

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 527 Session of  
1997

INTRODUCED BY ROONEY, STABACK, YOUNGBLOOD, COY, ROBINSON,  
TRELLO, MICHLOVIC AND RAMOS, FEBRUARY 12, 1997

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 12, 1997

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. Part VI of Title 23 of the Pennsylvania  
7 Consolidated Statutes is amended by adding a chapter to read:

PART VI

CHILDREN AND MINORS

\* \* \*

CHAPTER 59

SURROGATE PARENTING AGREEMENTS

13 Sec.

14 5901. Legislative intent.

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6 § 5901. Legislative intent.

7 (a) Findings.--The General Assembly finds the following:

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

11 (2) That an individual's decision regarding whether or  
12 not to bear or beget a child falls within the  
13 constitutionally protected right of privacy, and, therefore,  
14 the Commonwealth may not prohibit the practice of surrogate  
15 parenting or enact regulations that would have the effect of  
16 prohibiting the practice.

17 (3) That the legal status of children born under  
18 surrogate parenting agreements is currently uncertain.  
19 Consequently, when state courts are called upon to interpret  
20 or enforce surrogate parenting agreements, they must decide  
21 issues, such as the status of the child, without the guidance  
22 of statute.

23 (4) That, in accordance with the findings in paragraphs  
24 (1) through (3), the General Assembly must act to protect the  
25 best interests of children who will result from the practice  
26 of surrogate parenting.

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

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

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

4           (3) To facilitate private reproductive choices by  
5       effectuating the parties' intentions.

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

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

8   § 5902. Definitions.

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

12      "Child." A child or children conceived by and born to a  
13      surrogate mother following artificial insemination pursuant to  
14      the provisions of a surrogate parenting agreement or a child or  
15      children conceived through in vitro fertilization and born to a  
16      surrogate mother pursuant to the provisions of a surrogate  
17      parenting agreement.

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

24      "Infertile woman." A woman who, as determined by a physician  
25      licensed to practice in this Commonwealth, has been unable to  
26      conceive for a period of one year while not practicing birth  
27      control, or is incapable of conceiving a child or of carrying a  
28      child to term without significant risks to her life or health or  
29      to her child's life or health, or is sterile.

30      "Intended parents." An infertile woman and her husband who

1 enter into a surrogate parenting agreement.

2 "Mental health care professional." A person licensed in this  
3 Commonwealth to practice psychiatry, psychology, clinical social  
4 work or family counseling.

5 "Party." The surrogate mother, her husband, if any, and the  
6 intended parents.

7 "Surrogate mother." A woman 21 years of age or older who  
8 enters into a surrogate parenting agreement in which she agrees  
9 to assume the condition of pregnancy and experience childbirth  
10 in order to provide the child of that pregnancy to a couple that  
11 presumably would otherwise remain childless.

12 "Surrogate parenting agreement." A written contract entered  
13 into by the intended parents and a surrogate mother, which  
14 conforms to the requirements of section 5905 (relating to  
15 surrogate parenting agreements).

16 § 5903. Enforceability.

17 Any agreement to accomplish the purposes of a surrogate  
18 parenting agreement under this chapter which does not receive  
19 judicial approval as described in this chapter shall be deemed  
20 null and void and shall not have any force or effect in this  
21 Commonwealth.

22 § 5904. Jurisdiction and venue.

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

27 (b) Venue.--A petition for judicial review and approval of a  
28 surrogate parenting agreement shall be brought in the county  
29 where the surrogate mother resides. When the surrogate mother is  
30 not a resident of this Commonwealth, the petition shall be filed

1 in the county where the intended parents reside.

2 § 5905. Surrogate parenting agreements.

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

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

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

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

17 (4) The surrogate mother shall have control of all  
18 medical decisions relating to her pregnancy consistent with  
19 the laws of this Commonwealth.

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

1 parents.

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

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

11 (i) Sexually and genetically transmitted diseases.

12 (ii) Pregnancy.

13 (iii) Fertility.

14 (9) The natural father agrees to undergo medical  
15 examinations for sexually and genetically transmitted  
16 diseases immediately prior to the donation of semen.

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

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

25 (12) The surrogate mother shall have access to legal  
26 counsel of her own choosing during negotiation of the  
27 surrogate parenting agreement, the cost of which shall be the  
28 responsibility of the intended parents. The surrogate mother  
29 may waive the right to counsel, in writing, with such writing  
30 to be annexed to the petition. Under no circumstances,

1       however, shall both the surrogate mother and the intended  
2       parents be represented by the same attorney or an attorney  
3       from the same partnership, corporation or association at any  
4       stage of these proceedings.

5   § 5906.   Petition and required filings.

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

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

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

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

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

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

22           (1)   The proposed surrogate parenting agreement.

23           (2)   A physician's affidavit setting forth the grounds  
24       for his determination that the intended mother is an  
25       infertile woman.

26           (3)   A physician's affidavit stating that the surrogate  
27       mother is fertile and is not pregnant and stating further the  
28       presence or absence of sexually or genetically transmitted  
29       diseases.

30           (4)   A physician's affidavit stating that the husband of

1 the infertile woman has been tested for sexually and  
2 genetically transmitted diseases, and the results of such  
3 tests.

4 (5) If the surrogate mother is married, a duly  
5 acknowledged consent by the surrogate mother's husband to her  
6 execution of the surrogate parenting agreement. If the  
7 surrogate or egg donor marries after entering into the  
8 surrogate contract, the surrogate's husband or the egg  
9 donor's husband shall be bound by this division.

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

16 § 5907. Initial appearance of parties.

17 (a) Hearing scheduled.--Within 30 days from the date of the  
18 filing of the petition, the court shall schedule a hearing at  
19 which the parties shall be examined as set forth in this  
20 subsection. In the event the identity of the surrogate mother is  
21 unknown to the intended parents, the court shall provide for a  
22 separate hearing for the surrogate mother and her attorney. In  
23 the presence of counsel, the court shall examine the parties  
24 under oath, as to the surrogate parenting agreement, to  
25 determine the following:

26 (1) The party being examined has freely and knowingly  
27 entered into the agreement.

28 (2) The party being examined is fully informed as to all  
29 aspects of the agreement and the proceeding and of that  
30 party's rights and obligations under the agreement and the



1 proceeding.

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

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

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

12 (b) Counseling.--The court shall order each party to attend  
13 counseling sessions with a licensed independent mental health  
14 care professional from the date of the order until at least one  
15 month after the child's birth. The professional shall file a  
16 report with the court attesting to the parties' mental capacity  
17 to enter the agreement. The counseling provided to the surrogate  
18 and her husband, if any, shall encompass the potential  
19 psychological consequences of acting as a surrogate and  
20 consenting to the adoption of a child conceived pursuant to the  
21 surrogate contract. The counseling provided to the infertile  
22 couple shall encompass the psychological dynamics of  
23 infertility, adoption and acting as the parent of a child  
24 conceived pursuant to a surrogate contract.

25 (c) Home study.--The court shall order the children and  
26 youth services agency of the county to conduct a home study of  
27 the intended parents and of the surrogate mother and to file  
28 with the court a copy of the report of the home study. The costs  
29 of this study shall be paid by the intended parents.

30 (d) Criminal background check.--The court shall order the

1 sheriff of the county to conduct a criminal background check of  
2 the intended parents and of the surrogate mother and to file a  
3 copy of the results with the court. The intended parents shall  
4 pay the costs of this check.

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

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

12 § 5908. Subsequent court appearances.

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

17 (b) Competency.--If the court finds that a mental health  
18 professional has counseled the parties as to the emotional and  
19 psychological consequences of surrogate parenting and that they  
20 are entering into the agreement fully informed and that the home  
21 study report and criminal background check are satisfactory, the  
22 court shall approve the surrogate parenting agreement. Upon  
23 approval of the agreement, the court shall require the parties  
24 to execute consents.

25 (c) Disapproval.--In the event that the court is not  
26 satisfied that the surrogate parenting agreement protects the  
27 health and welfare of the potential child or that the parties to  
28 the surrogate parenting agreement are presently capable of  
29 giving informed consent, that the home study report is  
30 unsatisfactory or that the criminal background check is

1 unsatisfactory, the court shall make such other order or  
2 disposition as it may deem just and proper.

3 § 5909. Effect of court approval.

4 (a) General rule.--Upon approval of the agreement by the  
5 court, the agreement shall be deemed enforceable for all  
6 purposes and the child shall be deemed at birth the legitimate,  
7 natural child of the intended parents for all purposes.

8 (b) Exception.--If a paternity test demonstrates that the  
9 intended father is not biologically related to the child the  
10 agreement shall not be enforceable, and the fact of nonpaternity  
11 shall relieve the intended father and his wife of any financial  
12 duty to the surrogate mother.

13 (c) Termination of agreement.--

14 (1) After a court approves a surrogate agreement but  
15 before the surrogate becomes pregnant through assisted  
16 conception, the court for cause, or the surrogate, her  
17 husband, or the intended parents may terminate the surrogacy  
18 agreement by giving written notice of termination to all  
19 other parties and filing notice of the termination with the  
20 court. Thereupon, the court shall vacate its order of  
21 approval.

22 (2) A surrogate mother may terminate the agreement by  
23 filing written notice with the court. Upon finding, after  
24 notice to the parties to the agreement and hearing, that the  
25 surrogate mother has voluntarily terminated the agreement and  
26 understands the nature, meaning and effect of the  
27 termination, the court shall vacate its order of approval.

28 (3) The surrogate mother shall not be liable to the  
29 intended parents for terminating the agreement under this  
30 subsection.

1       (d) Custody of child after termination of agreement.--If,  
2 after notice of termination by the surrogate, the court vacates  
3 the order, the surrogate is the mother of a resulting child, and  
4 her husband, if any, is the father. If the surrogate mother is  
5 not married, the biological father shall retain all rights and  
6 duties regarding the child as if he and its mother were at one  
7 time married and are now divorced.

8   § 5910. Violations.

9       Any person, agency, association, corporation, institution,  
10 society or organization which, without court approval, enters  
11 into or pays fees under any surrogate parenting arrangement,  
12 agreement or contract commits a misdemeanor of the first degree  
13 and shall, upon conviction, be sentenced to pay a fine of not  
14 less than \$20,000.

15       Section 2. This act shall apply to all surrogate parenting  
16 agreements entered into on or after the effective date of this  
17 act.

18       Section 3. This act shall take effect January 1, 1998.