

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 21-0057.01 Brita Darling x2241

HOUSE BILL 21-1022

HOUSE SPONSORSHIP

Froelich, Arndt, Bacon, Bird, Caraveo, Cutter, Duran, Esgar, Gonzales-Gutierrez, Gray, Herod, Kipp, Lontine, McCluskie, McCormick, Michaelson Jenet, Mullica, Ortiz, Sirota, Tipper, Titone, Valdez A., Woodrow

SENATE SPONSORSHIP

Ginal,

House Committees
Health & Insurance

Senate Committees
Health & Human Services

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 creates the "Colorado Surrogacy Agreement Act" (act) in article 4.5 of title 19, Colorado Revised Statutes. The act:

- Establishes eligibility requirements for entering into surrogacy agreements (agreements) and required elements of agreements;
- Contains provisions governing the termination of

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.*

HOUSE
3rd Reading Unamended
March 2, 2021

HOUSE
Amended 2nd Reading
March 1, 2021

- agreements and the effect of a death or a change in marital status of any of the parties to such agreements;
- Authorizes court orders recognizing and enforcing agreements;
- Specifies the duties of persons under agreements;
- Authorizes court orders determining parentage; and
- Creates new definitions for agreements.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 4.5 to title
3 19 as follows:

4 **ARTICLE 4.5**

5 **Colorado Surrogacy Agreement Act**

6 **19-4.5-101. Short title.** THE SHORT TITLE OF THIS ARTICLE 4.5 IS
7 THE "COLORADO SURROGACY AGREEMENT ACT".

8 **19-4.5-102. Legislative declaration.** (1) THE GENERAL
9 ASSEMBLY FINDS AND DECLARES THAT SURROGACY AGREEMENTS
10 EXECUTED PURSUANT TO THIS ARTICLE 4.5 ARE IN ACCORD WITH THE
11 PUBLIC POLICY OF THIS STATE.

12 (2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT
13 THE PURPOSE OF THIS ARTICLE 4.5 IS TO:

14 (a) ESTABLISH CONSISTENT STANDARDS AND PROCEDURAL
15 SAFEGUARDS TO PROMOTE THE BEST INTERESTS OF THE CHILDREN WHO
16 ARE BORN AS A RESULT OF SURROGACY AGREEMENTS EXECUTED
17 PURSUANT TO THIS ARTICLE 4.5;

18 (b) PROTECT ALL PARTIES INVOLVED IN SURROGACY AGREEMENTS
19 EXECUTED PURSUANT TO THIS ARTICLE 4.5; AND

20 (c) RECOGNIZE THE TECHNOLOGICAL ADVANCES IN ASSISTED
21 REPRODUCTIVE MEDICINE AND ALLOW THE USE OF THESE ADVANCES BY
22 INTENDED PARENTS AND GESTATIONAL SURROGATES AND GENETIC

1 SURROGATES 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 AND EMBRYO TRANSFER;

11 (e) INTRACYTOPLASMIC SPERM INJECTION; AND

12 (f) ASSISTED REPRODUCTIVE TECHNOLOGY.

13 (2) "CHILD" MEANS AN INDIVIDUAL OR INDIVIDUALS BORN
14 PURSUANT TO ASSISTED REPRODUCTION WHOSE PARENTAGE MAY BE
15 DETERMINED UNDER THIS ARTICLE 4.5 OR OTHER LAW.

16 (3) "COMPENSATION" MEANS PAYMENT OF ANY VALUABLE
17 CONSIDERATION FOR TIME, EFFORT, SUPPORT, PAIN, OR RISK.

18 (4) "DONOR" MEANS AN INDIVIDUAL WHO PROVIDES GAMETES
19 INTENDED FOR USE IN ASSISTED REPRODUCTION, WHETHER OR NOT FOR
20 CONSIDERATION. "DONOR" DOES NOT INCLUDE A PERSON WHO GIVES
21 BIRTH TO A CHILD CONCEIVED BY ASSISTED REPRODUCTION, EXCEPT IN THE
22 CASE OF GENETIC SURROGACY, OR AN INDIVIDUAL WHO IS A PARENT
23 UNDER THE RULES GOVERNING THE PARENTAGE OF CHILDREN CONCEIVED
24 THROUGH ASSISTED REPRODUCTION.

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

27 (6) "EMBRYO TRANSFER" OR "TRANSFER" MEANS THE PLACEMENT

1 OF AN EMBRYO INTO A UTERUS.

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

6 (8) "GENETIC SURROGATE" MEANS AN INDIVIDUAL WHO IS NOT AN
7 INTENDED PARENT AND WHO AGREES TO BECOME PREGNANT THROUGH
8 ASSISTED REPRODUCTION USING THEIR OWN DONATED GAMETES, UNDER
9 A SURROGACY AGREEMENT AS PROVIDED IN THIS ARTICLE 4.5.

10 (9) "GESTATIONAL SURROGATE" MEANS AN INDIVIDUAL WHO IS
11 NOT AN INTENDED PARENT AND WHO AGREES TO BECOME PREGNANT
12 THROUGH ASSISTED REPRODUCTION USING GAMETES THAT ARE NOT THEIR
13 OWN, UNDER A SURROGACY AGREEMENT AS PROVIDED IN THIS ARTICLE
14 4.5.

15 (10) "INTENDED PARENT" MEANS AN INDIVIDUAL, MARRIED OR
16 UNMARRIED, WHO MANIFESTS AN INTENT TO BE LEGALLY BOUND AS A
17 PARENT OF A CHILD CONCEIVED BY ASSISTED REPRODUCTION.

18 (11) "LICENSED MENTAL HEALTH PROFESSIONAL" MEANS A
19 CERTIFICATE HOLDER OR LICENSEE, AS THOSE TERMS ARE DEFINED IN
20 SECTION 12-245-201, CERTIFIED OR LICENSED PURSUANT TO ARTICLE 245
21 OF TITLE 12.

22 (12) "MEDICAL EVALUATION" MEANS A COMPLETE CONSULTATION
23 WITH AND EVALUATION BY A LICENSED MEDICAL DOCTOR.

24 (13) "MENTAL HEALTH CONSULTATION" MEANS A CONSULTATION
25 WITH AND, WHEN REQUIRED BY THIS ARTICLE 4.5, AN ASSESSMENT BY A
26 LICENSED MENTAL HEALTH PROFESSIONAL.

27 (14) "SURROGACY AGREEMENT" MEANS AN AGREEMENT BETWEEN

1 ONE OR MORE INTENDED PARENTS AND AN INDIVIDUAL WHO IS NOT AN
2 INTENDED PARENT IN WHICH THE INDIVIDUAL AGREES TO BECOME
3 PREGNANT THROUGH ASSISTED REPRODUCTION AND THAT PROVIDES THAT
4 EACH INTENDED PARENT IS A PARENT OF A CHILD CONCEIVED UNDER THE
5 AGREEMENT. UNLESS OTHERWISE SPECIFIED, THE TERM REFERS TO BOTH
6 A GESTATIONAL SURROGACY AGREEMENT AND A GENETIC SURROGACY
7 AGREEMENT.

8 **19-4.5-104. Eligibility requirements.** (1) TO EXECUTE AN
9 AGREEMENT TO ACT AS A GESTATIONAL SURROGATE OR GENETIC
10 SURROGATE, AN INDIVIDUAL MUST:

- 11 (a) BE AT LEAST TWENTY-ONE YEARS OF AGE;
- 12 (b) PREVIOUSLY HAVE GIVEN BIRTH TO AT LEAST ONE CHILD;
- 13 (c) COMPLETE A MEDICAL EVALUATION RELATED TO THE
14 SURROGACY ARRANGEMENT BY A LICENSED MEDICAL DOCTOR;
- 15 (d) COMPLETE A MENTAL HEALTH CONSULTATION BY A LICENSED
16 MENTAL HEALTH PROFESSIONAL; AND
- 17 (e) HAVE INDEPENDENT LEGAL REPRESENTATION OF THEIR CHOICE
18 BY AN ATTORNEY LICENSED IN THIS STATE THROUGHOUT THE SURROGACY
19 ARRANGEMENT REGARDING THE TERMS OF THE SURROGACY AGREEMENT
20 AND THE POTENTIAL LEGAL CONSEQUENCES OF THE AGREEMENT.

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

- 23 (a) BE AT LEAST TWENTY-ONE YEARS OF AGE;
- 24 (b) COMPLETE A MEDICAL EVALUATION RELATED TO THE
25 SURROGACY ARRANGEMENT BY A LICENSED MEDICAL DOCTOR; AND
- 26 (c) HAVE INDEPENDENT LEGAL REPRESENTATION OF THE INTENDED
27 PARENT'S OR PARENTS' CHOICE BY AN ATTORNEY LICENSED IN THIS STATE

1 THROUGHOUT THE SURROGACY ARRANGEMENT REGARDING THE TERMS OF
2 THE SURROGACY AGREEMENT AND THE POTENTIAL LEGAL CONSEQUENCES
3 OF THE AGREEMENT.

4 **19-4.5-105. Process requirements for a surrogacy agreement.**

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

7 (a) AT LEAST ONE PARTY MUST BE A RESIDENT OF THIS STATE, OR
8 THE BIRTH WILL OCCUR OR IS ANTICIPATED TO OCCUR IN THIS STATE, OR
9 THE ASSISTED REPRODUCTION PERFORMED PURSUANT TO THE SURROGACY
10 AGREEMENT WILL OCCUR IN THIS STATE;

11 (b) A GESTATIONAL SURROGATE OR GENETIC SURROGATE AND
12 EACH INTENDED PARENT MUST MEET THE REQUIREMENTS OF SECTION
13 19-4.5-104;

14 (c) EACH INTENDED PARENT, THE GESTATIONAL SURROGATE OR
15 GENETIC SURROGATE, AND THE SURROGATE'S SPOUSE, IF ANY, MUST BE
16 PARTIES TO THE AGREEMENT;

17 (d) EACH PARTY LISTED IN SUBSECTION (1)(c) OF THIS SECTION
18 SHALL SIGN THE AGREEMENT;

19 (e) THE SIGNATURE OF EACH PARTY TO THE AGREEMENT MUST BE
20 ATTESTED BY A NOTARIAL OFFICER;

21 (f) THE INTENDED PARENT OR PARENTS MAY PAY FOR
22 INDEPENDENT LEGAL REPRESENTATION FOR THE GESTATIONAL SURROGATE
23 OR GENETIC SURROGATE; AND

24 (g) THE AGREEMENT MUST BE EXECUTED BEFORE A MEDICAL
25 PROCEDURE OCCURS RELATED TO THE SURROGACY AGREEMENT, OTHER
26 THAN THE MEDICAL EVALUATION AND MENTAL HEALTH CONSULTATION
27 REQUIRED BY SECTION 19-4.5-104.

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

4 (a) A GESTATIONAL SURROGATE OR GENETIC SURROGATE AGREES
5 TO ATTEMPT TO BECOME PREGNANT BY MEANS OF ASSISTED
6 REPRODUCTION;

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

11 (c) THE GESTATIONAL SURROGATE OR GENETIC SURROGATE'S
12 SPOUSE, IF ANY, MUST ACKNOWLEDGE AND AGREE TO COMPLY WITH THE
13 OBLIGATIONS IMPOSED ON THE SURROGATE BY THE AGREEMENT;

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

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

26 (f) THE AGREEMENT MUST INCLUDE INFORMATION DISCLOSING
27 HOW EACH INTENDED PARENT WILL COVER THE AGREED-UPON EXPENSES

1 OF THE GESTATIONAL SURROGATE OR GENETIC SURROGATE, THE ASSISTED
2 REPRODUCTION EXPENSES, AND THE MEDICAL EXPENSES FOR THE
3 SURROGATE AND THE CHILD;

4 (g) THE AGREEMENT MUST PERMIT THE GESTATIONAL SURROGATE
5 OR GENETIC SURROGATE TO MAKE ALL HEALTH AND WELFARE DECISIONS
6 REGARDING THEMSELVES AND THE PREGNANCY. ■ ■ ■

7 (h) THE AGREEMENT MUST INCLUDE INFORMATION ABOUT EACH
8 PARTY'S RIGHT UNDER THIS ARTICLE 4.5 TO TERMINATE THE SURROGACY
9 AGREEMENT.

10 (2) A SURROGACY AGREEMENT MAY PROVIDE FOR:

11 (a) PAYMENT OF COMPENSATION, SUPPORT, AND REASONABLE
12 EXPENSES; AND

13 (b) REIMBURSEMENT OF SPECIFIC AGREED-UPON EXPENSES IF THE
14 AGREEMENT IS TERMINATED UNDER THIS ARTICLE 4.5.

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

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

21 **19-4.5-107. Effect of subsequent change of marital status.**

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

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

1 AGREEMENT; AND

2 (b) THE DISSOLUTION, ANNULMENT, DECLARATION OF INVALIDITY,
3 LEGAL SEPARATION, OR SEPARATE MAINTENANCE OF THE GESTATIONAL
4 SURROGATE OR GENETIC SURROGATE AFTER THE AGREEMENT IS SIGNED BY
5 ALL PARTIES DOES NOT AFFECT THE VALIDITY OF THE AGREEMENT.

6 (2) UNLESS A SURROGACY AGREEMENT EXPRESSLY PROVIDES
7 OTHERWISE:

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

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

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

27 (2) UNLESS A SURROGACY AGREEMENT PROVIDES OTHERWISE, ON

1 TERMINATION OF THE AGREEMENT PURSUANT TO SUBSECTION (1) OF THIS
2 SECTION, THE PARTIES ARE RELEASED FROM THE AGREEMENT; EXCEPT
3 THAT EACH INTENDED PARENT REMAINS RESPONSIBLE FOR EXPENSES THAT
4 ARE REIMBURSABLE UNDER THE AGREEMENT AND INCURRED BY THE
5 GESTATIONAL SURROGATE OR GENETIC SURROGATE THROUGH THE DATE
6 OF TERMINATION.

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

10 **19-4.5-109. Establishment of parent-child relationship under**
11 **surrogacy agreement.** (1) EXCEPT AS OTHERWISE PROVIDED IN
12 SUBSECTION (3) OF THIS SECTION OR SECTION 19-4.5-110 (2) OR
13 19-4.5-112, ON BIRTH OF A CHILD CONCEIVED BY ASSISTED REPRODUCTION
14 UNDER A SURROGACY AGREEMENT, EACH INTENDED PARENT IS, BY
15 OPERATION OF LAW, A PARENT OF THE CHILD.

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

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

26 (4) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS
27 SECTION OR SECTION 19-4.5-110 (2) OR 19-4.5-112, IF, DUE TO A CLINICAL

1 OR LABORATORY ERROR, A CHILD CONCEIVED BY ASSISTED REPRODUCTION
2 UNDER A SURROGACY AGREEMENT IS NOT GENETICALLY RELATED TO AN
3 INTENDED PARENT OR A DONOR WHO DONATED TO THE INTENDED PARENT
4 OR PARENTS, EACH INTENDED PARENT, AND NOT THE GESTATIONAL
5 SURROGATE OR GENETIC SURROGATE AND THE SURROGATE'S SPOUSE OR
6 FORMER SPOUSE, IF ANY, IS A PARENT OF THE CHILD, SUBJECT TO ANY
7 OTHER CLAIM OF PARENTAGE.

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

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

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

- 19 (a) THE AGREEMENT PROVIDES OTHERWISE; AND
- 20 (b) THE TRANSFER OF A GAMETE OR EMBRYO OCCURS NOT LATER
21 THAN THIRTY-SIX MONTHS AFTER THE DEATH OF THE INTENDED PARENT OR
22 BIRTH OF THE CHILD OCCURS NOT LATER THAN FORTY-FIVE MONTHS AFTER
23 THE DEATH OF THE INTENDED PARENT.

24 **19-4.5-111. Court order of parentage under surrogacy**
25 **agreement.** (1) EXCEPT AS OTHERWISE PROVIDED IN SECTION 19-4.5-110
26 (2) OR 19-4.5-112, BEFORE, ON, OR AFTER THE BIRTH OF A CHILD
27 CONCEIVED BY ASSISTED REPRODUCTION PURSUANT TO A SURROGACY

1 AGREEMENT, A PARTY TO THE AGREEMENT MAY COMMENCE A
2 PROCEEDING IN A JUVENILE COURT IN THIS STATE BY FILING A PETITION
3 FOR DETERMINATION OF PARENT-CHILD RELATIONSHIP WITH ADMISSIONS
4 OF PARENTAGE, AS APPLICABLE BY THE INTENDED PARENTS, AND
5 ADMISSIONS OF NONPARENTAGE BY THE GESTATIONAL SURROGATE OR
6 GENETIC SURROGATE AND THEIR SPOUSE, IF ANY, AS APPLICABLE AND FOR
7 AN ORDER OR JUDGMENT:

8 (a) DECLARING THAT EACH INTENDED PARENT IS A PARENT OF THE
9 CHILD AND ORDERING THAT PARENTAL RIGHTS AND DUTIES VEST
10 IMMEDIATELY ON THE BIRTH OF THE CHILD EXCLUSIVELY IN EACH
11 INTENDED PARENT;

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

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

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

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

23 (f) FOR OTHER RELIEF THE COURT DETERMINES NECESSARY AND
24 PROPER.

25 (2) THE COURT MAY ISSUE AN ORDER OR JUDGMENT UNDER
26 SUBSECTION (1) OF THIS SECTION BEFORE THE BIRTH OF THE CHILD. THE
27 COURT SHALL STAY ENFORCEMENT OF THE ORDER OR JUDGMENT UNTIL

1 THE BIRTH OF THE CHILD.

2 (3) NEITHER THIS STATE NOR THE COLORADO DEPARTMENT OF
3 PUBLIC HEALTH AND ENVIRONMENT IS A NECESSARY PARTY TO A
4 PROCEEDING UNDER SUBSECTION (1) OF THIS SECTION.

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

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

10 **19-4.5-112. Effect of surrogacy agreement.** (1) A SURROGACY
11 AGREEMENT THAT COMPLIES WITH SECTIONS 19-4.5-104, 19-4.5-105, AND
12 19-4.5-106 IS ENFORCEABLE.

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

23 (3) EXCEPT AS EXPRESSLY PROVIDED IN A SURROGACY
24 AGREEMENT OR IN SUBSECTION (4) OR (5) OF THIS SECTION, IF THE
25 AGREEMENT IS BREACHED BY THE GESTATIONAL SURROGATE OR GENETIC
26 SURROGATE OR ONE OR MORE INTENDED PARENTS, THE NONBREACHING
27 PARTY IS ENTITLED TO THE REMEDIES AVAILABLE AT LAW OR IN EQUITY.

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

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

9 (a) BREACH OF THE AGREEMENT BY A GESTATIONAL SURROGATE
10 OR GENETIC SURROGATE WHICH PREVENTS THE INTENDED PARENT FROM
11 EXERCISING IMMEDIATELY ON BIRTH OF THE CHILD THE FULL RIGHTS OF
12 PARENTAGE; OR

13 (b) BREACH BY THE INTENDED PARENT WHICH PREVENTS THE
14 INTENDED PARENT'S ACCEPTANCE, IMMEDIATELY ON BIRTH OF THE CHILD
15 CONCEIVED BY ASSISTED REPRODUCTION UNDER THE AGREEMENT, OF THE
16 DUTIES OF PARENTAGE.

17 **19-4.5-113. Duty to support.** (1) THE ESTABLISHMENT OF THE
18 PARENT AND CHILD RELATIONSHIP PURSUANT TO A VALID SURROGACY
19 AGREEMENT, COURT ORDER OF PARENTAGE, AND THIS ARTICLE 4.5 IS THE
20 BASIS UPON WHICH AN ACTION FOR CHILD SUPPORT MAY BE BROUGHT
21 AGAINST THE INTENDED PARENT AND ACTED UPON BY THE COURT OR THE
22 DELEGATE CHILD SUPPORT ENFORCEMENT UNIT WITHOUT FURTHER
23 EVIDENTIARY PROCEEDINGS.

24 (2) THE BREACH OF THE SURROGACY AGREEMENT BY THE
25 INTENDED PARENT DOES NOT RELIEVE THE INTENDED PARENT OF THE
26 SUPPORT OBLIGATIONS IMPOSED BY THE PARENT AND CHILD RELATIONSHIP
27 PURSUANT TO THE PROVISIONS OF THIS ARTICLE 4.5.

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

4 **19-4.5-114. Certain provisions of law not applicable to**
5 **surrogacy agreements.** (1) A SURROGACY AGREEMENT IS NOT
6 CONSIDERED:

- 7 (a) AN ADOPTION PURSUANT TO ARTICLE 5 OF THIS TITLE 19; OR
- 8 (b) A SURRENDER OF CUSTODY OR TERMINATION OF PARENTAL
9 RIGHTS OF THE CHILD BY THE DONOR IN VIOLATION OF THE REQUIREMENTS
10 OF ARTICLE 3 OF THIS TITLE 19.

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

14 **SECTION 2.** In Colorado Revised Statutes, 19-1-103, **amend**
15 (91.5) as follows:

16 **19-1-103. Definitions.** As used in this title 19 or in the specified
17 portion of this title 19, unless the context otherwise requires:

18 (91.5) "Record", as used in section 19-4-106 AND SECTION
19 19-4.5-108, means information that is inscribed on a tangible medium or
20 that is stored in an electronic or other medium and is retrievable in
21 perceivable form.

22 **SECTION 3. Safety clause.** The general assembly hereby finds,
23 determines, and declares that this act is necessary for the immediate
24 preservation of the public peace, health, or safety.