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## A BILL FOR AN ACT

RELATING TO GESTATIONAL SURROGACY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that many people have  
2 strong desire to be a parent despite being unable to bear a  
3 child. Gestational surrogacy arrangements, in which a woman  
4 agrees to become pregnant, carry, and give birth to a child for  
5 another intended parent are made in the State, but the frequency  
6 and means are unknown.

7           The legislature further finds that there are neither  
8 prohibitions nor protections in the State for surrogate parents  
9 and intended parents with regard to surrogacy or gestational  
10 carrier agreements. The lack of regulation regarding surrogacy  
11 may create inconsistent legal results and inadequate protections  
12 among surrogates and intended parents in the State.

13           Accordingly, the purpose of this Act is to regulate  
14 surrogacy to establish consistent prohibitions and protections  
15 for surrogate parents and intended parents.



1 SECTION 2. Chapter 584, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§584- Gestational surrogacy; contracts. (a) Prior to  
5 engaging in gestational surrogacy, the commissioning couple and  
6 the gestational surrogate shall enter into a binding and  
7 enforceable gestational surrogacy contract. A contract for  
8 gestational surrogacy shall not be binding and enforceable  
9 unless the gestational surrogate is eighteen years of age or  
10 older and the commissioning couple are legally married and are  
11 both eighteen years of age or older.

12 (b) The commissioning couple shall enter into a contract  
13 with a gestational surrogate only when, within reasonable  
14 medical certainty as determined by a physician licensed under  
15 part I of chapter 453:

16 (1) The commissioning mother cannot physically gestate a  
17 pregnancy to term;

18 (2) Gestation would cause a risk to the physical health of  
19 the commissioning mother; or

20 (3) Gestation would cause a risk to the health of the  
21 fetus.



1        (c) A gestational surrogacy contract shall include the  
2 following provisions:

3        (1) The commissioning couple agrees that the gestational  
4 surrogate shall be the sole source of consent with  
5 respect to clinical intervention and management of the  
6 pregnancy;

7        (2) The gestational surrogate agrees to submit to  
8 reasonable medical evaluation and treatment and to  
9 adhere to reasonable medical instructions about the  
10 gestational surrogate's prenatal health;

11       (3) Except as provided in paragraph (5), the gestational  
12 surrogate agrees to relinquish any parental rights  
13 upon the child's birth;

14       (4) Except as provided in paragraph (5), the commissioning  
15 couple agrees to accept custody of and to assume full  
16 parental rights and responsibilities for the child  
17 immediately upon the child's birth, regardless of any  
18 impairment of the child; and

19       (5) The gestational surrogate agrees to assume parental  
20 rights and responsibilities for the child born to the  
21 surrogate if it is determined that neither member of



1           the commissioning couple is the genetic parent of the  
2           child.

3           (d) As part of the contract, the commissioning couple may  
4 agree to pay only reasonable living, legal, medical,  
5 psychological, and psychiatric expenses of the gestational  
6 surrogate that are directly related to prenatal, intrapartal,  
7 and postpartal periods.

8           (e) As used in this section:

9           "Commissioning couple" means two persons who are legally  
10 married, are both eighteen years of age or older, and commission  
11 a surrogate to carry a pregnancy created via in vitro  
12 fertilization and deliver a child that is not biologically  
13 related to the surrogate.

14           "Gestational surrogacy" means a process in which a  
15 surrogate carries a pregnancy created via in vitro fertilization  
16 and delivers a child that is not biologically related to the  
17 surrogate.

18           "Gestational surrogacy contract" means a written agreement  
19 between the gestational surrogate and the commissioning couple.

20           "Gestational surrogate" means a person who contracts with a  
21 commissioning couple to carry a pregnancy created via in vitro



1 fertilization and deliver a child that is not biologically  
2 related to the surrogate."

3 SECTION 3. New statutory material is underscored.

4 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

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JAN 18 2018



# H.B. NO. 1857

**Report Title:**

Gestational Surrogacy; Contracts; Terms

**Description:**

Provides that gestational surrogacy is permitted only when a contract containing certain terms has been executed between a gestational surrogate and a commissioning couple.

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