

CHAPTER 103

CHILDREN AND DOMESTIC MATTERS

HOUSE BILL 21-1022

BY REPRESENTATIVE(S) 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, Bennett, Valdez D., Young, Garnett;
also SENATOR(S) Ginal, Buckner, Fields, Jaquez Lewis, Winter.

AN ACT**CONCERNING THE PROTECTION OF PARTIES THROUGH THE ENFORCEMENT OF PROPER SURROGACY 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

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(c) RECOGNIZE THE TECHNOLOGICAL ADVANCES IN ASSISTED REPRODUCTIVE MEDICINE AND ALLOW THE USE OF THESE ADVANCES BY INTENDED PARENTS AND GESTATIONAL SURROGATES 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 AND EMBRYO TRANSFER;
- (e) INTRACYTOPLASMIC SPERM INJECTION; AND
- (f) ASSISTED REPRODUCTIVE TECHNOLOGY.

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

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

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

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

(6) "EMBRYO TRANSFER" OR "TRANSFER" MEANS THE PLACEMENT OF AN EMBRYO INTO A UTERUS.

(7) "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.

(8) "GENETIC SURROGATE" MEANS AN INDIVIDUAL 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.

(9) "GESTATIONAL SURROGATE" MEANS AN INDIVIDUAL 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.

(10) "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.

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

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

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

(14) "SURROGACY AGREEMENT" MEANS AN AGREEMENT BETWEEN ONE OR MORE INTENDED PARENTS AND AN INDIVIDUAL WHO IS NOT AN INTENDED PARENT IN WHICH THE INDIVIDUAL 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.

19-4.5-104. Eligibility requirements. (1) TO EXECUTE AN AGREEMENT TO ACT AS A GESTATIONAL SURROGATE OR GENETIC SURROGATE, AN INDIVIDUAL 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 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.

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 WILL OCCUR OR IS ANTICIPATED TO OCCUR IN THIS STATE, OR THE ASSISTED REPRODUCTION PERFORMED PURSUANT TO THE SURROGACY AGREEMENT WILL OCCUR IN THIS STATE;
- (b) A GESTATIONAL SURROGATE OR GENETIC SURROGATE AND EACH INTENDED PARENT MUST MEET THE REQUIREMENTS OF SECTION 19-4.5-104;
- (c) EACH INTENDED PARENT, THE GESTATIONAL SURROGATE 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 INTENDED PARENT OR PARENTS MAY PAY FOR INDEPENDENT LEGAL REPRESENTATION FOR THE GESTATIONAL SURROGATE OR GENETIC SURROGATE; AND
- (g) 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 SURROGATE 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 SURROGATE 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 SURROGATE 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 SURROGATE OR GENETIC SURROGATE, THE ASSISTED REPRODUCTION EXPENSES, AND THE MEDICAL EXPENSES FOR THE SURROGATE AND THE CHILD;

(g) THE AGREEMENT MUST PERMIT THE GESTATIONAL SURROGATE OR GENETIC SURROGATE TO MAKE ALL HEALTH AND WELFARE DECISIONS REGARDING THEMSELVES AND THE 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 SURROGATE 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 SURROGATE 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 SURROGATE 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 SURROGATE 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 INDIVIDUAL 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 INDIVIDUAL 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 SURROGATE 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 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 (2) OR 19-4.5-112, BEFORE, ON, OR AFTER THE BIRTH OF A CHILD CONCEIVED BY ASSISTED REPRODUCTION 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 NONPARENTAGE BY THE GESTATIONAL SURROGATE OR GENETIC SURROGATE AND THEIR SPOUSE, IF ANY, 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 SURROGATE 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 AND 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.

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

(3) EXCEPT AS EXPRESSLY PROVIDED IN A SURROGACY AGREEMENT OR IN SUBSECTION (4) OR (5) OF THIS SECTION, IF THE AGREEMENT IS BREACHED BY THE GESTATIONAL SURROGATE OR GENETIC SURROGATE OR ONE OR MORE INTENDED PARENTS, THE NONBREACHING 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 SURROGATE 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 SURROGATE 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, COURT ORDER OF PARENTAGE, AND 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 OR THE DELEGATE CHILD SUPPORT ENFORCEMENT UNIT 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. In Colorado Revised Statutes, 19-1-103, **amend** (91.5) as follows:

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

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

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

Approved: May 6, 2021