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SENATE BILL NO. 135

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 26, 2000)

(Patron Prior to Substitute—Senator Stosch)

A BILL to amend and reenact §§ 20-162 and 32.1-252 of the Code of Virginia, relating to surrogate consent and report form.

Be it enacted by the General Assembly of Virginia:**1. That §§ 20-162 and 32.1-252 of the Code of Virginia are amended and reenacted as follows:**

§ 20-162. Contracts not approved by the court; requirements.

A. In the case of any surrogacy agreement for which prior court approval has not been obtained pursuant to § 20-160, the provisions of this section and §§ 20-156 through 20-159 and §§ 20-163 through 20-165 shall apply. Any provision in a surrogacy contract that attempts to reduce the rights or responsibilities of the intended parents, surrogate, or her husband, if any, or the rights of any resulting child shall be reformed to include the requirements set forth in this chapter. A provision in the contract providing for compensation to be paid to the surrogate is void and unenforceable. Such surrogacy contracts shall be enforceable and shall be construed only as follows:

1. The surrogate, her husband, if any, and the intended parents shall be parties to any such surrogacy contract.

2. The contract shall be in writing, signed by all the parties, and acknowledged before an officer or other person authorized by law to take acknowledgments.

3. Upon expiration of twenty-five days following birth of any resulting child, the surrogate may relinquish her parental rights to the intended parents, if at least one of the intended parents is the genetic parent of the child, by signing a surrogate consent and report form naming the intended parents as the parents of the child. ~~The surrogate consent and report form shall be obtained from developed, furnished and distributed by the State Registrar of Vital Records and.~~ *The surrogate consent and report form shall be signed and acknowledged before an officer or other person authorized by law to take acknowledgments. The surrogate consent and report form, a copy of the contract, and a certificate statement from the physician who performed the assisted conception stating the genetic relationships between the child, the surrogate, and the intended parents, at least one of whom shall be the genetic parent of the child, shall be filed with the State Registrar within sixty days after the birth. The statement from the physician shall be signed and acknowledged before an officer or other person authorized by law to take acknowledgments. There shall be a rebuttable presumption that the statement from the physician accurately states the genetic relationships between the child, the surrogate and the intended parents.*

4. Upon the filing of the surrogate consent and report form and the required attachments, *including the physician's statement*, within sixty days of the birth, a new birth certificate shall be established by the State Registrar for the child naming the intended parents as the parents of the child as provided in § 32.1-261 ~~if the physician's certificate provides medical evidence that at least one of the intended parents is the genetic parent of the child.~~

B. Any contract governed by the provisions of this section shall include or, in the event such provisions are not explicitly covered in the contract or are included but are inconsistent with this section, shall be deemed to include the following provisions:

1. The intended parents shall be the parents of any resulting child only when the surrogate relinquishes her parental rights as provided in subdivision A 3 of this section and a new birth certificate is established as provided in subdivision A 4 of this section and § 32.1-261;

2. Incorporation of this chapter and a statement by each of the parties that they have read and understood the contract, they know and understand their rights and responsibilities under Virginia law, and the contract was entered into knowingly and voluntarily; and

3. A guarantee by the intended parents for payment of reasonable medical and ancillary costs either in the form of insurance, cash, escrow, bonds, or other arrangements satisfactory to the parties, including allocation of responsibility for such costs in the event of termination of the pregnancy, termination of the contract, or breach of the contract by any party.

C. Under any contract that does not include an allocation of responsibility for reasonable medical and ancillary costs in the event of termination of the pregnancy, termination of the contract, or breach of the contract by any party, the following provisions shall control:

1. If the intended parents and the surrogate and her husband, if any, and if he is a party to the contract, consent in writing to termination of the contract, the intended parents are responsible for all reasonable medical and ancillary costs for a period of six weeks following the termination.

60 2. If the surrogate voluntarily terminates the contract during the pregnancy, without consent of the
61 intended parents, the intended parents shall be responsible for one-half of the reasonable medical and
62 ancillary costs incurred prior to the termination.

63 3. If, after the birth of any resulting child, the surrogate fails to relinquish parental rights to the
64 intended parents pursuant to the contract, the intended parents shall be responsible for one-half of the
65 reasonable medical and ancillary costs incurred prior to the birth.

66 § 32.1-252. State Registrar; duties.

67 A. The State Registrar, under the supervision of the Commissioner, shall:

68 1. Administer the provisions of this chapter and the regulations of the Board in a manner that will
69 ensure the uniform and efficient administration of the system of vital records.

70 2. Direct and supervise the system of vital records and be custodian of its records.

71 3. Direct, supervise and control the activities of all persons when pertaining to the operation of the
72 system of vital records.

73 4, 5. [Repealed.]

74 6. Conduct training programs to promote uniformity of policy and procedures throughout the
75 Commonwealth in matters pertaining to the system of vital records.

76 7. Inspect vital records which have been sealed as provided by law whenever such inspection will
77 facilitate the administration of this chapter without violating the confidentiality of such records.

78 8. Perform such other duties as may be required by law.

79 9. Develop, furnish and distribute, in accordance with the regulations of the Board, forms as required
80 by this chapter and such other means for transmission of data as may be necessary for the purpose of
81 complete and accurate reporting and registration.

82 10. Develop and provide a means for obtaining a social security number in conjunction with the
83 issuance of a birth certificate.

84 11. *Develop, furnish and distribute a surrogate consent and report form as described in § 20-162.*

85 B. The State Registrar may delegate functions and duties vested in him to designated assistants and
86 to county, city and special registrars as he deems necessary or expedient.

87 **2.. However, notwithstanding any other provision of law, if the surrogate consent and report form**
88 **was not available from the State Registrar of Vital Records within sixty days after the birth, the**
89 **surrogate consent and report form, a copy of the contract, and the certificate from the physician**
90 **shall be filed within six months of the date that the form is made available by the State Registrar**
91 **of Vital Records and the State Registrar of Vital Records shall accept such form as if it had been**
92 **filed within sixty days after the birth.**