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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 4564

03/04/2024

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The bill was read for the first time and referred to the Committee on Judiciary Finance and Civil Law

1.1 A bill for an act

1.2 relating to civil law; updating rights and responsibilities relating to assisted

1.3 reproduction; creating requirements for gestational surrogacy agreements; creating

1.4 requirements for genetic surrogacy agreements; providing recordkeeping and

1.5 information sharing for genetic donation; proposing coding for new law as

1.6 Minnesota Statutes, chapter 257E; repealing Minnesota Statutes 2022, section

1.7 257.56.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 ARTICLE 1

1.10 DEFINITIONS

1.11 Section 1. 257E.10 DEFINITIONS.

1.12 Subdivision 1. Assisted reproduction. "Assisted reproduction" means a method of

1.13 causing pregnancy other than sexual intercourse. The term includes:

- 1.14 (1) intrauterine or intracervical insemination;
- 1.15 (2) donation of gametes;
- 1.16 (3) donation of embryos;
- 1.17 (4) in vitro fertilization and transfer of embryos; and
- 1.18 (5) intracytoplasmic sperm injection.

1.19 Subd. 2. Birth. "Birth" includes stillbirth.

1.20 Subd. 3. Determination of parentage. "Determination of parentage" means establishment

1.21 of a parent-child relationship by a judicial or administrative proceeding or signing of a valid

1.22 acknowledgment of parentage under the laws of the state.

2.1 Subd. 4. **Donor.** "Donor" means an individual who provides gametes intended for use
2.2 in assisted reproduction, whether or not for consideration. The term does not include:

2.3 (1) a woman who gives birth to a child conceived by assisted reproduction, except as
2.4 otherwise provided in sections 257E.50 to 257E.55; or

2.5 (2) a parent using assisted reproduction under sections 257E.20 to 257E.27 or an intended
2.6 parent under a gestational surrogacy agreement under sections 257E.37 to 257E.41.

2.7 Subd. 5. **Donor information.** "Donor information" means the full name of a donor; the
2.8 date of birth of the donor; and the permanent and, if different, current address of the donor
2.9 at the time of the donation.

2.10 Subd. 6. **Donor medical history.** "Donor medical history" means information regarding
2.11 any present illness or condition of a donor; past illness or condition of the donor; and
2.12 health-related social, genetic, and family history of the donor.

2.13 Subd. 7. **Gamete.** "Gamete" means sperm, egg, or any part of a sperm or egg.

2.14 Subd. 8. **Genetic surrogate.** "Genetic surrogate" means a woman who is not an intended
2.15 parent and who agrees to become pregnant through assisted reproduction using her own
2.16 gamete, under a genetic surrogacy agreement as provided in this chapter.

2.17 Subd. 9. **Genetic testing.** "Genetic testing" means an analysis of genetic markers to
2.18 identify or exclude a genetic relationship.

2.19 Subd. 10. **Gestational surrogate.** "Gestational surrogate" means a woman who is not
2.20 an intended parent and who agrees to become pregnant through assisted reproduction using
2.21 gametes that are not her own, under a gestational surrogacy agreement as provided in this
2.22 chapter.

2.23 Subd. 11. **Intended parent.** "Intended parent" means an individual, married or unmarried,
2.24 who manifests an intent to be legally bound as a parent of a child conceived by assisted
2.25 reproduction.

2.26 Subd. 12. **Parent.** "Parent" means an individual who is the legal parent of a child under
2.27 the laws of the state.

2.28 Subd. 13. **Parentage.** "Parentage" means the legal relationship between a child and a
2.29 parent of the child.

2.30 Subd. 14. **Presumed parent.** "Presumed parent" means an individual who under the
2.31 Minnesota Parentage Act is presumed to be a parent of a child, unless the presumption is

3.1 overcome in a judicial proceeding, a valid denial of parentage is made under section 257E.40
 3.2 or 257E.52, or a court adjudicates the individual to be a parent.

3.3 Subd. 15. **Significant other.** "Significant other" means a person who resides with a
 3.4 surrogate, sharing a living space, and who is in a romantic relationship with a surrogate.

3.5 Subd. 16. **Spouse.** "Spouse" means a person to whom an individual is legally married
 3.6 under the laws of this state, another state or territory of the United States, or under the laws
 3.7 of another country when that marriage would otherwise be legally recognized in this state.

3.8 Subd. 17. **Surrogacy agreement.** "Surrogacy agreement" means an agreement between
 3.9 one or more intended parents and a woman who is not an intended parent in which the
 3.10 woman agrees to become pregnant through assisted reproduction and that provides that each
 3.11 intended parent is a parent of a child conceived under the agreement. Unless otherwise
 3.12 specified, the term refers to both a gestational surrogacy agreement and a genetic surrogacy
 3.13 agreement.

3.14 Subd. 18. **Transfer.** "Transfer" means a procedure for assisted reproduction by which
 3.15 an embryo or sperm is placed in the body of the woman who will give birth to the child.

3.16 **ARTICLE 2**

3.17 **ASSISTED REPRODUCTION WITHOUT SURROGACY**

3.18 Section 1. **[257E.20] ASSISTED REPRODUCTION WITHOUT SURROGACY;**
 3.19 **SCOPE.**

3.20 Sections 257E.21 to 257E.27 do not apply to the birth of a child conceived by sexual
 3.21 intercourse or assisted reproduction under a gestational surrogacy agreement or genetic
 3.22 surrogacy agreement under sections 257E.30 to 257E.55.

3.23 Sec. 2. **[257E.21] PARENTAL STATUS OF DONOR.**

3.24 A donor is not a parent of a child conceived by assisted reproduction. Donor includes a
 3.25 third-party donor as defined by section 524.1-201.

3.26 Sec. 3. **[257E.22] PARENTAGE OF CHILD OF ASSISTED REPRODUCTION.**

3.27 An individual who consents in writing according to the requirements of section 257E.23
 3.28 to assisted reproduction by a woman with the intent to be a parent of a child conceived by
 3.29 the assisted reproduction is a legal parent of the child.

4.1 Sec. 4. [257E.23] CONSENT TO ASSISTED REPRODUCTION.

4.2 (a) Except as otherwise provided in paragraph (b), the consent described in section
4.3 257E.22 must be in writing signed by a woman giving birth to a child conceived by assisted
4.4 reproduction and another individual who intends to be a parent of the child.

4.5 (b) Failure to consent in writing as required by paragraph (a), before, on, or after the
4.6 birth of the child, does not preclude the court from finding consent to parentage if:

4.7 (1) the woman or the individual proves by clear and convincing evidence the existence
4.8 of an express agreement entered into before conception that the individual and the woman
4.9 intended they both would be parents of the child; or

4.10 (2) the woman and the individual for the first two years of the child's life, including any
4.11 period of temporary absence, resided together in the same household with the child and
4.12 both openly held out the child as the individual's child, unless the individual dies or becomes
4.13 incapacitated before the child attains two years of age or the child dies before the child
4.14 attains two years of age, in which case the court may find consent under this paragraph to
4.15 parentage if a party proves by clear and convincing evidence that the woman and the
4.16 individual intended to reside together in the same household with the child and both intended
4.17 the individual would openly hold out the child as the individual's child, but the individual
4.18 was prevented from carrying out that intent by death or incapacity.

4.19 Sec. 5. [257E.24] SPOUSE'S DISPUTE OF PARENTAGE; LIMITATIONS.

4.20 (a) Except as otherwise provided in paragraph (b), an individual who, at the time of a
4.21 child's birth, is the spouse of the woman who gave birth to the child by assisted reproduction
4.22 may not challenge the individual's parentage of the child unless:

4.23 (1) within two years after the birth of the child, the individual commences a proceeding
4.24 to adjudicate the nonexistence of the parent and child relationship, consistent with section
4.25 257.57, subdivision 1; and

4.26 (2) the court finds the individual did not consent to the assisted reproduction, before,
4.27 on, or after the birth of the child, or withdrew consent under section 257E.26.

4.28 (b) A proceeding to adjudicate the nonexistence of the parent and child relationship or
4.29 a spouse's parentage of a child born by assisted reproduction may be commenced at any
4.30 time if the court determines:

4.31 (1) the spouse neither provided a gamete for, nor consented to, the assisted reproduction;

5.1 (2) the spouse and the woman who gave birth to the child have not cohabited since the
5.2 probable time of assisted reproduction; and

5.3 (3) the spouse never openly held out the child as the spouse's child.

5.4 (c) This section applies to a spouse's dispute of parentage even if the spouse's marriage
5.5 is declared invalid after assisted reproduction occurs.

5.6 **Sec. 6. [257E.25] EFFECT OF DISSOLUTION.**

5.7 If a marriage of a woman who gives birth to a child conceived by assisted reproduction
5.8 is terminated through a dissolution before the transfer of gametes or embryos to the woman,
5.9 a former spouse of the woman is not a parent of the child unless the former spouse consented
5.10 in writing that the former spouse would be a parent of the child if assisted reproduction
5.11 were to occur after a dissolution of marriage and the former spouse did not withdraw consent
5.12 under section 257E.26.

5.13 **Sec. 7. [257E.26] WITHDRAWAL OF CONSENT.**

5.14 (a) An individual who consents under section 257E.24 to assisted reproduction may
5.15 withdraw consent any time before a transfer that results in a pregnancy, by giving notice in
5.16 writing of the withdrawal of consent to the woman who agreed to give birth to a child
5.17 conceived by assisted reproduction and to any clinic or healthcare provider facilitating the
5.18 assisted reproduction. Failure to give notice to the clinic or healthcare provider does not
5.19 affect a determination of parentage.

5.20 (b) An individual who withdraws consent under paragraph (a) is not a parent of the child.

5.21 **Sec. 8. [257E.27] PARENTAL STATUS OF DECEASED INDIVIDUAL.**

5.22 (a) If an individual who intends to be a parent of a child conceived by assisted
5.23 reproduction dies during the period between the transfer of a gamete or embryo and the
5.24 birth of the child, the individual's death does not preclude the establishment of the individual's
5.25 parentage of the child if the individual otherwise would be a parent of the child under the
5.26 law.

5.27 (b) If an individual who consented in a written record to assisted reproduction by a
5.28 woman who agreed to give birth to a child dies before a transfer of gametes or embryos,
5.29 the deceased individual is a parent of a child conceived by the assisted reproduction only
5.30 if:

6.1 (1) the individual consented in a written record that if assisted reproduction were to
6.2 occur after the death of the individual, the individual would be a parent of the child; or

6.3 (2) the individual's intent to be a parent of a child conceived by assisted reproduction
6.4 after the individual's death is established by clear and convincing evidence and the embryo
6.5 is in utero not later than 36 months after the individual's death, or the child is born not later
6.6 than 45 months after the individual's death.

6.7 **ARTICLE 3**

6.8 **GENERAL SURROGACY REQUIREMENTS**

6.9 Section 1. **[257E.30] ELIGIBILITY; SURROGACY AGREEMENTS.**

6.10 (a) To execute an agreement to act as a gestational or genetic surrogate, a woman must:

6.11 (1) have attained 21 years of age;

6.12 (2) previously have given birth to at least one child;

6.13 (3) complete a medical evaluation related to the surrogacy arrangement by a licensed
6.14 medical doctor;

6.15 (4) complete a mental health consultation by a licensed mental health professional; and

6.16 (5) have independent legal representation of her choice throughout the surrogacy
6.17 arrangement regarding the terms of the surrogacy agreement and the potential legal
6.18 consequences of the agreement or knowingly waive her right to legal representation.

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

6.21 (1) have attained 21 years of age;

6.22 (2) complete a medical evaluation related to the surrogacy arrangement by a licensed
6.23 medical doctor;

6.24 (3) complete a mental health consultation by a licensed mental health professional; and

6.25 (4) have independent legal representation of the intended parent's choice throughout the
6.26 surrogacy arrangement regarding the terms of the surrogacy agreement and the potential
6.27 legal consequences of the agreement or knowingly waive their right to legal representation.

6.28 Sec. 2. **[257E.31] REQUIREMENTS; LEGAL COUNSEL.**

6.29 (a) A surrogacy agreement must meet each of the following requirements:

- 7.1 (1) at least one party must be a resident of this state;
- 7.2 (2) the surrogate and each intended parent must meet the requirements of section 257E.30;
- 7.3 (3) each intended parent, the surrogate, and the surrogate's spouse, if any, must be parties
7.4 to the agreement;
- 7.5 (4) the agreement must be in writing, signed by each party listed in clause (3);
- 7.6 (5) the surrogate and each intended parent must acknowledge in writing receipt of a
7.7 copy of the agreement; and
- 7.8 (6) the signature of each party to the agreement must be attested by a notarial officer,
7.9 witnessed, or signed in accordance with section 358.116.
- 7.10 (b) The surrogate and the intended parent or parents must have independent legal
7.11 representation throughout the surrogacy arrangement regarding the terms of the surrogacy
7.12 agreement and the potential legal consequences of the agreement, and each counsel must
7.13 be identified in the surrogacy agreement, or the surrogate and the intended parent or parents
7.14 must knowingly waive their right to legal representation. The intended parent or parents
7.15 must pay for independent legal representation for the surrogate.
- 7.16 (c) The agreement must be executed before a medical procedure occurs related to the
7.17 surrogacy agreement, other than the medical evaluation and mental health consultation
7.18 required by section 257E.30.

7.19 **Sec. 3. [257E.32] CONTENTS OF SURROGACY AGREEMENTS.**

- 7.20 (a) A surrogacy agreement must comply with the requirements in paragraphs (b) to (i).
- 7.21 (b) A surrogate agrees to attempt to become pregnant by means of assisted reproduction.
- 7.22 (c) Except as otherwise provided in sections 257E.38, 257E.51, and 257E.52, the
7.23 surrogate and the surrogate's spouse, or significant other, if any, have no claim to parentage
7.24 of a child conceived by assisted reproduction under the agreement.
- 7.25 (d) The surrogate's spouse, if any, must acknowledge and agree to comply with the
7.26 obligations imposed on the surrogate by the agreement.
- 7.27 (e) Except as otherwise provided in sections 257E.38, 257E.51, and 257E.52, the intended
7.28 parent or, if there are two intended parents, each one jointly and severally, immediately on
7.29 birth will be the exclusive parent or parents of the child, regardless of the number of children
7.30 born or gender or mental or physical condition of each child.

8.1 (f) Except as otherwise provided in sections 257E.38, 257E.51, and 257E.52, the intended
 8.2 parent or, if there are two intended parents, each parent jointly and severally, immediately
 8.3 on birth will assume responsibility for the financial support of the child, regardless of number
 8.4 of children born or gender or mental or physical condition of each child.

8.5 (g) The agreement must include information disclosing how each intended parent will
 8.6 cover the surrogacy-related expenses of the surrogate and the medical expenses of the child.
 8.7 If health care coverage is used to cover the medical expenses, the disclosure must include
 8.8 a summary of the health care policy provisions related to coverage for surrogate pregnancy,
 8.9 including any possible liability of the surrogate, third-party liability liens, other insurance
 8.10 coverage, and any notice requirement that could affect coverage or liability of the surrogate.
 8.11 Unless the agreement expressly provides otherwise, the review and disclosure do not
 8.12 constitute legal advice. If the extent of coverage is uncertain, a statement of that fact is
 8.13 sufficient to comply with this paragraph.

8.14 (h) The agreement must permit the surrogate to make all health and welfare decisions
 8.15 regarding herself and her pregnancy. This section does not enlarge or diminish the surrogate's
 8.16 right to terminate her pregnancy.

8.17 (i) The agreement must include information about each party's right under this section
 8.18 to terminate the surrogacy agreement.

8.19 **Sec. 4. [257E.33] COMPENSATION; SURROGACY AGREEMENT.**

8.20 A surrogacy agreement may provide for:

8.21 (1) payment of consideration and reasonable expenses; and

8.22 (2) reimbursement of specific expenses if the agreement is terminated under this chapter.

8.23 **Sec. 5. [257E.34] ASSIGNMENT OF RIGHTS; SURROGACY AGREEMENT.**

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

8.26 **Sec. 6. [257E.35] CHANGE IN MARITAL STATUS; SURROGACY AGREEMENTS.**

8.27 (a) Unless a surrogacy agreement expressly provides otherwise, the marriage of a
 8.28 surrogate after the agreement is signed by all parties does not affect the validity of the
 8.29 agreement, her spouse's consent to the agreement is not required, and her spouse is not a
 8.30 presumed parent of a child conceived by assisted reproduction under the agreement. The

9.1 dissolution or legal separation of the surrogate after the agreement is signed by all parties
 9.2 also does not affect the validity of the agreement.

9.3 (b) Unless a surrogacy agreement expressly provides otherwise, the marriage of an
 9.4 intended parent after the agreement is signed by all parties does not affect the validity of a
 9.5 surrogacy agreement. The consent of the spouse of the intended parent is not required, and
 9.6 the spouse of the intended parent is not, based on the agreement, a parent of a child conceived
 9.7 by assisted reproduction under the agreement. The dissolution or legal separation of an
 9.8 intended parent after the agreement is signed by all parties does not affect the validity of
 9.9 the agreement and, except as otherwise provided in section 257E.52, the intended parents
 9.10 are the parents of the child.

9.11 **Sec. 7. [257E.36] INSPECTION OF DOCUMENTS.**

9.12 Unless the court orders otherwise, a petition and any other document related to a
 9.13 surrogacy agreement filed with the court under this section are not open to inspection by
 9.14 any individual other than the parties to the proceeding, a child conceived by assisted
 9.15 reproduction under the agreement, and their attorneys. A court may not authorize an
 9.16 individual to inspect a document related to the agreement, unless required by exigent
 9.17 circumstances. The individual seeking to inspect the document may be required to pay the
 9.18 expense of preparing a copy of the document to be inspected.

9.19 **ARTICLE 4**

9.20 **GESTATIONAL SURROGACY**

9.21 **Section 1. [257E.37] TERMINATION OF GESTATIONAL SURROGACY**
 9.22 **AGREEMENT PRIOR TO PREGNANCY.**

9.23 (a) A party to a gestational surrogacy agreement may terminate the agreement, at any
 9.24 time before an embryo transfer, by giving notice of termination in a record to all other
 9.25 parties. If an embryo transfer does not result in a pregnancy, a party may terminate the
 9.26 agreement at any time before a subsequent embryo transfer.

9.27 (b) Unless a gestational surrogacy agreement provides otherwise, on termination of the
 9.28 agreement under paragraph (a), except for obligations related to confidentiality, the parties
 9.29 are released from the agreement, except that each intended parent remains responsible for
 9.30 expenses that are reimbursable under the agreement and incurred by the gestational surrogate
 9.31 through the date of termination.

10.1 (c) Except in a case involving fraud, neither a gestational surrogate nor the surrogate's
 10.2 spouse or former spouse, if any, is liable to the intended parent or parents for a penalty or
 10.3 liquidated damages, for terminating a gestational surrogacy agreement under this section.

10.4 **Sec. 2. [257E.38] PARENTAGE UNDER GESTATIONAL SURROGACY**
 10.5 **AGREEMENT.**

10.6 (a) Each intended parent is, by operation of law, a parent of the child if the child is born
 10.7 and was conceived by assisted reproduction under a gestational surrogacy agreement, except
 10.8 as provided otherwise in paragraph (c), or sections 257E.37 and 257E.39.

10.9 (b) Except as otherwise provided in paragraph (c), neither a gestational surrogate nor
 10.10 the surrogate's spouse or former spouse, or her significant other, if any, is a parent of the
 10.11 child.

10.12 (c) If a child is alleged to be a genetic child of the woman who agreed to be a gestational
 10.13 surrogate, the court shall order genetic testing of the child. If the child is a genetic child of
 10.14 the woman who agreed to be a gestational surrogate, parentage must be determined under
 10.15 chapter 257.

10.16 (d) Except as otherwise provided in paragraph (c) or sections 257E.37 and 257E.39, if,
 10.17 due to a clinical or laboratory error, a child conceived by assisted reproduction under a
 10.18 gestational surrogacy agreement is not genetically related to (i) a gestational surrogate, (ii)
 10.19 an intended parent, or (iii) a donor who donated to the intended parent or parents, then the
 10.20 gestational surrogate, the gestational surrogate's spouse or former spouse, or her significant
 10.21 other are not the parents of the child, and each intended parent is a parent to the child, subject
 10.22 to any other claim of parentage.

10.23 **Sec. 3. [257E.39] GESTATIONAL SURROGACY AGREEMENT; DECEASED**
 10.24 **INTENDED PARENT.**

10.25 Section 257E.38 applies to an intended parent even if the intended parent died during
 10.26 the period between the transfer of a gamete or embryo and the birth of the child. Except as
 10.27 otherwise provided in section 257E.41, an intended parent is not a parent of a child conceived
 10.28 by assisted reproduction under a gestational surrogacy agreement if the intended parent dies
 10.29 before the transfer of a gamete or embryo unless:

10.30 (1) the agreement provides otherwise; and

11.1 (2) the transfer of a gamete or embryo occurs not later than 36 months after the death
11.2 of the intended parent or birth of the child occurs not later than 45 months after the death
11.3 of the intended parent.

11.4 **Sec. 4. [257E.40] GESTATIONAL SURROGACY AGREEMENT; COURT ORDER**
11.5 **FOR PARENTAGE.**

11.6 (a) Except as otherwise provided in section 257E.38, paragraph (c), or section 257E.41,
11.7 before, on, or after the birth of a child conceived by assisted reproduction under a gestational
11.8 surrogacy agreement, a party to the agreement may commence a proceeding in the county
11.9 where the intended parents reside, where the gestational surrogate resides, or where the
11.10 child is found for an order or judgment:

11.11 (1) declaring that each intended parent is a parent of the child and ordering that parental
11.12 rights and duties vest immediately on the birth of the child exclusively in each intended
11.13 parent;

11.14 (2) declaring that the gestational surrogate and the surrogate's spouse or former spouse,
11.15 or her significant other, if any, are not the parents of the child;

11.16 (3) designating the content of the birth record, in accordance with Minnesota Department
11.17 of Health, Vital Records Division, shall designate each intended parent as a parent of the
11.18 child and requiring that such information as would otherwise be required regarding a parent
11.19 be listed in the vital record;

11.20 (4) to protect the privacy of the child and the parties, declaring that the court record is
11.21 not open to inspection, except as authorized by section 257E.36;

11.22 (5) if necessary, that the child be surrendered to the intended parent or parents
11.23 immediately upon birth; and

11.24 (6) for other relief the court determines necessary and proper.

11.25 (b) The court may issue an order or judgment under paragraph (a) before the birth of
11.26 the child.

11.27 (c) Neither this state nor the Minnesota Department of Health, Vital Records Division,
11.28 nor any entity in which the child was born, is a necessary party to a proceeding under
11.29 paragraph (a).

12.1 **Sec. 5. [257E.41] EFFECT OF LAW; GESTATIONAL SURROGACY**

12.2 **AGREEMENT.**

12.3 (a) A gestational surrogacy agreement that complies with sections 257E.30 to 257E.32
12.4 is enforceable.

12.5 (b) If a child was conceived by assisted reproduction under a gestational surrogacy
12.6 agreement that does not comply with sections 257E.30 to 257E.32, the court shall determine
12.7 the rights and duties of the parties to the agreement consistent with the intent of the parties
12.8 at the time of execution of the agreement. Each party to the agreement and any individual
12.9 who at the time of the execution of the agreement was a spouse of a party to the agreement
12.10 has standing to maintain a proceeding to adjudicate an issue related to the enforcement of
12.11 the agreement.

12.12 (c) Except as expressly provided in a gestational surrogacy agreement or paragraph (d)
12.13 or (e), if the agreement is breached by the gestational surrogate or one or more intended
12.14 parents, the nonbreaching party is entitled to the remedies available at law or in equity.

12.15 (d) Specific performance is not a remedy available for breach by a gestational surrogate
12.16 of a provision in the agreement that the gestational surrogate be impregnated, terminate or
12.17 not terminate a pregnancy, or submit to medical procedures.

12.18 (e) Except as otherwise provided in paragraph (d), specific performance is a remedy
12.19 available for:

12.20 (1) breach of the agreement by a gestational surrogate that prevents the intended parent
12.21 from exercising immediately on birth of the child the full rights of parentage; or

12.22 (2) breach by the intended parent when the intended parent fails to accept custody of
12.23 the child immediately on birth of the child conceived by assisted reproduction under the
12.24 agreement and the duties of parentage.

12.25 **ARTICLE 5**

12.26 **GENETIC SURROGACY**

12.27 **Section 1. [257E.50] VALIDATING A GENETIC SURROGACY AGREEMENT.**

12.28 (a) Except as otherwise provided in section 257E.53, to be enforceable, a genetic
12.29 surrogacy agreement must be approved by the district court in the county where the genetic
12.30 surrogate resides. A proceeding to approve the agreement must be commenced before
12.31 assisted reproduction related to the surrogacy agreement begins.

13.1 (b) The court shall issue an order approving a genetic surrogacy agreement if the court
13.2 finds that:

13.3 (1) sections 257E.30 to 257E.32 are satisfied; and

13.4 (2) all parties entered into the agreement voluntarily and understand its terms.

13.5 (c) An individual who terminates a genetic surrogacy agreement under section 257E.51
13.6 shall file notice of the termination with the court. On receipt of the notice, the court shall
13.7 vacate any order issued under paragraph (b). An individual who does not notify the court
13.8 of the termination of the agreement is subject to sanctions.

13.9 **Sec. 2. [257E.51] TERMINATING A GENETIC SURROGACY AGREEMENT.**

13.10 (a) An intended parent who is a party to the agreement may terminate the agreement at
13.11 any time before a gamete or embryo transfer by giving notice of termination in writing,
13.12 served upon all other parties, and filed with the court. If a gamete or embryo transfer does
13.13 not result in a pregnancy, a party may terminate the agreement at any time before a
13.14 subsequent gamete or embryo transfer. The written notice of termination as required by this
13.15 section must be attested by a notarial officer or witnessed.

13.16 (b) A genetic surrogate who is a party to the agreement may withdraw consent to the
13.17 agreement any time before 72 hours after the birth of a child conceived by assisted
13.18 reproduction under the agreement. To withdraw consent, the genetic surrogate must execute
13.19 a notice of termination in a written statement, served upon all other parties and filed with
13.20 the court stating the surrogate's intent to terminate the agreement. The written notice of
13.21 termination must be attested by a notarial officer or witnessed and be delivered to each
13.22 intended parent and filed with the court at any time before 72 hours after the birth of the
13.23 child.

13.24 (c) On termination of the genetic surrogacy agreement under paragraph (a), the parties
13.25 are released from all obligations under the agreement except that each intended parent
13.26 remains responsible for all expenses incurred by the genetic surrogate through the date of
13.27 termination that are reimbursable under the agreement. Unless the agreement provides
13.28 otherwise, the genetic surrogate is not entitled to any nonexpense-related compensation
13.29 paid for serving as a genetic surrogate.

13.30 (d) Except in a case involving fraud, neither a genetic surrogate nor the genetic surrogate's
13.31 spouse or former spouse, if any, is liable to the intended parent or parents for a penalty or
13.32 liquidated damages, for terminating a genetic surrogacy agreement under this section.

14.1 Sec. 3. [257E.52] PARENTAGE AND ORDER; GENETIC SURROGACY
14.2 AGREEMENT.

14.3 Subdivision 1. **Parentage.** Unless a genetic surrogate exercises the right under section
14.4 257E.51 to terminate a genetic surrogacy agreement, each intended parent is a parent of a
14.5 child conceived by assisted reproduction under an agreement validated under section 257E.50.

14.6 Subd. 2. **Court order.** Unless a genetic surrogate exercises the right under section
14.7 257E.51 to terminate the genetic surrogacy agreement, on proof of a court order issued
14.8 under section 257E.50 validating the agreement, the court shall make an order:

14.9 (1) declaring that each intended parent is a parent of a child conceived by assisted
14.10 reproduction under the agreement and ordering that parental rights and duties vest exclusively
14.11 in each intended parent;

14.12 (2) declaring that the genetic surrogate and the surrogate's spouse or former spouse, if
14.13 any, are not parents of the child;

14.14 (3) designating the contents of the birth certificate and directing the Minnesota
14.15 Department of Vital Records to designate each intended parent as a parent of the child;

14.16 (4) to protect the privacy of the child and the parties, declaring that the court record is
14.17 not open to inspection except as authorized under section 257E.36;

14.18 (5) if necessary, that the child be surrendered to the intended parent or parents; and

14.19 (6) for other relief the court determines necessary and proper.

14.20 Subd. 3. **Parentage after termination.** If a genetic surrogate terminates a genetic
14.21 surrogacy agreement under section 257E.51, parentage of the child conceived by assisted
14.22 reproduction under the agreement must be determined under chapter 257.

14.23 Subd. 4. **Parentage without assisted reproduction.** If a child born to a genetic surrogate
14.24 is alleged not to have been conceived by assisted reproduction, the court shall order genetic
14.25 testing to determine the genetic parentage of the child. If the child was not conceived by
14.26 assisted reproduction, parentage must be determined under chapter 257. Unless the genetic
14.27 surrogacy agreement provides otherwise, if the child was not conceived by assisted
14.28 reproduction, the surrogate is not entitled to any nonexpense-related compensation paid for
14.29 servicing as a surrogate.

14.30 Subd. 5. **Failure to file notice; court order.** Unless a genetic surrogate exercises the
14.31 right under section 257E.51 to terminate the genetic surrogacy agreement, if an intended
14.32 parent fails to file notice required under section 257E.50, the genetic surrogate or the

15.1 Minnesota Department of Human Services or its local county agency may file with the
15.2 court, not later than 60 days after the birth of a child conceived by assisted reproduction
15.3 under the agreement, notice that the child has been born to the genetic surrogate. Unless
15.4 the genetic surrogate has properly exercised the right under section 257E.51 to withdraw
15.5 consent to the agreement, on proof of a court order issued under subdivision 2 validating
15.6 the agreement, the court shall order that each intended parent is a parent of the child.

15.7 **Sec. 4. [257E.53] EFFECT OF NONVALIDATED GENETIC SURROGACY.**

15.8 (a) A genetic surrogacy agreement, whether or not in a record, that is not validated under
15.9 section 257E.50 is enforceable only to the extent provided in this section and section 257E.55.
15.10 If all parties agree, a court may validate a genetic surrogacy agreement after assisted
15.11 reproduction has occurred but before the birth of a child conceived by assisted reproduction
15.12 under the agreement.

15.13 (b) If a child conceived by assisted reproduction under a genetic surrogacy agreement
15.14 that is not validated under section 257E.50 is born and the genetic surrogate, consistent with
15.15 section 257E.51, withdraws her consent to the agreement before 72 hours after the birth of
15.16 the child, the court shall adjudicate the parentage of the child under chapter 257.

15.17 (c) If a child conceived by assisted reproduction under a genetic surrogacy agreement
15.18 that is not validated under section 257E.50 is born and a genetic surrogate does not withdraw
15.19 her consent to the agreement before 72 hours after the birth of the child, the genetic surrogate
15.20 is not automatically a parent and the court shall adjudicate parentage of the child based on
15.21 the best interest of the child, taking into account the factors in chapter 257 and chapter 518,
15.22 and the intent of the parties at the time of the execution of the agreement.

15.23 (d) The parties to a genetic surrogacy agreement have standing to maintain a proceeding
15.24 to adjudicate parentage under this section.

15.25 **Sec. 5. [257E.54] DEATH OF INTENDED PARENT; GENETIC SURROGACY.**

15.26 (a) Except as otherwise provided in sections 257E.52 and 257E.53, on birth of a child
15.27 conceived by assisted reproduction under a genetic surrogacy agreement, each intended
15.28 parent is, by operation of law, a parent of the child, notwithstanding the death of an intended
15.29 parent during the period between the transfer of a gamete or embryo and the birth of the
15.30 child.

15.31 (b) Except as otherwise provided in sections 257E.52 and 257E.53, an intended parent
15.32 is not a parent of a child conceived by assisted reproduction under a genetic surrogacy

16.1 agreement if the intended parent dies before the transfer of a gamete or embryo unless the
16.2 agreement provides otherwise, and the transfer of the gamete or embryo occurs not later
16.3 than 36 months after the death of the intended parent, or birth of the child occurs not later
16.4 than 45 months after the death of the intended parent.

16.5 **Sec. 6. [257E.55] BREACH OF GENETIC SURROGACY AGREEMENT.**

16.6 (a) Subject to section 257E.51, paragraph (b), if a genetic surrogacy agreement is breached
16.7 by a genetic surrogate or one or more intended parents, the nonbreaching party is entitled
16.8 to the remedies available at law or in equity.

16.9 (b) Specific performance is not a remedy available for breach by a genetic surrogate of
16.10 a requirement of a validated or nonvalidated genetic surrogacy agreement that the surrogate
16.11 be impregnated, terminate or not terminate a pregnancy, or submit to medical procedures.

16.12 (c) Except as otherwise provided in paragraph (b), specific performance is a remedy
16.13 available for:

16.14 (1) breach of a validated genetic surrogacy agreement by a genetic surrogate of a
16.15 requirement that prevents an intended parent from exercising the full rights of parentage 72
16.16 hours after the birth of the child; or

16.17 (2) breach by an intended parent that prevents the intended parent's acceptance of duties
16.18 of parentage 72 hours after the birth of the child.

16.19 **ARTICLE 6**

16.20 **DONOR INFORMATION**

16.21 **Section 1. [257E.60] DONOR INFORMATION; APPLICABILITY.**

16.22 Sections 257E.60 to 257E.64 apply only to gametes collected on or after August 1, 2024.

16.23 **Sec. 2. [257E.61] COLLECTION OF INFORMATION.**

16.24 (a) A gamete bank or fertility clinic licensed in this state shall collect from a donor the
16.25 donor's identifying information and donor's medical history at the time of the donation.

16.26 (b) A gamete bank or fertility clinic licensed in this state that receives gametes of a donor
16.27 collected by another gamete bank or fertility clinic shall collect the name, address, telephone
16.28 number, and electronic mail address of the gamete bank or fertility clinic from which it
16.29 received the gametes.

17.1 (c) A gamete bank or fertility clinic licensed in this state shall disclose the information
17.2 collected under paragraphs (a) and (b) only as provided under section 257E.63.

17.3 **Sec. 3. [257E.62] DONOR DISCLOSURE; RECORD.**

17.4 (a) A gamete bank or fertility clinic licensed in this state that collects gametes from a
17.5 donor shall provide the donor with information about the donor's choice regarding identity
17.6 disclosure and obtain a declaration from the donor regarding identity disclosure consistent
17.7 with paragraph (b).

17.8 (b) A gamete bank or fertility clinic licensed in this state shall give a donor the choice
17.9 to sign a declaration, attested by a notarial officer or witnessed, that either:

17.10 (1) states that the donor agrees to disclose the donor's identity to a child conceived by
17.11 assisted reproduction with the donor's gametes on request once the child attains 18 years
17.12 of age; or

17.13 (2) states that the donor does not agree presently to disclose the donor's identity to the
17.14 child.

17.15 (c) A gamete bank or fertility clinic licensed in this state shall permit a donor who has
17.16 signed a declaration under paragraph (b), clause (2), to withdraw the declaration at any time
17.17 by signing a declaration under paragraph (b), clause (1).

17.18 **Sec. 4. [257E.63] DISCLOSURE OF DONOR IDENTIFYING INFORMATION**
17.19 **AND MEDICAL HISTORY.**

17.20 (a) On written request of a child conceived by assisted reproduction who has attained
17.21 18 years of age, a gamete bank or fertility clinic licensed in this state that collected the
17.22 gametes used in the assisted reproduction shall make a good faith effort to provide the child
17.23 with identifying information of the donor who provided the gametes, unless the donor signed
17.24 and did not withdraw a declaration under section 257E.62, paragraph (b), clause (2), that
17.25 the donor does not want identifying information shared.

17.26 (b) Regardless whether a donor signed a declaration under section 257E.62, paragraph
17.27 (b), clause (2), on the request of a child conceived by assisted reproduction who attains 18
17.28 years of age, or, if the child is a minor, by a parent or guardian of the child, a gamete bank
17.29 or fertility clinic licensed in this state that collected the gametes used in the assisted
17.30 reproduction shall make a good faith effort to provide the child or, if the child is a minor,
17.31 the parent or guardian of the child, access to nonidentifying donor medical history.

18.1 (c) On request of a child conceived by assisted reproduction who attains 18 years of age,
18.2 a gamete bank or fertility clinic licensed in this state that received the gametes used in the
18.3 assisted reproduction from another gamete bank or fertility clinic shall disclose the name,
18.4 address, telephone number, and electronic mail address of the gamete bank or fertility clinic
18.5 from which it received the gametes.

18.6 Sec. 5. **[257E.64] CLINIC RECORDKEEPING.**

18.7 (a) A gamete bank or fertility clinic licensed in this state that collects gametes for use
18.8 in assisted reproduction shall maintain identifying information and medical history about
18.9 each gamete donor. The gamete bank or fertility clinic shall maintain records of gamete
18.10 screening and testing and comply with reporting requirements, in accordance with federal
18.11 law and applicable law of this state.

18.12 (b) A gamete bank or fertility clinic licensed in this state that receives gametes from
18.13 another gamete bank or fertility clinic shall maintain the name, address, telephone number,
18.14 and electronic mail address of the gamete bank or fertility clinic from which it received the
18.15 gametes.

18.16 Sec. 6. **REPEALER.**

18.17 Minnesota Statutes 2022, section 257.56, is repealed.

257.56 ARTIFICIAL INSEMINATION.

Subdivision 1. **Husband treated as biological father.** If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the biological father of a child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The consent must be retained by the physician for at least four years after the confirmation of a pregnancy that occurs during the process of artificial insemination.

All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

Subd. 2. **Donor not treated as biological father.** The donor of semen provided to a licensed physician for use in artificial insemination of a married woman other than the donor's wife is treated in law as if he were not the biological father of a child thereby conceived.