

**Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 20-0674.01 Jerry Barry x4341

HOUSE BILL 20-1316

HOUSE SPONSORSHIP

Froelich,

SENATE SPONSORSHIP

Ginal,

House Committees

Public Health Care & Human Services

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE PROTECTION OF PARTIES THROUGH THE**
102 **ENFORCEMENT OF PROPER SURROGACY AGREEMENTS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill repeals a section on assisted reproduction of the "Uniform Parentage Act" and replaces it with a new "Colorado Surrogacy Agreement Act" (act). The act:

- ! Establishes eligibility requirements for entering into surrogacy agreements (agreements) and required elements of the agreements;

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 ACCORDING TO THE PUBLIC POLICY OF THIS STATE.

2 **19-4.5-103. Definitions.** AS USED IN THIS ARTICLE 4.5, UNLESS
3 THE CONTEXT OTHERWISE REQUIRES:

4 (1) "ASSISTED REPRODUCTION" MEANS A METHOD OF CAUSING
5 PREGNANCY THROUGH MEANS OTHER THAN BY SEXUAL INTERCOURSE. IN
6 THE FOREGOING CONTEXT, THE TERM INCLUDES, BUT IS NOT LIMITED TO:

7 (a) INTRAUTERINE OR INTRACERVICAL INSEMINATION;

8 (b) DONATION OF EGGS OR SPERM;

9 (c) DONATION OF EMBRYOS;

10 (d) IN VITRO FERTILIZATION (IVF) AND EMBRYO TRANSFER; AND

11 (e) INTRACYTOPLASMIC SPERM INJECTION.

12 (2) "ASSISTED REPRODUCTIVE TECHNOLOGY" OR "ART" MEANS
13 ANY MEDICAL OR SCIENTIFIC PROCEDURES OR TREATMENT PROVIDED BY
14 A MEDICAL PROVIDER, WITH THE INTENT OF HAVING A CHILD OTHER THAN
15 SEXUAL INTERCOURSE.

16 (3) "CHILD" MEANS AN INDIVIDUAL OR INDIVIDUALS BORN
17 PURSUANT TO ASSISTED REPRODUCTION WHOSE PARENTAGE MAY BE
18 DETERMINED UNDER THIS ARTICLE 4.5 OR OTHER LAW.

19 (4) "COMPENSATION" MEANS PAYMENT OF ANY VALUABLE
20 CONSIDERATION FOR TIME, EFFORT, SUPPORT, PAIN, OR RISK.

21 (5) "DONOR" MEANS AN INDIVIDUAL, INCLUDING A GENETIC
22 SURROGATE OR AN INTENDED PARENT, WHO PROVIDES GAMETES OR
23 EMBRYOS FOR ASSISTED REPRODUCTION.

24 (6) "EMBRYO" MEANS A FERTILIZED EGG THAT HAS THE POTENTIAL
25 TO DEVELOP INTO A FETUS IF TRANSFERRED INTO A UTERUS.

26 (7) "EMBRYO TRANSFER" OR "TRANSFER" MEANS THE PLACEMENT
27 OF AN EMBRYO INTO A UTERUS.

1 (8) "GAMETE" MEANS A CELL CONTAINING A HAPLOID
2 COMPLEMENT OF DNA THAT HAS THE POTENTIAL TO FORM AN EMBRYO
3 WHEN COMBINED WITH ANOTHER GAMETE. SPERM AND EGGS ARE
4 GAMETES.

5 (9) "INTENDED PARENT" MEANS AN INDIVIDUAL, MARRIED OR
6 UNMARRIED, WHO MANIFESTS AN INTENT TO BE LEGALLY BOUND AS A
7 PARENT OF A CHILD CONCEIVED BY ASSISTED REPRODUCTION.

8 (10) "MEDICAL EVALUATION" MEANS A COMPLETE CONSULTATION
9 WITH AND EVALUATION BY A LICENSED MEDICAL DOCTOR.

10 (11) "MENTAL HEALTH EVALUATION" MEANS A CONSULTATION
11 WITH AND, WHEN REQUIRED BY THIS ARTICLE 4.5, AN ASSESSMENT BY A
12 LICENSED MENTAL HEALTH PROFESSIONAL.

13 (12) "GENETIC SURROGATE" MEANS A WOMAN WHO IS NOT AN
14 INTENDED PARENT AND WHO AGREES TO BECOME PREGNANT THROUGH
15 ASSISTED REPRODUCTION USING THEIR OWN DONATED GAMETES, UNDER
16 A SURROGACY AGREEMENT AS PROVIDED IN THIS ARTICLE 4.5.

17 (13) "GESTATIONAL SURROGATE" MEANS A WOMAN WHO IS NOT
18 AN INTENDED PARENT AND WHO AGREES TO BECOME PREGNANT THROUGH
19 ASSISTED REPRODUCTION USING GAMETES THAT ARE NOT THEIR OWN,
20 UNDER A SURROGACY AGREEMENT AS PROVIDED IN THIS ARTICLE 4.5.

21 (14) "SURROGACY AGREEMENT" MEANS AN AGREEMENT BETWEEN
22 ONE OR MORE INTENDED PARENTS AND A WOMAN WHO IS NOT AN
23 INTENDED PARENT IN WHICH THE WOMAN AGREES TO BECOME PREGNANT
24 THROUGH ASSISTED REPRODUCTION AND THAT PROVIDES THAT EACH
25 INTENDED PARENT IS A PARENT OF A CHILD CONCEIVED UNDER THE
26 AGREEMENT. UNLESS OTHERWISE SPECIFIED, THE TERM REFERS TO BOTH
27 A GESTATIONAL SURROGACY AGREEMENT AND A GENETIC SURROGACY

1 AGREEMENT.

2 **19-4.5-104. Eligibility requirements.** (1) TO EXECUTE AN
3 AGREEMENT TO ACT AS A GESTATIONAL OR GENETIC SURROGATE, A
4 WOMAN MUST:

5 (a) BE AT LEAST TWENTY-ONE YEARS OF AGE;

6 (b) PREVIOUSLY HAVE GIVEN BIRTH TO AT LEAST ONE CHILD;

7 (c) COMPLETE A MEDICAL EVALUATION RELATED TO THE
8 SURROGACY ARRANGEMENT BY A LICENSED MEDICAL DOCTOR;

9 (d) COMPLETE A MENTAL-HEALTH CONSULTATION BY A LICENSED
10 MENTAL-HEALTH PROFESSIONAL; AND

11 (e) HAVE INDEPENDENT LEGAL REPRESENTATION OF THEIR CHOICE
12 BY AN ATTORNEY LICENSED IN THIS STATE THROUGHOUT THE SURROGACY
13 ARRANGEMENT REGARDING THE TERMS OF THE SURROGACY AGREEMENT
14 AND THE POTENTIAL LEGAL CONSEQUENCES OF THE AGREEMENT.

15 (2) TO EXECUTE A SURROGACY AGREEMENT, EACH INTENDED
16 PARENT, WHETHER OR NOT GENETICALLY RELATED TO THE CHILD, MUST:

17 (a) BE AT LEAST TWENTY-ONE YEARS OF AGE;

18 (b) COMPLETE A MEDICAL EVALUATION RELATED TO THE
19 SURROGACY ARRANGEMENT BY A LICENSED MEDICAL DOCTOR; AND

20 (c) HAVE INDEPENDENT LEGAL REPRESENTATION OF THE INTENDED
21 PARENT'S OR PARENTS' CHOICE THROUGHOUT THE SURROGACY
22 ARRANGEMENT REGARDING THE TERMS OF THE SURROGACY AGREEMENT
23 AND THE POTENTIAL LEGAL CONSEQUENCES OF THE AGREEMENT.

24 **19-4.5-105. Process requirements for a surrogacy agreement.**

25 (1) A SURROGACY AGREEMENT MUST BE EXECUTED IN COMPLIANCE WITH
26 THE FOLLOWING RULES:

27 (a) AT LEAST ONE PARTY MUST BE A RESIDENT OF THIS STATE OR

1 THE BIRTH MUST OCCUR OR IS ANTICIPATED TO OCCUR IN THIS STATE.

2 (b) A GESTATIONAL OR GENETIC SURROGATE AND EACH INTENDED
3 PARENT MUST MEET THE REQUIREMENTS OF SECTION 19-4.5-104.

4 (c) EACH INTENDED PARENT, THE GESTATIONAL OR GENETIC
5 SURROGATE, AND THE SURROGATE'S SPOUSE, IF ANY, MUST BE PARTIES TO
6 THE AGREEMENT.

7 (d) EACH PARTY LISTED IN SUBSECTION (1)(c) OF THIS SECTION
8 SHALL SIGN THE AGREEMENT.

9 (e) THE SIGNATURE OF EACH PARTY TO THE AGREEMENT MUST BE
10 ATTESTED BY A NOTARIAL OFFICER.

11 (f) THE GESTATIONAL OR GENETIC SURROGATE AND THE INTENDED
12 PARENT OR PARENTS MUST EACH HAVE INDEPENDENT LEGAL
13 REPRESENTATION THROUGHOUT THE SURROGACY ARRANGEMENT
14 REGARDING THE TERMS OF THE SURROGACY AGREEMENT AND THE
15 POTENTIAL LEGAL CONSEQUENCES OF THE AGREEMENT, AND EACH
16 COUNSEL MUST BE IDENTIFIED IN THE SURROGACY AGREEMENT.

17 (g) THE INTENDED PARENT OR PARENTS MAY PAY FOR
18 INDEPENDENT LEGAL REPRESENTATION FOR THE GESTATIONAL OR GENETIC
19 SURROGATE.

20 (h) THE AGREEMENT MUST BE EXECUTED BEFORE A MEDICAL
21 PROCEDURE OCCURS RELATED TO THE SURROGACY AGREEMENT, OTHER
22 THAN THE MEDICAL EVALUATION AND MENTAL HEALTH CONSULTATION
23 REQUIRED BY SECTION 19-4.5-104.

24 **19-4.5-106. Required contents of surrogacy agreement.** (1) A
25 SURROGACY AGREEMENT MUST COMPLY WITH THE FOLLOWING
26 REQUIREMENTS:

27 (a) A GESTATIONAL OR GENETIC SURROGATE AGREES TO ATTEMPT

1 TO BECOME PREGNANT BY MEANS OF ASSISTED REPRODUCTION.

2 (b) EXCEPT AS OTHERWISE PROVIDED IN SECTION 19-4.5-111, THE
3 GESTATIONAL OR GENETIC SURROGATE AND THE SURROGATE'S SPOUSE OR
4 FORMER SPOUSE, IF ANY, HAVE NO CLAIM TO PARENTAGE OF A CHILD
5 CONCEIVED BY ASSISTED REPRODUCTION UNDER THE AGREEMENT.

6 (c) THE GESTATIONAL OR GENETIC SURROGATE'S SPOUSE, IF ANY,
7 MUST ACKNOWLEDGE AND AGREE TO COMPLY WITH THE OBLIGATIONS
8 IMPOSED ON THE SURROGATE BY THE AGREEMENT.

9 (d) EXCEPT AS OTHERWISE PROVIDED IN SECTION 19-4.5-111, THE
10 INTENDED PARENT OR, IF THERE ARE TWO INTENDED PARENTS, EACH ONE
11 JOINTLY AND SEVERALLY, IMMEDIATELY ON BIRTH WILL BE THE
12 EXCLUSIVE PARENT OR PARENTS OF THE CHILD, REGARDLESS OF NUMBER
13 OF CHILDREN BORN OR GENDER OR MENTAL OR PHYSICAL CONDITION OF
14 EACH CHILD.

15 (e) EXCEPT AS OTHERWISE PROVIDED IN SECTION 19-4.5-111, THE
16 INTENDED PARENT OR, IF THERE ARE TWO INTENDED PARENTS, EACH
17 PARENT JOINTLY AND SEVERALLY, IMMEDIATELY ON BIRTH WILL ASSUME
18 RESPONSIBILITY FOR THE FINANCIAL SUPPORT OF THE CHILD, REGARDLESS
19 OF THE NUMBER OF CHILDREN BORN OR GENDER OR MENTAL OR PHYSICAL
20 CONDITION OF EACH CHILD.

21 (f) THE AGREEMENT MUST INCLUDE INFORMATION DISCLOSING
22 HOW EACH INTENDED PARENT WILL COVER THE AGREED UPON EXPENSES
23 OF THE GESTATIONAL OR GENETIC SURROGATE, THE ASSISTED
24 REPRODUCTIVE TECHNOLOGY EXPENSES, AND THE MEDICAL EXPENSES FOR
25 THE SURROGATE AND THE CHILD.

26 (g) THE AGREEMENT MUST PERMIT THE GESTATIONAL OR GENETIC
27 SURROGATE TO MAKE ALL HEALTH AND WELFARE DECISIONS REGARDING

1 THEMSELVES AND THEIR PREGNANCY. THIS ARTICLE 4.5 DOES NOT
2 ENLARGE OR DIMINISH THE GESTATIONAL OR GENETIC SURROGATE'S RIGHT
3 TO TERMINATE THEIR PREGNANCY.

4 (h) THE AGREEMENT MUST INCLUDE INFORMATION ABOUT EACH
5 PARTY'S RIGHT UNDER THIS ARTICLE 4.5 TO TERMINATE THE SURROGACY
6 AGREEMENT.

7 (2) A SURROGACY AGREEMENT MAY PROVIDE FOR:

8 (a) PAYMENT OF COMPENSATION, SUPPORT, AND REASONABLE
9 EXPENSES; AND

10 (b) REIMBURSEMENT OF SPECIFIC AGREED UPON EXPENSES IF THE
11 AGREEMENT IS TERMINATED UNDER THIS ARTICLE 4.5.

12 (3) A RIGHT CREATED UNDER A SURROGACY AGREEMENT IS NOT
13 ASSIGNABLE AND THERE IS NO THIRD-PARTY BENEFICIARY OF THE
14 AGREEMENT OTHER THAN THE CHILD.

15 (4) IN THE EVENT THAT ANY OF THE REQUIREMENTS OF THIS
16 SECTION ARE NOT MET, A COURT OF COMPETENT JURISDICTION SHALL
17 DETERMINE PARENTAGE BASED ON THE PARTIES' INTENT.

18 **19-4.5-107. Effect of subsequent change of marital status.**

19 (1) UNLESS A SURROGACY AGREEMENT EXPRESSLY PROVIDES OTHERWISE:

20 (a) THE MARRIAGE OF A GESTATIONAL OR GENETIC SURROGATE
21 AFTER THE AGREEMENT IS SIGNED BY ALL PARTIES DOES NOT AFFECT THE
22 VALIDITY OF THE AGREEMENT, THEIR SPOUSE'S CONSENT TO THE
23 AGREEMENT IS NOT REQUIRED, AND THEIR SPOUSE IS NOT A PRESUMED
24 PARENT OF A CHILD CONCEIVED BY ASSISTED REPRODUCTION UNDER THE
25 AGREEMENT; AND

26 (b) THE DISSOLUTION, ANNULMENT, DECLARATION OF INVALIDITY,
27 LEGAL SEPARATION, OR SEPARATE MAINTENANCE OF THE GESTATIONAL OR

1 GENETIC SURROGATE AFTER THE AGREEMENT IS SIGNED BY ALL PARTIES
2 DOES NOT AFFECT THE VALIDITY OF THE AGREEMENT.

3 (2) UNLESS A SURROGACY AGREEMENT EXPRESSLY PROVIDES
4 OTHERWISE:

5 (a) THE MARRIAGE OF AN INTENDED PARENT AFTER THE
6 AGREEMENT IS SIGNED BY ALL PARTIES DOES NOT AFFECT THE VALIDITY
7 OF A SURROGACY AGREEMENT, THE CONSENT OF THE SPOUSE OF THE
8 INTENDED PARENT IS NOT REQUIRED, AND THE SPOUSE OF THE INTENDED
9 PARENT IS NOT, BASED ON THE AGREEMENT, A PARENT OF A CHILD
10 CONCEIVED BY ASSISTED REPRODUCTION UNDER THE AGREEMENT; AND

11 (b) THE DISSOLUTION, ANNULMENT, DECLARATION OF INVALIDITY,
12 LEGAL SEPARATION, OR SEPARATE MAINTENANCE OF AN INTENDED PARENT
13 AFTER THE AGREEMENT IS SIGNED BY ALL PARTIES DOES NOT AFFECT THE
14 VALIDITY OF THE AGREEMENT AND, EXCEPT AS OTHERWISE PROVIDED IN
15 SECTION 19-4.5-110 OR 19-4.5-112, THE INTENDED PARENTS ARE THE
16 PARENTS OF THE CHILD.

17 **19-4.5-108. Termination of surrogacy agreement.** (1) A PARTY
18 TO A SURROGACY AGREEMENT MAY TERMINATE THE AGREEMENT, AT ANY
19 TIME BEFORE A GAMETE OR AN EMBRYO TRANSFER, BY GIVING NOTICE OF
20 TERMINATION IN A RECORD TO ALL OTHER PARTIES. IF A GAMETE OR AN
21 EMBRYO TRANSFER DOES NOT RESULT IN A PREGNANCY, A PARTY MAY
22 TERMINATE THE AGREEMENT AT ANY TIME BEFORE A SUBSEQUENT
23 GAMETE OR EMBRYO TRANSFER.

24 (2) UNLESS A SURROGACY AGREEMENT PROVIDES OTHERWISE, ON
25 TERMINATION OF THE AGREEMENT PURSUANT TO SUBSECTION (1) OF THIS
26 SECTION, THE PARTIES ARE RELEASED FROM THE AGREEMENT; EXCEPT
27 THAT EACH INTENDED PARENT REMAINS RESPONSIBLE FOR EXPENSES THAT

1 ARE REIMBURSABLE UNDER THE AGREEMENT AND INCURRED BY THE
2 GESTATIONAL OR GENETIC SURROGATE THROUGH THE DATE OF
3 TERMINATION.

4 (3) EXCEPT IN A CASE INVOLVING FRAUD, NO PARTY IS LIABLE TO
5 ANY OTHER PARTY FOR A PENALTY OR LIQUIDATED DAMAGES FOR
6 TERMINATING A SURROGACY AGREEMENT UNDER THIS SECTION.

7 **19-4.5-109. Establishment of parent-child relationship under**
8 **surrogacy agreement.** (1) EXCEPT AS OTHERWISE PROVIDED IN
9 SUBSECTION (3) OF THIS SECTION OR SECTION 19-4.5-110 (2) OR
10 19-4.5-112, ON BIRTH OF A CHILD CONCEIVED BY ASSISTED REPRODUCTION
11 UNDER A SURROGACY AGREEMENT EACH INTENDED PARENT IS, BY
12 OPERATION OF LAW, A PARENT OF THE CHILD.

13 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS
14 SECTION OR SECTION 19-4.5-112, NEITHER A GESTATIONAL OR GENETIC
15 SURROGATE NOR THE SURROGATE'S SPOUSE OR FORMER SPOUSE, IF ANY,
16 IS A PARENT OF THE CHILD.

17 (3) IF A CHILD IS ALLEGED TO BE A GENETIC CHILD OF THE WOMAN
18 WHO AGREED TO BE A GESTATIONAL SURROGATE, THE COURT SHALL
19 ORDER GENETIC TESTING OF THE CHILD. IF THE CHILD IS A GENETIC CHILD
20 OF THE WOMAN WHO AGREED TO BE A GESTATIONAL SURROGATE,
21 PARENTAGE MUST BE DETERMINED BASED ON ARTICLE 4 OF THIS TITLE 19.

22 (4) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS
23 SECTION OR SECTION 19-4.5-110 (2) OR 19-4.5-112, IF, DUE TO A CLINICAL
24 OR LABORATORY ERROR, A CHILD CONCEIVED BY ASSISTED REPRODUCTION
25 UNDER A SURROGACY AGREEMENT IS NOT GENETICALLY RELATED TO AN
26 INTENDED PARENT OR A DONOR WHO DONATED TO THE INTENDED PARENT
27 OR PARENTS, EACH INTENDED PARENT, AND NOT THE GESTATIONAL OR

1 GENETIC SURROGATE AND THE SURROGATE'S SPOUSE OR FORMER SPOUSE,
2 IF ANY, IS A PARENT OF THE CHILD, SUBJECT TO ANY OTHER CLAIM OF
3 PARENTAGE.

4 (5) A DONOR IS NOT A PARENT OF A CHILD CONCEIVED BY ASSISTED
5 REPRODUCTION.

6 **19-4.5-110. Parentage of deceased intended parent under**
7 **surrogacy agreement.** (1) SECTION 19-4.5-109 APPLIES TO AN INTENDED
8 PARENT EVEN IF THE INTENDED PARENT DIED DURING THE PERIOD
9 BETWEEN THE TRANSFER OF A GAMETE OR EMBRYO AND THE BIRTH OF THE
10 CHILD.

11 (2) EXCEPT AS OTHERWISE PROVIDED IN SECTION 19-4.5-112, AN
12 INTENDED PARENT IS NOT A PARENT OF A CHILD CONCEIVED BY ASSISTED
13 REPRODUCTION UNDER A SURROGACY AGREEMENT IF THE INTENDED
14 PARENT DIES BEFORE THE TRANSFER OF A GAMETE OR EMBRYO UNLESS:

15 (a) THE AGREEMENT PROVIDES OTHERWISE; AND

16 (b) THE TRANSFER OF A GAMETE OR EMBRYO OCCURS NOT LATER
17 THAN THIRTY-SIX MONTHS AFTER THE DEATH OF THE INTENDED PARENT OR
18 BIRTH OF THE CHILD OCCURS NOT LATER THAN FORTY-FIVE MONTHS AFTER
19 THE DEATH OF THE INTENDED PARENT.

20 **19-4.5-111. Court order of parentage under surrogacy**
21 **agreement.** (1) EXCEPT AS OTHERWISE PROVIDED IN SECTION 19-4.5-110
22 (3) OR 19-4.5-112, BEFORE, ON, OR AFTER THE BIRTH OF A CHILD
23 CONCEIVED BY ASSISTED REPRODUCTIVE TECHNOLOGY PURSUANT TO A
24 SURROGACY AGREEMENT, A PARTY TO THE AGREEMENT MAY COMMENCE
25 A PROCEEDING IN A JUVENILE COURT IN THIS STATE BY FILING A PETITION
26 FOR DETERMINATION OF PARENT CHILD RELATIONSHIP WITH ADMISSIONS
27 OF PARENTAGE, AS APPLICABLE BY THE INTENDED PARENTS, AND

1 ADMISSIONS OF NON-PARENTAGE BY THE GESTATIONAL OR GENETIC
2 SURROGATE AND THEIR SPOUSE, AS APPLICABLE AND FOR AN ORDER OR
3 JUDGMENT:

4 (a) DECLARING THAT EACH INTENDED PARENT IS A PARENT OF THE
5 CHILD AND ORDERING THAT PARENTAL RIGHTS AND DUTIES VEST
6 IMMEDIATELY ON THE BIRTH OF THE CHILD EXCLUSIVELY IN EACH
7 INTENDED PARENT;

8 (b) DECLARING THAT THE GESTATIONAL OR GENETIC SURROGATE
9 AND THE SURROGATE'S SPOUSE OR FORMER SPOUSE, IF ANY, ARE NOT THE
10 PARENTS OF THE CHILD;

11 (c) DESIGNATING THE CONTENT OF THE BIRTH RECORD IN
12 ACCORDANCE WITH ARTICLE 2 OF TITLE 25 AND DIRECTING THE COLORADO
13 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT OR STATE REGISTRAR
14 TO DESIGNATE EACH INTENDED PARENT AS A PARENT OF THE CHILD;

15 (d) TO PROTECT THE PRIVACY OF THE CHILD AND THE PARTIES,
16 DECLARING THAT THE COURT RECORD IS NOT OPEN TO INSPECTION;

17 (e) IF NECESSARY, THAT THE CHILD BE SURRENDERED TO THE
18 INTENDED PARENT OR PARENTS; AND

19 (f) FOR OTHER RELIEF THE COURT DETERMINES NECESSARY AND
20 PROPER.

21 (2) THE COURT MAY ISSUE AN ORDER OR JUDGMENT UNDER
22 SUBSECTION (1) OF THIS SECTION BEFORE THE BIRTH OF THE CHILD. THE
23 COURT SHALL STAY ENFORCEMENT OF THE ORDER OR JUDGMENT UNTIL
24 THE BIRTH OF THE CHILD.

25 (3) NEITHER THIS STATE NOR THE COLORADO DEPARTMENT OF
26 PUBLIC HEALTH & ENVIRONMENT IS A NECESSARY PARTY TO A
27 PROCEEDING UNDER SUBSECTION (1) OF THIS SECTION.

1 (4) THE PETITION DESCRIBED IN SUBSECTION (1) OF THIS SECTION
2 MUST SET FORTH THE FACTS OF THE SURROGACY ARRANGEMENT.

3 (5) IF A COURT ORDER OF PARENTAGE IS ISSUED IN ANOTHER
4 STATE, THE ORDER MUST BE REGISTERED WITH A COLORADO COURT OF
5 COMPETENT JURISDICTION BEFORE BEING VALID IN THIS STATE.

6 **19-4.5-112. Effect of surrogacy agreement.** (1) A SURROGACY
7 AGREEMENT THAT COMPLIES WITH SECTIONS 19-4.5-104, 19-4.5-105 AND
8 19-4.5-106, IS ENFORCEABLE.

9 (2) IF A CHILD WAS CONCEIVED BY ASSISTED REPRODUCTION
10 UNDER A SURROGACY AGREEMENT THAT DOES NOT COMPLY WITH
11 SECTIONS 19-4.5-104, 19-4.5-105, AND 19-4.5-106, THE COURT SHALL
12 DETERMINE THE RIGHTS AND DUTIES OF THE PARTIES TO THE AGREEMENT
13 CONSISTENT WITH THE INTENT OF THE PARTIES AT THE TIME OF EXECUTION
14 OF THE AGREEMENT. EACH PARTY TO THE AGREEMENT AND ANY
15 INDIVIDUAL WHO AT THE TIME OF THE EXECUTION OF THE AGREEMENT
16 WAS A SPOUSE OF A PARTY TO THE AGREEMENT HAS STANDING TO
17 MAINTAIN A PROCEEDING TO ADJUDICATE AN ISSUE RELATED TO THE
18 ENFORCEMENT OF THE AGREEMENT.

19 (3) EXCEPT AS EXPRESSLY PROVIDED IN A SURROGACY
20 AGREEMENT OR SUBSECTION (4) OR (5) OF THIS SECTION, IF THE
21 AGREEMENT IS BREACHED BY THE SURROGATE OR ONE OR MORE INTENDED
22 PARENTS, THE NON-BREACHING PARTY IS ENTITLED TO THE REMEDIES
23 AVAILABLE AT LAW OR IN EQUITY.

24 (4) SPECIFIC PERFORMANCE IS NOT A REMEDY AVAILABLE FOR
25 BREACH BY A GESTATIONAL OR GENETIC SURROGATE OF A PROVISION IN
26 THE AGREEMENT THAT THE SURROGATE BE IMPREGNATED, TERMINATE OR
27 NOT TERMINATE A PREGNANCY, OR SUBMIT TO MEDICAL PROCEDURES.

1 (5) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4) OF THIS
2 SECTION, IF AN INTENDED PARENT IS DETERMINED TO BE A PARENT OF THE
3 CHILD, SPECIFIC PERFORMANCE IS A REMEDY AVAILABLE FOR:

4 (a) BREACH OF THE AGREEMENT BY A GESTATIONAL OR GENETIC
5 SURROGATE WHICH PREVENTS THE INTENDED PARENT FROM EXERCISING
6 IMMEDIATELY ON BIRTH OF THE CHILD THE FULL RIGHTS OF PARENTAGE;
7 OR

8 (b) BREACH BY THE INTENDED PARENT WHICH PREVENTS THE
9 INTENDED PARENT'S ACCEPTANCE, IMMEDIATELY ON BIRTH OF THE CHILD
10 CONCEIVED BY ASSISTED REPRODUCTION UNDER THE AGREEMENT, OF THE
11 DUTIES OF PARENTAGE.

12 **19-4.5-113. Duty to support.** (1) THE ESTABLISHMENT OF THE
13 PARENT AND CHILD RELATIONSHIP PURSUANT TO A VALID SURROGACY
14 AGREEMENT AND THE PROVISIONS OF THIS ARTICLE 4.5 IS THE BASIS UPON
15 WHICH AN ACTION FOR CHILD SUPPORT MAY BE BROUGHT AGAINST THE
16 INTENDED PARENT AND ACTED UPON BY THE COURT WITHOUT FURTHER
17 EVIDENTIARY PROCEEDINGS.

18 (2) THE BREACH OF THE SURROGACY AGREEMENT BY THE
19 INTENDED PARENT DOES NOT RELIEVE THE INTENDED PARENT OF THE
20 SUPPORT OBLIGATIONS IMPOSED BY THE PARENT AND CHILD RELATIONSHIP
21 PURSUANT TO THE PROVISIONS OF THIS ARTICLE 4.5.

22 (3) THE DONOR IS NOT THE LEGAL PARENT OF THE CHILD THEREBY
23 CONCEIVED AND HAS NO RIGHTS OR DUTIES STEMMING FROM THE
24 CONCEPTION OF THE CHILD.

25 **19-4.5-114. Certain provisions of law not applicable to**
26 **surrogacy agreements.** (1) A SURROGACY AGREEMENT IS NOT
27 CONSIDERED:

1 (a) AN ADOPTION PURSUANT TO ARTICLE 5 OF THIS TITLE 19; OR

2 (b) A SURRENDER OF CUSTODY OR TERMINATION OF PARENTAL
3 RIGHTS OF THE CHILD BY THE DONOR IN VIOLATION OF THE REQUIREMENTS
4 OF ARTICLE 3 OF THIS TITLE 19.

5 (2) THE PAYMENT OF REASONABLE EXPENSES AND SUPPORT IN
6 CONNECTION WITH A VALID SURROGACY AGREEMENT DOES NOT
7 CONSTITUTE A VIOLATION OF SECTION 19-5-213.

8

9 **SECTION 2. Act subject to petition - effective date -**

10 **applicability.** (1) This act takes effect January 1, 2021; except that, if a
11 referendum petition is filed pursuant to section 1 (3) of article V of the
12 state constitution against this act or an item, section, or part of this act
13 within the ninety-day period after final adjournment of the general
14 assembly, then the act, item, section, or part will not take effect unless
15 approved by the people at the general election to be held in November
16 2020 and, in such case, will take effect January 1, 2021, or on the date of
17 the official declaration of the vote thereon by the governor, whichever is
18 later.

19 (2) This act applies to surrogacy agreements entered into on or
20 after the applicable effective date of this act.