL No. 811

February 23, 2016, Introduced by Senators WARREN and BIEDA and referred to the Committee on Families, Seniors and Human Services.

A bill to establish gestational surrogate parentage contracts; to allow gestational surrogate parentage contracts for compensation; to provide for a child conceived, gestated, and born according to a gestational surrogate parentage contract; to provide for penalties and remedies; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "gestational surrogate parentage act".

3 Sec. 3. As used in this act:

4 (a) "Compensation" means a payment of money, objects,
5 services, or anything else having monetary value except payment of
6 expenses incurred as a result of the pregnancy and the actual
7 medical expenses of a surrogate mother or surrogate carrier.

8 (b) "Developmental disability" means that term as defined in

1 section 100a of the mental health code, 1974 PA 258, MCL 330.1100a.

2 (c) "Gestational surrogate parentage contract" means a
3 contract, agreement, or arrangement in which a female agrees to
4 gestate a child that is not genetically related to her and
5 voluntarily relinquish her parental or custodial rights to the
6 child.

7 (d) "Intellectually disabled" means intellectual disability as
8 that term is defined in section 100b of the mental health code,
9 1974 PA 258, MCL 330.1100b.

10 (e) "Mental health professional" means that term as defined in
11 section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.

12 (f) "Mental illness" means that term as defined in section 400
13 of the mental health code, 1974 PA 258, MCL 330.1400.

14 (g) "Participating party" means a biological parent, surrogate
15 carrier, or the spouse of a biological parent, or surrogate
16 carrier, if any.

17 (h) "Physician" means an individual licensed under article 15
18 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838,
19 to engage in the practice of medicine.

20 (i) "Surrogate carrier" means the female in whom an embryo is
21 implanted in a surrogate gestation procedure.

22 (j) "Surrogate gestation" means the implantation in a female
23 of an embryo not genetically related to that female and subsequent
24 gestation of a child by that female.

25 (k) "Surrogate mother" means a female who is naturally or
26 artificially inseminated and who subsequently gestates a child
27 conceived through the insemination according to a gestational

1 surrogate parentage contract.

2 Sec. 5. (1) If the provisions of section 7 are met, a
3 gestational surrogate parentage contract is enforceable under the
4 provisions of this act.

5 (2) If the provisions of section 7 are met, a person may enter
6 into, arrange, procure, or otherwise assist in the formation of a
7 surrogate parentage contract, whether or not compensation is
8 provided.

9 (3) It is presumed that a contract, agreement, or arrangement
10 in which an individual agrees to conceive a child through natural
11 or artificial insemination by a person other than their spouse, or
12 in which an individual agrees to surrogate gestation, includes a
13 provision, whether or not express, that the individual will
14 relinquish their parental or custodial rights to the child.

15 Sec. 7. Before a gestational surrogate parentage contract can
16 be considered valid under this act, all of the following must
17 occur:

18 (a) Before the gestational surrogate parentage contract is
19 written, the surrogate carrier must submit to psychological testing
20 to ensure that there is informed consent.

21 (b) The surrogate carrier must obtain a statement from a
22 physician that states that the surrogate carrier is in good
23 physical health.

24 (c) All parties to the gestational surrogate parentage
25 contract must obtain a statement from a mental health professional
26 that states that the parties are in good mental health.

27 (d) The parties must petition the court for approval of the

1 contract in order for the contract to be valid and enforceable.
2 Information provided to the court under this subdivision,
3 including, but not limited to, the names of the parties and the
4 contents of the contract, shall not be released to the public
5 unless all parties to the contract provide written authorization to
6 the court for release of the information.

7 Sec. 9. (1) A person shall not enter into, induce, arrange,
8 procure, or otherwise assist in the formation of a gestational
9 surrogate parentage contract under which an unemancipated minor
10 female or a female diagnosed as being intellectually disabled or as
11 having a mental illness or developmental disability is the
12 surrogate mother or surrogate carrier.

13 (2) A person other than an unemancipated minor female or a
14 female diagnosed as being intellectually disabled or as having a
15 mental illness or developmental disability who enters into,
16 induces, arranges, procures, or otherwise assists in the formation
17 of a contract described in subsection (1) is guilty of a felony
18 punishable by a fine of not more than \$50,000.00 or imprisonment
19 for not more than 5 years, or both.

20 Sec. 11. If a child is born to a surrogate carrier pursuant to
21 a surrogate parentage contract and there is a dispute between the
22 parties concerning custody of the child, the party having physical
23 custody of the child may retain physical custody of the child until
24 the circuit court orders otherwise. The circuit court shall award
25 legal custody of the child based on a determination of the best
26 interests of the child. As used in this section, "best interests of
27 the child" means that term as defined in section 3 of the child

1 custody act of 1970, 1970 PA 91, MCL 722.23.

2 Enacting section 1. The surrogate parenting act, 1988 PA 118,
3 MCL 400.851 to 400.76 to 400.863, is repealed.

4 Enacting section 2. This act takes effect 90 days after the
5 date it is enacted into law.