

ASSISTED REPRODUCTION AND SURROGACY PARENTAGE ACT (EXCERPT)
Act 24 of 2024

PART 3
PARENTAGE OF CHILD BORN THROUGH SURROGACY

***** 722.1901.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE
2024 REGULAR SESSION SINE DIE *****

722.1901.new Execution of surrogacy agreements; individual requirements.

Sec. 301. (1) To execute an agreement to act as a surrogate, an individual 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 concerning the surrogacy arrangement.
- (d) Have completed a mental health consultation concerning the surrogacy arrangement.

(e) Have independent legal representation of the individual's choice by an attorney licensed in this state throughout the agreement negotiation process, the execution of the agreement, and the duration of the agreement about the terms of the surrogacy agreement and the potential legal consequences of the surrogacy agreement.

(2) To execute a surrogacy agreement, an intended parent, whether or not genetically related to the child, must meet all of the following requirements:

- (a) Be 21 years of age or older.
- (b) Have completed a mental health consultation.

(c) Have independent legal representation of the intended parent's or parents' choice by an attorney licensed in this state throughout the agreement negotiation process, the execution of the agreement, and the duration of the agreement about the terms of the surrogacy agreement and the potential legal consequences of the surrogacy agreement.

History: 2024, Act 24, Eff. (sine die).

***** 722.1902.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE
2024 REGULAR SESSION SINE DIE *****

722.1902.new Surrogacy agreement; process requirements.

Sec. 302. A surrogacy agreement must meet all of the following requirements:

(a) One or more of the following must apply:

- (i) At least 1 party must be a resident of this state.
- (ii) The birth will occur or is anticipated to occur in this state.
- (iii) The assisted reproduction performed under the surrogacy agreement will occur in this state.

- (b) The surrogate and each intended parent must meet the requirements of section 301.
- (c) Each intended parent, the surrogate, and the surrogate's spouse, if any, must be parties to the agreement.
- (d) Each party listed in subdivision (c) must sign the agreement.
- (e) The signature of each party to the agreement must be attested by a notarial officer.
- (f) The intended parent or parents must pay for independent legal representation for the surrogate.
- (g) The agreement must be executed before a medical procedure occurs related to the surrogacy agreement, other than the medical evaluation and mental health consultations required by section 301.

History: 2024, Act 24, Eff. (sine die).

***** 722.1903.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE
2024 REGULAR SESSION SINE DIE *****

722.1903.new Surrogacy agreement; compliance requirements; permissible provisions.

Sec. 303. (1) A surrogacy agreement must comply with all of the following requirements:

- (a) The surrogate must agree to attempt to become pregnant by means of assisted reproduction.
- (b) Except as otherwise provided in sections 306, 308, and 309, the surrogate and the surrogate's spouse or former spouse, if any, must have no claim to parentage of a child conceived by assisted reproduction under the agreement.
- (c) The surrogate's spouse, if any, must acknowledge and agree to comply with the obligations imposed on the surrogate by the agreement.

(d) Except as otherwise provided in sections 306, 308, and 309, the agreement must provide that the intended parent, or, if there are 2 intended parents, each intended parent jointly and severally, immediately on birth, will be the exclusive parent or parents of the child, regardless of the number of children born or gender or mental or physical condition of each child.

(e) Except as otherwise provided in sections 306, 308, and 309, the intended parent, or, if there are 2 intended parents, each parent jointly and severally, immediately on birth, will assume responsibility for the financial support of the child, regardless of the number of children born or gender or mental or physical condition of each child.

(f) The agreement must include information disclosing that the intended parent or parents will cover the agreed-on expenses of the surrogate, the assisted reproduction expenses, and the medical expenses for the surrogate and the child.

(g) The agreement must permit the surrogate to make all health and welfare decisions regarding the surrogate and the pregnancy, including, but not limited to, whether to consent to a cesarean section or multiple embryo transfer. Notwithstanding anything in this act, any provision in the agreement to the contrary is void and unenforceable. This act does not diminish the right of the surrogate under section 28 of article I of the state constitution of 1963.

(h) The surrogacy agreement must permit the surrogate to use the services of a health care practitioner of the surrogate's choosing.

(i) The surrogacy agreement must include information about each party's right under section 305 to terminate the surrogacy agreement.

(2) A surrogacy agreement may provide for 1 or both of the following:

(a) Payment of compensation, support, and reasonable expenses.

(b) Reimbursement of specific agreed-on expenses if the agreement is terminated under section 305.

(3) A right created under a surrogacy agreement is not assignable, and there is no third-party beneficiary of the surrogacy agreement other than the child.

(4) If any of the requirements of this part are not met, a court of competent jurisdiction must determine parentage under section 309(1) and (2).

History: 2024, Act 24, Eff. (sine die).

***** 722.1904.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE *****

722.1904.new Effect of subsequent change in marital status.

Sec. 304. (1) Unless a surrogacy agreement expressly provides otherwise, both of the following apply:

(a) The marriage of a surrogate after the surrogacy agreement is signed by all parties does not affect the validity of the agreement, the spouse's consent to the agreement is not required, and the spouse is not a presumed parent of a child conceived by assisted reproduction under the agreement.

(b) The dissolution, annulment, or declaration of invalidity of the surrogate's marriage, the legal separation of the surrogate, or a judgment of separate maintenance concerning the surrogate after the surrogacy agreement is signed by all parties does not affect the validity of the agreement.

(2) Unless a surrogacy agreement expressly provides otherwise, both of the following apply:

(a) The marriage of an intended parent after the surrogacy agreement is signed by all parties does not affect the validity of a surrogacy agreement, the consent of the spouse is not required, and the spouse is not, based on the agreement, a parent of a child conceived by assisted reproduction under the agreement.

(b) The dissolution, annulment, or declaration of invalidity of an intended parent's marriage, the legal separation of an intended parent, or a judgment of separate maintenance concerning an intended parent after the agreement is signed by all parties does not affect the validity of the agreement and, except as otherwise provided in sections 306, 308, and 309, the intended parent is a parent of the child.

History: 2024, Act 24, Eff. (sine die).

***** 722.1905.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE *****

722.1905.new Termination of surrogacy agreement.

Sec. 305. (1) A party to a surrogacy agreement may terminate the agreement at any time before a gamete or an embryo transfer by giving notice of termination in a record to all other parties. If a gamete or an embryo transfer does not result in a pregnancy, a party may terminate the agreement at any time before a subsequent gamete or embryo transfer.

(2) Unless a surrogacy agreement provides otherwise, on termination of the agreement under subsection (1), the parties are released from the agreement, except that each intended parent remains responsible for expenses that are reimbursable under the agreement and incurred by the surrogate through the date of termination of the surrogacy agreement.

(3) Unless there is fraud, a party is not liable to any other party for a penalty or liquidated damages for terminating a surrogacy agreement under this section.

History: 2024, Act 24, Eff. (sine die).

***** 722.1906.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE *****

722.1906.new Establishment of parent-child relationship under surrogacy agreement.

Sec. 306. (1) Except as otherwise provided in subsection (3) and sections 307(2), 308, and 309, on birth of a child conceived by assisted reproduction under a surrogacy agreement that complies with this part, each intended parent is, by operation of law, a parent of the child.

(2) Except as otherwise provided in subsection (3) and sections 308 and 309, on birth of a child conceived by assisted reproduction under a surrogacy agreement that complies with this part, neither a surrogate nor the surrogate's spouse or former spouse, if any, is a parent of the child.

(3) If a child is alleged to be a genetic child of the individual who agreed to be a gestational surrogate, the court shall order genetic testing of the child. If the child is a genetic child of the individual who agreed to be a gestational surrogate, parentage must be determined based on law of this state other than this act.

(4) Except as otherwise provided in subsection (3) and sections 307(2), 308, and 309, if, because of a clinical or laboratory error, a child conceived by assisted reproduction under a surrogacy agreement is not genetically related to an intended parent or a donor who donated to the intended parent or parents, each intended parent, and not the surrogate and the surrogate's spouse or former spouse, if any, is a parent of the child, subject to any other claim of parentage.

(5) A donor is not a parent of a child conceived by assisted reproduction under a surrogacy agreement.

History: 2024, Act 24, Eff. (sine die).

***** 722.1907.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE *****

722.1907.new Parentage of deceased intended parent under surrogacy agreement.

Sec. 307. (1) Section 306 applies to an intended parent even if the intended parent died during the period between the transfer of a gamete or embryo and the birth of the child.

(2) Except as otherwise provided in sections 308 and 309, an intended parent is not a parent of a child conceived by assisted reproduction under a surrogacy agreement if the intended parent dies before the transfer of a gamete or embryo unless both of the following apply:

(a) The surrogacy agreement provides otherwise.

(b) The transfer of a gamete or embryo occurs not later than 36 months after the death of the intended parent or the birth of the child occurs not later than 45 months after the death of the intended parent.

History: 2024, Act 24, Eff. (sine die).

***** 722.1908.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE *****

722.1908.new Court judgment of parentage under surrogacy agreement.

Sec. 308. (1) Before, on, or after the birth of a child conceived by assisted reproduction under a surrogacy agreement that complies with this part, a party to the agreement may commence an action in the family division of the circuit court for entry of a parentage judgment. The requested parentage judgment may be issued before or after the child's birth as requested by the parties. The surrogate and all intended parents are necessary parties to the action. The complaint must be accompanied by a certification from the attorney representing the intended parent or parents and from the attorney representing the surrogate that the surrogacy agreement complies with the requirements of this part and a statement from all parties to the surrogacy agreement that they knowingly and voluntarily entered into the surrogacy agreement and that all parties are requesting the judgment of parentage. On receipt of the complaint and accompanying certifications, the court must, without holding a hearing unless the surrogate challenges the accuracy of the attorney certificates, enter a judgment of parentage that does all of the following, without additional proceedings or documentation:

(a) Declares that each intended parent is a parent of the child and orders that parental rights and duties vest

immediately on the birth of the child exclusively in each intended parent.

(b) Declares that the surrogate and the surrogate's spouse or former spouse, if any, are not the parents of the child.

(c) To protect the privacy of the child and the parties, orders the court records sealed.

(d) If necessary, orders that the child be surrendered to the intended parent or parents.

(e) Awards other relief the court determines necessary and proper.

(2) The court may issue an order or judgment under subsection (1) before or after the birth of the child. The court must stay enforcement of the order or judgment until the birth of the child.

(3) Neither the state nor the department nor the hospital where the child is or is expected to be born are necessary parties to an action under subsection (1).

(4) A certificate of live birth of a child must comply with this act and must be established as provided under part 28 of the public health code, 1978 PA 368, MCL 333.2801 to 333.2899.

History: 2024, Act 24, Eff. (sine die).

***** 722.1909.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE *****

722.1909.new Effect and enforceability of surrogacy agreement.

Sec. 309. (1) A surrogacy agreement that substantially complies with sections 302 and 303 is enforceable.

(2) If a child was conceived by assisted reproduction under a surrogacy agreement that does not substantially meet the material requirements of this part, a court must determine parentage consistent with the intent of the parties, taking into account the best interests of the child. Each party to the surrogacy agreement and any individual who at the time of the execution of the agreement was a spouse of a party to the agreement has standing to maintain an action to adjudicate an issue related to the enforcement of the agreement.

(3) Except as expressly provided in a surrogacy agreement or in subsection (4), if the agreement is breached by the surrogate or 1 or more intended parents, the nonbreaching party is entitled to the remedies available at law or in equity.

(4) The breach of the surrogacy agreement by 1 or more intended parents does not relieve the intended parent of the support obligations imposed by the parent and child relationship under this part.

(5) Specific performance is not a remedy available for breach by a surrogate of a provision in the agreement that the surrogate be impregnated, terminate a pregnancy, or submit to medical procedures.

(6) Except as otherwise provided in subsection (5), if an intended parent is determined to be a parent of the child, specific performance is a remedy available for either of the following:

(a) Breach of the surrogacy agreement by a surrogate that prevents an intended parent from exercising immediately on birth of the child the full rights of parentage.

(b) Breach of the surrogacy agreement by an intended parent that prevents the intended parent's acceptance, immediately on the birth of the child, of the duties of parentage.

History: 2024, Act 24, Eff. (sine die).