

March 5, 2009

S 440. ESTABLISH GESTATIONAL SURROGACY AGREEMENTS. Filed 3/5/09.

ESTABLISHING LAWS PERTAINING TO GESTATIONAL SURROGACY AGREEMENTS.

Enacts a new GS Chapter 52D, entitled *Gestational Surrogacy Agreements*, to provide for an authorized written agreement for gestational surrogacy. Establishes definitions for *assisted reproduction*, *donor*, *gestational carrier*, *gestational surrogacy agreement*, *gestational surrogate*, *intended parent*, and *traditional surrogate*. Provides that a *gestational surrogate* is a woman into whom an embryo, formed using eggs other than her own, is transferred, and that a *traditional surrogate* is a woman who undergoes fertilization and insemination of her own eggs. Defines *gestational carrier* as a woman, not an intended parent, who enters into a gestational surrogacy agreement to bear a child, whether or not she has any genetic relationship to the resulting child, is at least 21 years old, and has given birth to at least one child. Provides that both a traditional surrogate and a gestational surrogate may be gestational carriers.

Allows a gestational carrier, her spouse if married, and the intended parent to enter into a written agreement for gestational surrogacy if (1) the gestational carrier agrees to pregnancy by means of assisted reproduction; (2) the gestational carrier and her spouse, if she is married, relinquish all rights and duties as parents of a child conceived through assisted reproduction; and (3) the intended parent will become the parent of the child conceived through assisted reproduction immediately upon the birth of that child. Requires that (1) if an intended parent is married, the spouse be a party to the agreement, (2) the agreement be in writing, and (3) the agreement is acknowledged by all parties before a notary public. Provides that the agreement is only enforceable if validated by a district court before the gestational carrier becomes pregnant. Provides for procedures related to filing a court petition to validate the agreement and scheduling of a court hearing. Allows a court to issue the validation order, and declare that the intended parent is the only parent of a child born as a result of the agreement, if after hearing testimony, the court finds: (1) the requirements for creating the agreement and petitioning the court are satisfied, (2) that both the intended parent and the gestational carrier, independently, consulted with legal counsel and had been advised regarding the terms and potential legal consequences of the agreement, (3) that all the parties voluntarily entered into the agreement and understand the terms and continue to agree to all the terms in the agreement, (4) all donors, if any, have relinquished rights and duties as parents of the child conceived through assisted reproduction, (5) that adequate provision has been made for all healthcare expenses associated with the agreement until the birth of the child and for a reasonable time thereafter, including responsibility for those expenses if the agreement is terminated, (6) that the consideration, if any, paid or to be paid to the gestational carrier is reasonable, and (7) each party understands the procedure for and consequences of termination of the agreement. Requires that a judicial hearing held pursuant to this Chapter be in a closed court. Allows termination of the agreement, without liability unless otherwise provided for in the agreement, after issuance of the order but before the gestational carrier becomes pregnant by (1) the gestational carrier, (2) her spouse, or (3) an intended parent, upon written notice to all other parties and the court. Provides for termination of the agreement on motion by any party to the agreement any time before the birth of the child if the court finds termination to be appropriate. Prohibits the court from terminating the agreement if it has been validated and the gestational carrier is pregnant, unless the terms regarding termination are expressly agreed upon by the parties. If terminated, the parentage of the child is determined as if the agreement had not been validated.

Provides that the effect of a nonvalidated agreement is that it (1) is unenforceable, (2) does not create parentage rights, (3) results in the gestational carrier being deemed the mother of the child, (4) allows paternity to be established in accordance with state law, and (4) creates potential liability for support of the resulting child by any intended parent that is party to the agreement.

Allows the agreement to provide for payment of reasonable consideration that is negotiated in good faith between the parties, but prohibits compensation from being conditioned upon the health or characteristics of any fetus, embryo, or child produced as the result of assisted reproduction.

Prohibits an agreement from limiting the right of the gestational carrier to make decisions to safeguard her health or the health of the embryo or fetus. Permits the agreement to include the following provisions: (1) an agreement by the gestational carrier to undergo all medical

examinations, treatments, and fetal monitoring procedures that a physician recommends for the success of the pregnancy and (2) an agreement by the gestational carrier to abstain from activities that the intended parent or physician believes to be harmful to the pregnancy and future health of the child, including smoking, drinking alcohol, using drugs not authorized by a physician aware of the pregnancy, exposure to radiation, or any other activity proscribed by a health care provider.

Requires that the intended parent file a notice with the court that the child has been born, as a result of the previously validated gestational surrogacy agreement, within 300 days after assisted reproduction. The court must issue an order (1) confirming that the intended parent and the intended parent's spouse, if married, are the only parents of the child, (2) ordering that the child be surrendered to the intended parent, if necessary, and (3) directing that the birth certificate of the child name the intended parent and the intended parent's spouse, if applicable, as the only parents of the child. Requires the court to order genetic testing if the child is alleged to not have been conceived as a result of assisted reproduction. If the birth is not a result of assisted reproduction, then parentage is determined as if the agreement is nonvalidated. Prohibits an action from being commenced to challenge the rights of parentage until 12 months from the date of birth. Allows the gestational carrier, any interested person, or county department of social services to file the notice that the child has been born within 300 days after assisted reproduction, if the intended parent fails to do so.

Provides that the subsequent marriage of a gestational carrier does not affect the validity of the gestational surrogacy agreement. The agreement does not require the consent of the gestational carrier's legal spouse, and the legal spouse is not presumed to be the father of the resulting child.

Provides that all court records created or filed pursuant to a court proceeding under this Chapter are confidential and may not be disclosed, except upon court order finding that disclosure is necessary to protect the interest of any child born as a result of the agreement or otherwise necessary in the interest of justice. Establishes a definition for *court records*. Requires that when the order issued after the birth of the child becomes final, all records and indices of records are to be retained permanently and sealed and not open for inspection unless by court order. Requires that within 10 days following an entry of the final order, that the superior court clerk must transmit a copy to the State Registrar if the child is born in this state. Allows the petitioner to forward a copy of the final order to the appropriate officials issuing birth certificates in another state. Provides that this statute must not be construed to prevent a court official or employee or any state employee from inspecting permanent, confidential records to discharge an obligation related to official duties or responsibilities.

Effective for gestational surrogacy agreements entered into on or after the date this act becomes law.

Intro. by Rand.

GS 52D

May 12, 2009

S 440. ESTABLISH GESTATIONAL SURROGACY AGREEMENTS. Filed 3/5/09. Senate committee substitute makes the following changes to 1st edition. Removes from proposed GS 52D-2 that if an intended parent is married, the intended parent's spouse is required to be a party to the agreement. Adds to the list of requirements needed for an agreement to be entered into that all donors must agree to relinquish all rights and duties as parents. Amends proposed new GS 52D-6(a) to provide that the intended parents in a gestational surrogacy arrangement may file notice with the court of the impending birth of the child any time after thirty weeks of gestation. Deletes the last sentence of proposed new GS 52D-10(a), which provided that court records were not to include specific documents related to gestational surrogacy. As amended, the subsection provides for their confidentiality except as otherwise ordered by the court. Adds new section amending GS 48-3-701 by adding new subsection (d) providing that donors and gestational carriers, as both terms are defined in GS 52D-1, relinquish parental rights to a resulting child at the time an order is entered by the court under GS 52D-4. Changes effective date from date of enactment to October 1, 2009. Also makes clarifying and technical changes.