
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 408 Session of
2005

INTRODUCED BY EARLL, THOMPSON, RAFFERTY, C. WILLIAMS, LEMMOND,
KITCHEN AND WOZNIAK, MARCH 14, 2005

REFERRED TO JUDICIARY, MARCH 14, 2005

AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania
2 Consolidated Statutes, providing for surrogate parenting
3 agreements.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 23 of the Pennsylvania Consolidated
7 Statutes is amended by adding a chapter to read:

8 CHAPTER 59

9 SURROGATE PARENTING AGREEMENTS

10 Sec.

11 5901. Legislative intent.

12 5902. Definitions.

13 5903. Enforceability.

14 5904. Jurisdiction and venue.

15 5905. Surrogate parenting agreements.

16 5906. Petition and required filings.

17 5907. Initial appearance of parties.

18 5908. Subsequent court appearances.

1 5909. Effect of court approval.

2 5910. Hospital protocols.

3 5911. Birth certificates.

4 5912. Violations.

5 § 5901. Legislative intent.

6 (a) Findings.--The General Assembly finds that:

7 (1) Due to the increased incidence of female
8 infertility, many couples are turning to surrogate mothers to
9 help them create families.

10 (2) The legal status of children born under surrogate
11 parenting agreements is currently uncertain. Consequently,
12 when the courts of this Commonwealth are called upon to
13 interpret or enforce surrogate parenting agreements, they
14 must decide issues, such as the status of the child, without
15 the guidance of statute.

16 (3) The General Assembly must act to protect the best
17 interests of children who will result from the practice of
18 surrogate parenting.

19 (b) Purposes.--The purposes of this chapter are:

20 (1) To ensure that the child born in fulfillment of a
21 surrogate parenting agreement has a permanent home and
22 settled rights to inheritance.

23 (2) To define and delineate the rights and
24 responsibilities of the intended parents, the surrogate
25 mother and her husband, if any.

26 (3) To facilitate private reproductive choices by
27 effectuating the parties' intentions.

28 (4) To minimize the risk to the parties.

29 (5) To ensure informed and voluntary decision making.

30 § 5902. Definitions.

1 The following words and phrases when used in this chapter
2 shall have the meanings given to them in this section unless the
3 context clearly indicates otherwise:

4 "Child." A child conceived by and born to a surrogate mother
5 following artificial insemination pursuant to the provisions of
6 a surrogate parenting agreement or a child conceived through in
7 vitro fertilization and born to a surrogate mother pursuant to
8 the provisions of a surrogate parenting agreement.

9 "Independent mental health care professional." A person who
10 is licensed to practice psychiatry, psychology or clinical
11 social work by the Commonwealth and who has no compensated
12 business relationship with any person, firm or entity required
13 by this chapter to provide an affidavit of fees received or
14 given pursuant to a surrogate parenting agreement.

15 "Infertile person." Either of the following:

16 (1) A woman who, as determined by a physician licensed
17 to practice in this Commonwealth, has been unable to conceive
18 for a period of one year while not practicing birth control,
19 or is incapable of conceiving a child or of carrying a child
20 to term without significant risks to her life or health or to
21 her child's life or health, or is sterile.

22 (2) A man who, as determined by a physician licensed to
23 practice in this Commonwealth, is sterile.

24 "Intended parents." An infertile person and that person's
25 spouse who enter into a surrogate parenting agreement.

26 "Mental health care professional." A person licensed in this
27 Commonwealth to practice psychiatry, psychology, clinical social
28 work or family counseling.

29 "Party." The surrogate mother, her husband, if any, and the
30 intended parents.

1 "Surrogate mother." A woman 21 years of age or older who
2 enters into a surrogate parenting agreement in which she agrees
3 to assume the condition of pregnancy and experience childbirth
4 in order to provide the child of that pregnancy to a couple that
5 presumably would otherwise remain childless, regardless of
6 whether the woman will or will not have a genetic relationship
7 to the child.

8 "Surrogate parenting agreement." A written contract entered
9 into by the intended parents and a surrogate mother, which
10 conforms to the requirements of section 5905 (relating to
11 surrogate parenting agreements).

12 § 5903. Enforceability.

13 An agreement to accomplish the purposes of a surrogate
14 parenting agreement under this chapter which does not receive
15 judicial approval as described in this chapter shall be deemed
16 null and void and shall not have any force or effect in this
17 Commonwealth.

18 § 5904. Jurisdiction and venue.

19 (a) Jurisdiction.--The domestic relations division of the
20 court of common pleas shall have jurisdiction over petitions for
21 judicial review and approval of surrogate parenting agreements
22 under the provisions of this chapter.

23 (b) Venue.--A petition for judicial review and approval of a
24 surrogate parenting agreement shall be brought in the county
25 where the surrogate mother resides. When the surrogate mother is
26 not a resident of this Commonwealth, the petition shall be filed
27 in the county where the intended parents reside.

28 § 5905. Surrogate parenting agreements.

29 A surrogate parenting agreement shall include, but not be
30 limited to, the following provisions:

1 (1) The agreement is not binding and enforceable until
2 approved by a court of appropriate jurisdiction.

3 (2) The surrogate mother agrees to be inseminated with
4 the sperm of the spouse of an infertile person or be
5 implanted with an embryo/zygote which has been conceived
6 through the process of in vitro fertilization and, in either
7 case, to carry the child to term and then relinquish the
8 custody of the child conceived in either manner to the
9 intended parents immediately after birth or as soon
10 thereafter as is medically feasible.

11 (3) The intended parents agree that, upon the birth of
12 the child, they will accept and take custody of the child.

13 (4) The surrogate mother shall have control of all
14 medical decisions relating to her pregnancy consistent with
15 the laws of this Commonwealth, provided that the parties may
16 contract that the surrogate mother refrain from certain
17 activities that could be considered harmful to the child or
18 children of the pregnancy, including, but not limited to,
19 smoking, drinking and physical labor.

20 (5) All reasonable and necessary medical expenses
21 incurred by the surrogate mother in the performance of a
22 surrogate parenting agreement shall be the responsibility of
23 the intended parents.

24 (6) Provisions for term life and health insurance for
25 the surrogate mother with the beneficiary of her choice, and
26 term life insurance for the intended parents with the child
27 named as beneficiary, for a term and amount as shall be
28 determined by the parties. The cost of any such life or
29 health insurance shall be the obligation of the intended
30 parents.

1 (7) Just and reasonable monetary compensation for the
2 surrogate mother shall be deposited in an escrow account or
3 attorney trust account prior to the first artificial
4 insemination of the surrogate mother, together with a
5 schedule of payments to be made from the escrow account to
6 the surrogate mother.

7 (8) The surrogate mother agrees to undergo medical
8 examinations, to be paid for by the intended parents, for the
9 following:

10 (i) Sexually and genetically transmitted diseases.

11 (ii) Pregnancy.

12 (iii) Fertility.

13 (9) The spouse of the infertile person who donates sperm
14 agrees to undergo medical examinations for sexually and
15 genetically transmitted diseases immediately prior to the
16 donation of the sperm.

17 (10) The information obtained from the examinations
18 required in paragraphs (8) and (9) shall be made available to
19 all parties.

20 (11) Any cause of action arising from a surrogate
21 parenting agreement shall be limited to an action for breach
22 of contract and an action for enforcement of the terms of the
23 agreement. Remedies for breach of contract shall be limited
24 to monetary damages in the amounts described in the
25 agreements.

26 (12) The surrogate mother shall have the right to be
27 represented by an attorney of her choosing during negotiation
28 of the surrogate parenting agreement, the cost of which shall
29 be the responsibility of the intended parents, or during any
30 other time, the cost of which shall be the responsibility of

1 the surrogate mother. The surrogate mother may waive the
2 right to counsel, in writing, with such writing to be annexed
3 to the petition. Under no circumstances, however, shall both
4 the surrogate mother and the intended parents be represented
5 by the same attorney or an attorney from the same
6 partnership, corporation or association at any stage of these
7 proceedings.

8 § 5906. Petition and required filings.

9 (a) Verification and contents.--A petition for judicial
10 approval and review of a surrogate parenting agreement shall be
11 verified by the intended parents. A petition shall set forth:

12 (1) The intended parents' names and address.

13 (2) The name and address of the proposed surrogate
14 mother, or, if such is not known to petitioners, that of her
15 legal representative.

16 (3) A statement that each of the intended parents
17 understands that, upon the birth of the child, each such
18 parent shall have full legal and parental responsibilities
19 toward the child.

20 (4) A statement of any and all fees paid or to be paid
21 by or on behalf of the intended parents in connection with
22 the surrogate parenting agreement.

23 (b) Attachments.--The petition shall have annexed thereto
24 the following documents:

25 (1) The proposed surrogate parenting agreement.

26 (2) A physician's affidavit setting forth the grounds
27 for the physician's determination that one of the intended
28 parents is an infertile person.

29 (3) A physician's affidavit stating that the surrogate
30 mother is fertile and is not pregnant and stating further the

1 presence or absence of sexually or genetically transmitted
2 diseases.

3 (4) A physician's affidavit stating that the spouse of
4 an infertile person who will donate sperm has been tested for
5 sexually and genetically transmitted diseases, and the
6 results of such tests.

7 (5) If the surrogate mother is married, a duly
8 acknowledged consent by the surrogate mother's spouse to the
9 surrogate mother's execution of the surrogate parenting
10 agreement. If the surrogate mother or egg donor marries after
11 entering into the surrogate parenting agreement, the spouse
12 of the surrogate mother or the egg donor shall be bound by
13 this chapter.

14 (6) An affidavit from any person, firm, corporation or
15 other entity which has received, or will receive, fees or
16 other consideration for services rendered in connection with
17 the surrogate parenting agreement. Fees and charges for
18 medical and other health-related services need not be set
19 forth by affidavit.

20 § 5907. Initial appearance of parties.

21 (a) Hearing scheduled.--The court shall schedule, as soon as
22 it may reasonably do so, a hearing at which the parties shall be
23 examined as set forth in this subsection. In the event the
24 identity of the surrogate mother is unknown to the intended
25 parents, the court shall provide for a separate hearing for the
26 surrogate mother and her attorney. In the presence of counsel,
27 the court shall examine the parties under oath, as to the
28 surrogate parenting agreement, to determine the following:

29 (1) Each party has freely and knowingly entered into the
30 agreement.

1 (2) Each party is fully informed as to all aspects of
2 the agreement and the proceeding and of that party's rights
3 and obligations under the agreement and the proceeding.

4 (3) The intended parents understand that, as of the date
5 of the child's birth, they will have full parental
6 responsibilities, including the duty of support of the child.

7 (4) The surrogate mother understands that, upon the
8 birth of the child, she will have no parental rights in and
9 to the child.

10 (5) Any other information the court, in its discretion,
11 deems necessary to ascertain the validity of the surrogate
12 parenting agreement.

13 (b) Counseling.--

14 (1) The court shall order each party to attend
15 counseling sessions with a licensed independent mental health
16 care professional from the date of the order until at least
17 one month after the child's birth.

18 (2) The professional shall file a report with the court
19 attesting to the parties' mental capacity to enter the
20 agreement and a final report after conclusion of the
21 counseling.

22 (3) The counseling provided to the surrogate mother and
23 the surrogate mother's spouse, if any, shall encompass the
24 potential psychological consequences of acting as a surrogate
25 mother and consenting to the adoption of a child conceived
26 pursuant to the surrogate parenting agreement.

27 (4) The counseling provided to the intended parents
28 shall encompass the psychological dynamics of infertility,
29 adoption and acting as the parent of a child conceived
30 pursuant to a surrogate parenting agreement.

1 (c) Home study.--The court shall order the children and
2 youth services agency of the county to conduct a home study of
3 the intended parents and of the surrogate mother and to file
4 with the court a copy of the report of the home study. The costs
5 of this study shall be paid by the intended parents.

6 (d) Criminal background check.--The court shall order the
7 sheriff of the county to conduct a criminal background check of
8 the intended parents, the surrogate mother, the surrogate
9 mother's spouse, if any, and any members of the surrogate
10 mother's household that may have prolonged contact with the
11 surrogate mother or the surrogate mother's child and to file a
12 copy of the results with the court. The intended parents shall
13 pay the costs of this check.

14 (e) Review of affidavits.--After receiving the affidavits
15 listing the fees to be paid in connection with the surrogate
16 parenting agreement, the court shall review those affidavits in
17 order to determine that the fees are just and reasonable.

18 (f) Petitions and records to be sealed.--The petition and
19 the records of all hearings held in a proceeding under this
20 chapter shall be sealed by the court.

21 § 5908. Subsequent court appearances.

22 (a) Basis for final approval.--After receipt of the reports
23 required under section 5907(b), (c) and (d) (relating to initial
24 appearance of parties), the court shall cause the parties and
25 their counsel to appear.

26 (b) Competency.--If the court finds that:

27 (1) a mental health professional has counseled the
28 parties as to the emotional and psychological consequences of
29 surrogate parenting;

30 (2) they are entering into the surrogate parenting

1 agreement fully informed; and

2 (3) the home study report and criminal background check
3 are satisfactory,

4 the court shall approve the surrogate parenting agreement. Upon
5 approval of the agreement, the court shall require the parties
6 to execute consents.

7 (c) Disapproval.--In the event that the court is not
8 satisfied that the surrogate parenting agreement protects the
9 health and welfare of the child or that the parties to the
10 surrogate parenting agreement are presently capable of giving
11 informed consent, that the home study report is unsatisfactory
12 or that the criminal background check is unsatisfactory, the
13 court shall make such other order or disposition as it may deem
14 just and proper.

15 § 5909. Effect of court approval.

16 (a) General rule.--Upon approval of a surrogate parenting
17 agreement by the court, the surrogate parenting agreement shall
18 be deemed enforceable for all purposes and the child shall be
19 deemed at birth the legitimate, natural child of the intended
20 parents for all purposes.

21 (b) Exception.--In the case where the spouse of an infertile
22 person donates sperm, if a paternity test demonstrates that the
23 spouse is not biologically related to the child the surrogate
24 parenting agreement shall not be enforceable, and the fact of
25 nonpaternity shall relieve the intended parents of any financial
26 duty to the surrogate mother.

27 (c) Termination of agreement.--

28 (1) After a court approves a surrogate parenting
29 agreement but before the surrogate mother becomes pregnant
30 with the child for the intended parents, the court for cause

1 or the surrogate mother, the surrogate mother's spouse or the
2 intended parents may terminate the surrogate parenting
3 agreement by giving written notice of termination to all
4 other parties and filing notice of the termination with the
5 court. Thereupon, the court shall vacate its order of
6 approval.

7 (2) A surrogate mother may terminate a surrogate
8 parenting agreement by filing written notice with the court.
9 Upon finding, after notice to the parties to the surrogate
10 parenting agreement and hearing, that the surrogate mother
11 has voluntarily terminated the surrogate parenting agreement
12 and understands the nature, meaning and effect of the
13 termination, the court shall vacate its order of approval.

14 (3) A surrogate mother shall not be liable to the
15 intended parents for terminating a surrogate parenting
16 agreement under this subsection.

17 (d) Custody of child after termination of agreement.--If,
18 after notice of termination by a surrogate mother, the court
19 vacates the order, the surrogate mother and the surrogate
20 mother's spouse, if any, shall have legal status as parents of
21 the child. If the surrogate mother is not married, the person
22 who donated the sperm shall retain all rights and duties
23 regarding the child as if the person and the surrogate mother
24 were at one time married and are now divorced.

25 § 5910. Hospital protocols.

26 A hospital that provides medical care or maternity services
27 for a surrogate mother and child of the pregnancy shall adopt
28 and comply with a protocol for surrogacy agreements and custody
29 arrangements involving a child. The hospital shall receive a
30 copy of the surrogate parenting agreement before providing

1 services.

2 § 5911. Birth certificates.

3 In addition to the requirements of the act of June 29, 1953
4 (P.L.304, No.66), known as the Vital Statistics Law of 1953,
5 relating to birth registration, a certificate of each birth
6 occurring in this Commonwealth and involving a surrogate mother
7 shall include the name of the sperm donor and, if any, egg
8 donor.

9 § 5912. Violations.

10 (a) General rule.--Except as otherwise provided for under
11 subsection (b), a person, agency, association, corporation,
12 institution, society or organization which, without court
13 approval, enters into or pays fees under any surrogate parenting
14 arrangement, agreement or contract commits a misdemeanor of the
15 first degree and shall, upon conviction, be sentenced to pay a
16 fine of not more than \$10,000.

17 (b) Surrogate mothers.--A surrogate mother who violates a
18 provision of this chapter commits a misdemeanor of the third
19 degree and shall, upon conviction, be sentenced to pay a fine of
20 not more than \$2,500.

21 Section 2. This act shall apply to all surrogate parenting
22 agreements entered into on or after the effective date of this
23 section.

24 Section 3. This act shall take effect in 90 days.