SENATE BILL No. 1082

September 5, 2018, Introduced by Senators WARREN, ANANICH, CONYERS and YOUNG 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 prescribe the duties of certain state departments; 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 "gestational surrogate parentage act".
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3 Sec. 3. As used in this act:
4 (a) "Compensation" means a payment of any valuable consideration for service in excess of expense.
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6 (b) "Developmental disability" means that term as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a.
(c) "Expense" includes, but is not limited to, medical, legal, and other professional and incidental cost or fee related to the surrogate gestation or the gestational surrogate parentage contract.

(d) "Gestational carrier" means, in a surrogate gestation, the female in whom an embryo, that is not procreated from her own egg, is transferred into her uterus by a physician.

(e) "Gestational surrogate parentage contract" or "contract" means a contract, agreement, or arrangement, with or without compensation, in which a female does both of the following:

(i) Agrees to gestate a child conceived through assisted reproduction, by the transfer of an embryo that may or may not be genetically related to the intended parent, but is not procreated by the gestational carrier's own egg.

(ii) Agrees that the intended parent is the legal parent and agrees that the intended parent assumes full legal and physical custody of the resulting child by operation of law.

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

(g) "Intended parent" means an individual who intends to become the legal parent and assumes full legal and physical custody by operation of law of the child that results from a gestational surrogate parentage contract.

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

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

(j) "Physician" means an individual licensed under part 170 or 175 of the public health code, 1978 PA 368, MCL 333.17001 to 333.17084 and 333.17501 to 333.17556, to engage in the practice of medicine or osteopathic medicine and surgery.

(k) "Surrogate gestation" means the transfer, by a physician, into the female's uterus, of an embryo that was not procreated from the female's own egg.

(l) "Transfer" means placement of an embryo inside the uterus of a gestational carrier by a physician.

Sec. 5. (1) In order to enter into a gestational surrogate parentage contract, a gestational carrier must meet all of the following requirements:

(a) Be 21 years of age or older.
(b) Have previously given birth to at least 1 child.
(c) Have completed a medical evaluation by a physician.
(d) Have completed a mental health evaluation by a mental health professional.
(e) Have consulted with independent legal counsel about the terms of the contract.

(2) In order to enter into a gestational surrogate parentage contract, an intended parent must meet both of the following requirements:

(a) Have completed a mental health evaluation by a mental health professional.
(b) Have consulted with independent legal counsel about the terms of the contract.
Sec. 7. (1) In addition to the requirements under section 5 for a gestational carrier and an intended parent, the gestational surrogate parentage contract must meet all of the following requirements:

(a) Be in writing and signed by all parties to the contract.

(b) Specify that all evaluations, medical procedures, and treatment must be conducted in accordance with the guidelines published by the American Society for Reproductive Medicine or the American Congress of Obstetricians and Gynecologists, or a successor organization.

(c) Specify that a party to a gestational surrogate parentage contract may withdraw consent to an evaluation, medical procedure, or treatment and may terminate the contract no later than 24 hours before an embryo transfer or implantation by giving written notice of the termination to all parties to the contract.

(d) Specify that a gestational carrier does not have any parental or custodial rights to the resulting child and that legal and physical custody are automatically vested in the intended parent by operation of the law.

(e) Specify that the intended parent has legal and physical custody of and assumes responsibility for the resulting child immediately upon birth.

(f) Specify that, if the gestational surrogate parentage contract provides for payment of compensation to the gestational carrier, the compensation must be placed in an escrow account with an independent escrow agent before the gestational carrier begins any medical procedure or treatment related to the contract.
(2) At least 1 of the parties to the gestational surrogate parentage contract must be a resident of this state.

(3) The gestational surrogate parentage contract must expressly provide that if the gestational carrier is married, her spouse must acknowledge and agree to abide by the obligations imposed on the gestational carrier by the terms of the contract; that the spouse of the gestational carrier has no claim to parental rights or legal or physical custody of a resulting child; and that the spouse of the gestational carrier must acknowledge the exclusive parental rights of the intended parent of the resulting child.

(4) A marriage of the gestational carrier subsequent to executing the gestational surrogate parentage contract does not affect the validity of that contract or the exclusive parental rights of the intended parent.

Sec. 9. (1) If the attorneys representing both the gestational carrier and the intended parent certify that the parties entered into a gestational surrogate parentage contract that meets the requirements of sections 5 and 7, that contract is valid and enforceable under the provisions of this act.

(2) The certification required of the attorneys under subsection (1) shall be filed on forms prescribed by the department of health and human services.

(3) A certification form required under this section is sufficient documentation for the state registrar to issue a birth certificate naming the intended parent as the parent of the resulting child.
(4) If the provisions of sections 5 and 7 are met, a person may enter into, arrange, procure, or otherwise assist in the formation of a gestational surrogate parentage contract, with or without compensation or payment of expenses.

Sec. 11. If a gestational surrogate parentage contract satisfies the requirements of this act, all of the following apply:

(a) The gestational surrogate and her spouse, if any, by operation of law, do not have any parental or custodial rights to the resulting child.

(b) The intended parent, by operation of law, is the parent of the resulting child. A resulting child is the child of the intended parent. Parental rights and responsibilities vest exclusively in the intended parent. The intended parent is entitled to receive a birth certificate naming the intended parent as the parent of the resulting child.

(c) A person who is the parent of a resulting child under this act is obligated to support the resulting child. Breach of a gestational surrogate parentage contract by the intended parent does not relieve the intended parent of the obligation to support the resulting child.

Sec. 13. (1) The family division of the circuit court has jurisdiction if the gestational surrogate parentage contract specifies that the parties to the contract intend for the birth of the resulting child to take place in this state.

(2) If there is a dispute over the terms of the gestational surrogate parentage contract or if there is noncompliance with a term of the contract, a party to that contract may petition the
court to construe the terms of the contract or to compel the noncompliant party to comply with the terms of the contract. There is no specific performance remedy available for a breach of a gestational surrogate parentage contract that requires a gestational carrier to be impregnated.

Sec. 15. (1) A person shall not enter into, induce, arrange, procure, or otherwise assist in the formation of a gestational surrogate parentage contract under which a minor female or a female diagnosed as being intellectually disabled or as having a mental illness or developmental disability is the gestational carrier.

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

Sec. 17. (1) If a provision of this act or its application to a person or circumstance is held invalid, the invalidity of that provision or application does not affect other provisions or applications of this act that can be given effect without the invalid provision or application.

(2) The provisions of this act apply only to a gestational surrogate parentage contract entered into after the effective date of this act.

Enacting section 1. The surrogate parenting act, 1988 PA 199, MCL 722.851 to 722.863, is repealed.
Enacting section 2. This act takes effect 90 days after the date it is enacted into law.

Enacting section 3. This act does not take effect unless all of the following bills of the 99th Legislature are enacted into law:

(a) Senate Bill No. 1084.

(b) Senate Bill No. 1083.