A BILL FOR AN ACT

CONCERNING THE PROTECTION OF PARTIES THROUGH THE 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:

1. 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.
Contains provisions governing the termination of 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; and

Specifies the duties of persons under the agreements.

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

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

ARTICLE 4.5

Colorado Surrogacy Agreement Act

19-4.5-101. Short title. The short title of this article 4.5 is the "Colorado Surrogacy Agreement Act".

19-4.5-102. Legislative declaration. (1) The general assembly finds and declares that surrogacy agreements executed pursuant to this article 4.5 are in accord with the public policy of this state.

(2) The general assembly further finds and declares that the purpose of this article 4.5 is to:

(a) Establish consistent standards and procedural safeguards to promote the best interests of the children who are born as a result of surrogacy agreements executed pursuant to this article 4.5;

(b) Protect all parties involved in surrogacy agreements executed pursuant to this article 4.5; and

(c) Recognize the technological advances in assisted reproductive medicine and allow the use of these advances by intended parents and gestational and genetic surrogates.
ACCORDING TO THE PUBLIC POLICY OF THIS STATE.

19-4.5-103. Definitions. As used in this Article 4.5, unless the context otherwise requires:

(1) "Assisted Reproduction" means a method of causing pregnancy through means other than by sexual intercourse. In the foregoing context, the term includes, but is not limited to:

(a) Intrauterine or intracervical insemination;
(b) Donation of eggs or sperm;
(c) Donation of embryos;
(d) In vitro fertilization (IVF) and embryo transfer; and
(e) Intracytoplasmic sperm injection.

(2) "Assisted Reproductive Technology" or "ART" means any medical or scientific procedures or treatment provided by a medical provider, with the intent of having a child other than sexual intercourse.

(3) "Child" means an individual or individuals born pursuant to assisted reproduction whose parentage may be determined under this Article 4.5 or other law.

(4) "Compensation" means payment of any valuable consideration for time, effort, support, pain, or risk.

(5) "Donor" means an individual, including a genetic surrogate or an intended parent, who provides gametes or embryos for assisted reproduction.

(6) "Embryo" means a fertilized egg that has the potential to develop into a fetus if transferred into a uterus.

(7) "Embryo transfer" or "transfer" means the placement of an embryo into a uterus.
(8) "Gamete" means a cell containing a haploid complement of DNA that has the potential to form an embryo when combined with another gamete. Sperm and eggs are gametes.

(9) "Intended parent" means an individual, married or unmarried, who manifests an intent to be legally bound as a parent of a child conceived by assisted reproduction.

(10) "Medical evaluation" means a complete consultation with and evaluation by a licensed medical doctor.

(11) "Mental health evaluation" means a consultation with and, when required by this article 4.5, an assessment by a licensed mental health professional.

(12) "Genetic surrogate" means a woman who is not an intended parent and who agrees to become pregnant through assisted reproduction using their own donated gametes, under a surrogacy agreement as provided in this article 4.5.

(13) "Gestational surrogate" means a woman who is not an intended parent and who agrees to become pregnant through assisted reproduction using gametes that are not their own, under a surrogacy agreement as provided in this article 4.5.

(14) "Surrogacy agreement" means an agreement between one or more intended parents and a woman who is not an intended parent in which the woman agrees to become pregnant through assisted reproduction and that provides that each intended parent is a parent of a child conceived under the agreement. Unless otherwise specified, the term refers to both a gestational surrogacy agreement and a genetic surrogacy agreement.
AGREEMENT.

19-4.5-104. Eligibility requirements. (1) To execute an agreement to act as a gestational or genetic surrogate, a woman must:

(a) Be at least twenty-one years of age;
(b) Previously have given birth to at least one child;
(c) Complete a medical evaluation related to the surrogacy arrangement by a licensed medical doctor;
(d) Complete a mental-health consultation by a licensed mental-health professional; and
(e) Have independent legal representation of their choice by an attorney licensed in this state throughout the surrogacy arrangement regarding the terms of the surrogacy agreement and the potential legal consequences of the agreement.

(2) To execute a surrogacy agreement, each intended parent, whether or not genetically related to the child, must:

(a) Be at least twenty-one years of age;
(b) Complete a medical evaluation related to the surrogacy arrangement by a licensed medical doctor; and
(c) Have independent legal representation of the intended parent's or parents' choice throughout the surrogacy arrangement regarding the terms of the surrogacy agreement and the potential legal consequences of the agreement.

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

(1) A surrogacy agreement must be executed in compliance with the following rules:

(a) At least one party must be a resident of this state or
THE BIRTH MUST OCCUR OR IS ANTICIPATED TO OCCUR IN THIS STATE.

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

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

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

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

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

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

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

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

(a) A GESTATIONAL OR GENETIC SURROGATE AGREES TO ATTEMPT
TO BECOME PREGNANT BY MEANS OF ASSISTED REPRODUCTION.

(b) Except as otherwise provided in Section 19-4.5-111, the gestational or genetic surrogate and the surrogate's spouse or former spouse, if any, have no claim to parentage of a child conceived by assisted reproduction under the agreement.

(c) The gestational or genetic surrogate's spouse, if any, must acknowledge and agree to comply with the obligations imposed on the surrogate by the agreement.

(d) Except as otherwise provided in Section 19-4.5-111, the intended parent or, if there are two intended parents, each one jointly and severally, immediately on birth will be the exclusive parent or parents of the child, regardless of number of children born or gender or mental or physical condition of each child.

(e) Except as otherwise provided in Section 19-4.5-111, the intended parent or, if there are two intended parents, each parent jointly and severally, immediately on birth will assume responsibility for the financial support of the child, regardless of the number of children born or gender or mental or physical condition of each child.

(f) The agreement must include information disclosing how each intended parent will cover the agreed upon expenses of the gestational or genetic surrogate, the assisted reproductive technology expenses, and the medical expenses for the surrogate and the child.

(g) The agreement must permit the gestational or genetic surrogate to make all health and welfare decisions regarding
themselvess and their pregnancy. This article 4.5 does not
enlarge or diminish the gestational or genetic surrogate’s right
to terminate their pregnancy.

(h) The agreement must include information about each
party’s right under this article 4.5 to terminate the surrogacy
agreement.

(2) A surrogacy agreement may provide for:

(a) Payment of compensation, support, and reasonable
expenses; and

(b) Reimbursement of specific agreed upon expenses if the
agreement is terminated under this article 4.5.

(3) A right created under a surrogacy agreement is not
assignable and there is no third-party beneficiary of the
agreement other than the child.

(4) In the event that any of the requirements of this
section are not met, a court of competent jurisdiction shall
determine parentage based on the parties’ intent.

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

(1) Unless a surrogacy agreement expressly provides otherwise:

(a) The marriage of a gestational or genetic surrogate
after the agreement is signed by all parties does not affect the
validity of the agreement, their spouse’s consent to the
agreement is not required, and their spouse is not a presumed
parent of a child conceived by assisted reproduction under the
agreement; and

(b) The dissolution, annulment, declaration of invalidity,
legal separation, or separate maintenance of the gestational or
GENETIC SURROGATE AFTER THE AGREEMENT IS SIGNED BY ALL PARTIES DOES NOT AFFECT THE VALIDITY OF THE AGREEMENT.

(2) UNLESS A SURROGACY AGREEMENT EXPRESSLY PROVIDES OTHERWISE:

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

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

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

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

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

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

(2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS
SECTION OR SECTION 19-4.5-112, NEITHER A GESTATIONAL OR GENETIC
SURROGATE NOR THE SURROGATE'S SPOUSE OR FORMER SPOUSE, IF ANY,
is a parent of the child.

(3) IF A CHILD IS ALLEGED TO BE A GENETIC CHILD OF THE WOMAN
WHO AGREED TO BE A GESTATIONAL SURROGATE, THE COURT SHALL
ORDER GENETIC TESTING OF THE CHILD. IF THE CHILD IS A GENETIC CHILD
OF THE WOMAN WHO AGREED TO BE A GESTATIONAL SURROGATE,
parentage must be determined based on Article 4 of this Title 19.

(4) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS
SECTION OR SECTION 19-4.5-110 (2) OR 19-4.5-112, IF, DUE TO A CLINICAL
OR LABORATORY ERROR, A CHILD CONCEIVED BY ASSISTED REPRODUCTION
UNDER A SURROGACY AGREEMENT IS NOT GENETICALLY RELATED TO AN
INTENDED PARENT OR A DONOR WHO DONATED TO THE INTENDED PARENT
OR PARENTS, EACH INTENDED PARENT, AND NOT THE GESTATIONAL OR
GENETIC SURROGATE AND THE SURROGATE’S SPOUSE OR FORMER SPOUSE, IF ANY, IS A PARENT OF THE CHILD, SUBJECT TO ANY OTHER CLAIM OF PARENTAGE.

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

19-4.5-110. Parentage of deceased intended parent under surrogacy agreement. (1) Section 19-4.5-109 applies to an intended parent even if the intended parent died during the period between the transfer of a gamete or embryo and the birth of the child.

(2) Except as otherwise provided in Section 19-4.5-112, an intended parent is not a parent of a child conceived by assisted reproduction under a surrogacy agreement if the intended parent dies before the transfer of a gamete or embryo unless:

(a) the agreement provides otherwise; and

(b) the transfer of a gamete or embryo occurs not later than thirty-six months after the death of the intended parent or the birth of the child occurs not later than forty-five months after the death of the intended parent.

19-4.5-111. Court order of parentage under surrogacy agreement. (1) Except as otherwise provided in Section 19-4.5-110 or 19-4.5-112, before, on, or after the birth of a child conceived by assisted reproductive technology pursuant to a surrogacy agreement, a party to the agreement may commence a proceeding in a juvenile court in this State by filing a petition for determination of parent-child relationship with admissions of parentage, as applicable by the intended parents, and
ADMISSIONS OF NON-PARENTAGE BY THE GESTATIONAL OR GENETIC
SURROGATE AND THEIR SPOUSE, AS APPLICABLE AND FOR AN ORDER OR
JUDGMENT:

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

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

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

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

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

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

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

(3) NEITHER THIS STATE NOR THE COLORADO DEPARTMENT OF
PUBLIC HEALTH & ENVIRONMENT IS A NECESSARY PARTY TO A
PROCEEDING UNDER SUBSECTION (1) OF THIS SECTION.
(4) THE PETITION DESCRIBED IN SUBSECTION (1) OF THIS SECTION MUST SET FORTH THE FACTS OF THE SURROGACY ARRANGEMENT.

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

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


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

(4) SPECIFIC PERFORMANCE IS NOT A REMEDY AVAILABLE FOR BREACH BY A GESTATIONAL OR GENETIC SURROGATE OF A PROVISION IN THE AGREEMENT THAT THE SURROGATE BE IMPREGNATED, TERMINATE OR NOT TERMINATE A PREGNANCY, OR SUBMIT TO MEDICAL PROCEDURES.
(5) Except as otherwise provided in subsection (4) of this
section, if an intended parent is determined to be a parent of the
child, specific performance is a remedy available for:

(a) Breach of the agreement by a gestational or genetic
surrogate which prevents the intended parent from exercising
immediately on birth of the child the full rights of parentage;
or

(b) Breach by the intended parent which prevents the
intended parent's acceptance, immediately on birth of the child
conceived by assisted reproduction under the agreement, of the
duties of parentage.

19-4.5-113. Duty to support. (1) The establishment of the
parent and child relationship pursuant to a valid surrogacy
agreement and the provisions of this article 4.5 is the basis upon
which an action for child support may be brought against the
intended parent and acted upon by the court without further
evidentiary proceedings.

(2) The breach of the surrogacy agreement by the
intended parent does not relieve the intended parent of the
support obligations imposed by the parent and child relationship
pursuant to the provisions of this article 4.5.

(3) The donor is not the legal parent of the child thereby
conceived and has no rights or duties stemming from the
conception of the child.

19-4.5-114. Certain provisions of law not applicable to
surrogacy agreements. (1) A surrogacy agreement is not
considered:
(a) AN ADOPTION PURSUANT TO ARTICLE 5 OF THIS TITLE 19; OR
(b) A SURRENDER OF CUSTODY OR TERMINATION OF PARENTAL
RIGHTS OF THE CHILD BY THE DONOR IN VIOLATION OF THE REQUIREMENTS
OF ARTICLE 3 OF THIS TITLE 19.

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

SECTION 2. Act subject to petition - effective date -
applicability. (1) This act takes effect January 1, 2021; except that, if a
referendum petition is filed pursuant to section 1 (3) of article V of the
state constitution against this act or an item, section, or part of this act
within the ninety-day period after final adjournment of the general
assembly, then the act, item, section, or part will not take effect unless
approved by the people at the general election to be held in November
2020 and, in such case, will take effect January 1, 2021, or on the date of
the official declaration of the vote thereon by the governor, whichever is
later.

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