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HOUSE BILL NO. 2357

Offered January 13, 2023

A *BILL to amend and reenact § 20-162 of the Code of Virginia, relating to surrogacy; consent; relinquishment of parental rights.*

Patrons—Murphy, Guzman, Kory, Seibold, Simon and Simonds

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 20-162 of the Code of Virginia is 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 parent, the surrogate, or her spouse, 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 spouse, if any, and the intended parent 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 three days following~~ *At any time prior to the birth of any resulting the child,* the surrogate may relinquish her parental rights to the intended parent, if at least one intended parent is the genetic parent of the child, or the embryo was subject to the legal or contractual custody of such intended parent, by signing a surrogate consent and report form naming the intended parent as the parent of the child. The surrogate consent and report form shall be developed, furnished, and distributed by the State Registrar of Vital Records. 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 statement from the physician who performed the assisted conception stating either the genetic relationships between the child, the surrogate, and at least one intended parent, or proof of the legal or contractual custody of the embryo, shall be filed with the State Registrar within 180 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 among the child, the surrogate, and the intended parent. Where a physician's statement is not available and at least one intended parent is a genetic parent, DNA testing establishing the genetic relationships between the child, the surrogate, and the intended parent may be substituted for the physician's statement.

4. ~~Upon~~ *Within 180 days of the birth of the child and upon* the filing of the surrogate consent and report form and the required attachments, including the physician's statement, DNA testing establishing the genetic relationships between the child, the surrogate, and the intended parent, or proof of the legal or contractual custody of the embryo, ~~within 180 days of the birth,~~ a new birth certificate shall be established by the State Registrar for the child naming the intended parent as the parent of the child as provided in § 32.1-261.

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 parent shall be the parent of any resulting child when the surrogate relinquishes her parental rights as provided in subdivision A 3 and a new birth certificate is established as provided in subdivision A 4 of this section and § 32.1-261, unless parentage is instead established through Chapter 3.1 (§ 20-49.1 et seq.);

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 parent 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

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59 the contract, or breach of the contract by any party.

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

63 1. If the intended parent and the surrogate and her spouse, if any, and if such spouse is a party to
64 the contract, consent in writing to termination of the contract, the intended parent is responsible for all
65 reasonable medical and ancillary costs for a period of six weeks following the termination.

66 2. If the surrogate is a genetic parent and voluntarily terminates the contract during the pregnancy,
67 without consent of the intended parent, the intended parent shall be responsible for one-half of the
68 reasonable medical and ancillary costs incurred prior to the termination.

69 3. If, after the birth of any resulting child, the surrogate is also a genetic parent and fails to
70 relinquish parental rights to the intended parent pursuant to the contract, the intended parent shall be
71 responsible for one-half of the reasonable medical and ancillary costs incurred prior to the birth.