

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 440\*

Short Title: Establish Gestational Surrogacy Agreements. (Public)

Sponsors: Senator Rand.

Referred to: Judiciary I.

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 one or more  
25 intended parents 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 parent. – A person who manifests the intent in a gestational  
29 surrogacy agreement to be legally bound as the parent of a child resulting  
30 from assisted reproduction. For purposes of this definition, the term intended  
31 parent includes the spouse of an intended parent, when applicable.  
32 (7) Traditional surrogate. – A woman who undergoes fertilization and  
33 insemination of her own eggs.

34 **"§ G.S. 52D-2. Gestational surrogacy agreement authorized.**

35 (a) A gestational carrier, her spouse if she is married, and the intended parent may enter  
36 into a written agreement for gestational surrogacy if:



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

27 **"§ 52D-3. Petition to validate agreement.**

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

41 **"§ 52D-4. Hearing to validate gestational surrogacy agreement.**

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

18          (c) A judicial hearing held pursuant to this Chapter shall be in closed court.

19 **"§ 52D-5. Termination of gestational surrogacy agreement.**

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

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

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

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

42 **"§ 52D-6. Parentage under validated gestational surrogacy agreement.**

43          (a) Upon the birth of a child to a gestational carrier after the agreement has been  
44 validated by the court, the intended parent shall file notice with the court that a child has been  
45 born to the gestational carrier within 300 days after assisted reproduction. The court shall issue  
46 an order:

47                 (1) Confirming that the intended parent and the intended parent's spouse, if  
48 married, are the only parents of the child;

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

1           (3)     Directing that the birth certificate of the child name the intended parent and  
2                 the intended parent's spouse, if married, as the only parents 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 shall be commenced after 12 months from the date of birth  
9                 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 parent and the intended  
15                 parent's spouse, if married, are the only parents of the child and are financially responsible for  
16                 the child. The court shall direct that the birth certificate of the child name the intended parent  
17                 and the intended parent's spouse, if married, as the only parents of the child.

18     **"§ 52D-7. Gestational surrogacy agreement; effect of subsequent marriage.**

19                 After the court has issued an order under this Chapter, the subsequent marriage of the  
20                 gestational carrier shall not affect the validity of a gestational surrogacy agreement. The  
21                 gestational surrogacy agreement shall not require the consent of the gestational carrier's legal  
22                 spouse, nor shall her legal spouse 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                 are confidential and may not be disclosed, except upon order of the court finding that disclosure  
40                 is necessary to protect the interest of any child born as a result of the gestational surrogacy  
41                 agreement or otherwise necessary in the interest of justice. For purposes of this section, 'court  
42                 records' mean any petition, affidavit, transcript or notes of testimony, deposition, written or  
43                 recorded response to discovery request, report, decree, order, judgment, correspondence, or  
44                 document of any kind relating to a court proceeding under this Chapter. Court records shall not  
45                 include a gestational surrogacy agreement, an order validating the gestational surrogacy  
46                 agreement, or an order entered following the birth of a child in connection with a gestational  
47                 surrogacy agreement.

48                 (b) When an order issued pursuant to G.S. 52D-6 becomes final, all records and indices  
49                 of records on file with the court shall be retained permanently and sealed. [RETAINED BY  
50                 WHOM??] The sealed records shall not be open for inspection to any person, except upon  
51                 order of the court after finding inspection is necessary to protect the interest of any child born

1 as a result of the gestational surrogacy agreement or otherwise necessary in the interest of  
2 justice.

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

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

12 **SECTION 2.** This act is effective when it becomes law and applies to gestational  
13 surrogacy agreements entered into on or after that date.