

JAN 19 2018

---

---

# A BILL FOR AN ACT

RELATING TO SURROGACY.

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

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

4                               **"PART . SURROGACY AGREEMENTS**

5           **§584-A Definitions.** As used in this part:

6           "Genetic surrogate" means a woman who is not an intended  
7 parent and who agrees to become pregnant through assisted  
8 reproduction using her own gamete under a genetic surrogacy  
9 agreement as provided in this part.

10           "Gestational surrogate" means a woman who is not an  
11 intended parent and who agrees to become pregnant through  
12 assisted reproduction using gametes that are not her own under a  
13 gestational surrogacy agreement as provided in this part.

14           "Intended parent" means an individual, married or  
15 unmarried, who manifests an intent to be legally bound as a  
16 parent of a child conceived by assisted reproduction.



1 "Surrogacy agreement" means an agreement between one or  
2 more intended parents and a woman who is not an intended parent  
3 in which the woman who is not an intended parent agrees to  
4 become pregnant through assisted reproduction and that provides  
5 that each intended parent is a parent of a child conceived under  
6 the agreement. Unless otherwise specified, "surrogacy  
7 agreement" includes gestational surrogacy agreements and genetic  
8 surrogacy agreements.

9 "Surrogate" means a woman who is not an intended parent and  
10 who agrees to become pregnant through assisted reproduction  
11 under a surrogacy agreement. Unless otherwise specified,  
12 "surrogate" includes gestational surrogates and genetic  
13 surrogates.

14 **§584-B Eligibility to enter a surrogacy agreement. (a)**

15 To execute an agreement to act as a gestational or genetic  
16 surrogate, a woman must:

- 17 (1) Be at least twenty-one years old;
- 18 (2) Previously have given birth to at least one child;
- 19 (3) Complete a medical evaluation related to the surrogacy  
20 arrangement by a licensed medical doctor;



1 (4) Complete a mental health consultation by a licensed  
2 mental health professional; and

3 (5) Have independent legal representation of her choice  
4 throughout the surrogacy arrangement regarding the  
5 terms of the surrogacy agreement and the potential  
6 legal consequences of the agreement.

7 (b) To execute a surrogacy agreement, each intended  
8 parent, whether genetically related to the child, shall:

9 (1) Be at least twenty-one years old;

10 (2) Complete a medical evaluation related to the surrogacy  
11 arrangement by a licensed medical doctor;

12 (3) Complete a mental health consultation by a licensed  
13 mental health professional; and

14 (4) Have independent legal representation of the intended  
15 parent's choice throughout the surrogacy arrangement  
16 regarding the terms of the surrogacy agreement and the  
17 potential legal consequences of the agreement.

18 **§584-C Process requirements of surrogacy agreements.** A  
19 surrogacy agreement shall be executed in compliance with the  
20 following requirements:

- 1           (1) At least one party to the agreement shall be a  
2           resident of Hawaii or, if no party is a resident of  
3           Hawaii, at least one medical evaluation or procedure  
4           or mental health consultation under the agreement must  
5           occur in Hawaii;
- 6           (2) The surrogate and each intended parent shall meet the  
7           requirements of section 584-B;
- 8           (3) Each intended parent, the surrogate, and the  
9           surrogate's spouse, if any, shall be parties to the  
10          surrogacy agreement;
- 11          (4) The surrogacy agreement shall be in a record signed by  
12          each party described in paragraph (3);
- 13          (5) The surrogate and each intended parent shall  
14          acknowledge in a record receipt of a copy of the  
15          surrogacy agreement;
- 16          (6) The signature of each party to the surrogacy agreement  
17          shall be attested by a notary public or witnessed;
- 18          (7) The surrogate and the intended parent or parents shall  
19          have independent legal representation throughout the  
20          surrogacy arrangement regarding the terms of the  
21          surrogacy agreement and the potential legal



1 consequences of the agreement, and each counsel shall  
2 be identified in the surrogacy agreement; and

3 (8) The agreement shall be executed before a medical  
4 procedure occurs related to the surrogacy agreement,  
5 other than the medical evaluation and mental health  
6 consultation required under section 584-B.

7 **§584-D Content of surrogacy agreements.** (a) A surrogacy  
8 agreement shall comply with the following requirements:

9 (1) A surrogate shall agree to attempt to become pregnant  
10 by means of assisted reproduction;

11 (2) Except as otherwise provided in sections 584-K, 584-N,  
12 and 584-O, the surrogate and the surrogate's spouse or  
13 former spouse, if any, shall have no claim to  
14 parentage of a child conceived by assisted  
15 reproduction under the agreement;

16 (3) The surrogate's spouse, if any, shall acknowledge and  
17 agree to comply with the surrogate's obligations under  
18 the agreement;

19 (4) Except as otherwise provided in sections 584-K, 584-N,  
20 and 584-O, the intended parent or, if there are two  
21 intended parents, each one jointly and severally,



1 immediately on birth shall be the exclusive parent or  
2 parents of the child, regardless of number of children  
3 born or the gender or mental or physical condition of  
4 each child;

5 (5) Except as otherwise provided in sections 584-K, 584-N,  
6 and 584-O, the intended parent or, if there are two  
7 intended parents, each parent jointly and severally,  
8 immediately on birth shall assume responsibility for  
9 the financial support of the child, regardless of  
10 number of children born or the gender or mental or  
11 physical condition of each child;

12 (6) The agreement shall include information disclosing how  
13 each intended parent will cover the surrogacy-related  
14 expenses of the surrogate and the medical expenses of  
15 the child; provided that:

16 (A) If health-care coverage is used to cover the  
17 medical expenses, the disclosure shall include a  
18 summary of the health care policy provisions  
19 related to coverage for surrogate pregnancy,  
20 including any possible liability of the  
21 surrogate, third-party-liability liens, other



1 insurance coverage, and any notice requirement  
2 that could affect coverage or liability of the  
3 surrogate;

4 (B) If the extent of coverage is uncertain, a  
5 statement of that fact is sufficient to comply  
6 with this paragraph; and

7 (C) Unless the agreement expressly provides  
8 otherwise, the review and disclosure do not  
9 constitute legal advice;

10 (7) The agreement shall permit the surrogate to make all  
11 health and welfare decisions regarding herself and her  
12 pregnancy; provided that this does not enlarge or  
13 diminish the surrogate's right to terminate the  
14 pregnancy; and

15 (8) The agreement shall include information about each  
16 party's right under this part to terminate the  
17 surrogacy agreement.

18 (b) A surrogacy agreement may provide for:

19 (1) Payment of consideration and reasonable expenses; and  
20 (2) Reimbursement of specific expenses if the agreement is  
21 terminated under this part.



1 (c) A right created under a surrogacy agreement is not  
2 assignable and there is no third-party beneficiary of the  
3 agreement other than the child.

4 **§584-E Effect of subsequent change in marital status on**  
5 **surrogacy agreement.** (a) Unless the surrogacy agreement  
6 expressly provides otherwise, a change in marital status of the  
7 surrogate or an intended parent after the agreement is signed by  
8 all parties shall not affect the validity of the agreement.

9 (b) Unless the surrogacy agreement expressly provides  
10 otherwise:

11 (1) If a surrogate or intended parent marries after the  
12 agreement is signed by all parties, the spouse shall  
13 not become a party to the agreement; consent of the  
14 non-party spouse shall not be required for the  
15 agreement; and the non-party spouse shall not, based  
16 on the agreement, be a parent of a child conceived by  
17 assisted reproduction under the agreement; and

18 (2) If the intended parents undergo divorce, dissolution  
19 of marriage, annulment, declaration of invalidly of  
20 marriage, legal separation, or separate maintenance  
21 before the birth of a child conceived by assisted



1 reproduction under a surrogacy agreement, each  
2 intended parent shall still be a parent of the child.

3 **584-F Inspection of documents.** Unless the court orders  
4 otherwise, a petition and any other document related to a  
5 surrogacy agreement filed with the court under this part are not  
6 open to inspection by any person other than the parties to the  
7 proceeding, a child conceived by assisted reproduction under the  
8 agreement, their attorneys, and an institution or agency having  
9 a legitimate interest in the proceedings from the standpoint of  
10 the welfare of a child conceived by assisted reproduction under  
11 the agreement. A court shall not authorize a person to inspect  
12 a document related to the agreement unless required by exigent  
13 circumstances. The person seeking to inspect the document may  
14 be required to pay the expense of preparing a copy of the  
15 document to be inspected.

16 **§584-G Exclusive, continuing jurisdiction.** During the  
17 period after the execution of a surrogacy agreement until ninety  
18 days after the birth of a child conceived by assisted  
19 reproduction under the agreement, a court conducting a  
20 proceeding under this part has exclusive, continuing  
21 jurisdiction over all matters arising out of the agreement.



1 This section shall not give the court jurisdiction over a child-  
2 custody or child-support proceeding if jurisdiction is not  
3 otherwise authorized by law.

4 **§584-H Termination of gestational surrogacy agreement.**

5 (a) A party to a gestational surrogacy agreement may terminate  
6 the agreement at any time before an embryo transfer by giving  
7 notice of termination in a record to all other parties. If an  
8 embryo transfer does not result in a pregnancy, a party may  
9 terminate the agreement at any time before a subsequent embryo  
10 transfer.

11 (b) Unless a gestational surrogacy agreement provides  
12 otherwise, upon termination of the agreement under subsection  
13 (a), the parties are released from the agreement, except that  
14 each intended parent remains responsible for expenses that are  
15 reimbursable under the agreement and are incurred by the  
16 surrogate through the date of termination.

17 (c) Except in cases involving fraud, neither a surrogate  
18 nor the surrogate's spouse or former spouse, if any, is liable  
19 to the intended parent or parents for a penalty or liquidated  
20 damages for terminating a surrogacy agreement under this  
21 section.



1           **584-I Parentage under gestational surrogacy agreements.**

2       (a) Except as otherwise provided in subsection (c) or sections  
3       584-J(b) or 584-L, on birth of a child conceived by assisted  
4       reproduction under a gestational surrogacy agreement, each  
5       intended parent is, by operation of law, a parent of the child.

6           (b) Except as otherwise provided in subsection (c) or  
7       section 584-L, neither the surrogate nor the surrogate's spouse  
8       or former spouse, if any, is a parent of the child.

9           (c) If a child is alleged to be a genetic child of the  
10       woman who agreed to be a gestational surrogate, the court shall  
11       order genetic testing of the child. If the child is a genetic  
12       child of the woman who agreed to be a gestational surrogate,  
13       parentage shall be determined pursuant to section 584-3.

14          (d) Except as otherwise provided in subsection (c) or  
15       sections 584-J(b) or 584-L, if, due to a clinical or laboratory  
16       error, a child conceived by assisted reproduction under a  
17       gestational surrogacy agreement is not genetically related to an  
18       intended parent or donor who donated to the intended parent or  
19       parents, each intended parent, and not the gestational surrogate  
20       and the surrogate's spouse or former spouse, if any, is a parent  
21       of the child, subject to any other claim of parentage.



1           **§584-J Parentage of deceased intended parent under**  
2 **gestational surrogacy agreements.** (a) Section 584-I applies to  
3 an intended parent even if the intended parent died during the  
4 period between the transfer of a gamete or embryo and the birth  
5 of a child.

6           (b) Except as otherwise provided in section 584-L, an  
7 intended parent is not a parent of a child conceived by assisted  
8 reproduction under a gestational surrogacy agreement if the  
9 intended parent dies before the transfer of a gamete or embryo  
10 unless:

- 11           (1) The agreement provides otherwise; and
- 12           (2) The transfer of a gamete or embryo occurs within  
13           thirty-six months of the death of the intended parent  
14           or birth of the child occurs within forty-five months  
15           of the death of the intended parent.

16           **§584-K Order of parentage under gestational surrogacy**  
17 **agreement.** (a) Except as otherwise provided in sections 584-  
18 I(c) or 584-L, before, on, or after the birth of a child  
19 conceived by assisted reproduction under a gestational surrogacy  
20 agreement, a party to the agreement may commence a proceeding in  
21 the family court for an order or judgment:



- 1           (1) Declaring that each intended parent is a parent of the  
2           child and ordering that parental rights and duties  
3           vest immediately on the birth of the child exclusively  
4           in each intended parent;
- 5           (2) Declaring that the gestational surrogate and the  
6           surrogate's spouse or former spouse, if any, are not  
7           the parents of the child;
- 8           (3) Designating the content of the birth record in  
9           accordance with 584-23 and directing the department of  
10          health to designate each intended parent as a parent  
11          of the child;
- 12          (4) To protect the privacy of the child and the parties,  
13          declaring that the court record is not open to  
14          inspection except as authorized under section 584-F;
- 15          (5) If necessary, that the child be surrendered to the  
16          intended parent or parents; and
- 17          (6) For other relief that the court deems necessary and  
18          proper.
- 19          (b) If the court issues an order or judgment under  
20          subsection (a) before the birth of the child, the court shall



1 stay enforcement of the order or judgment until the birth of the  
2 child.

3 (c) Neither the State nor the department of health is a  
4 necessary party to a proceeding under subsection (a).

5 **§584-L Effect of gestational surrogacy agreement.** (a) A  
6 gestational surrogacy agreement that complies with sections 584-  
7 B, 584-C, and 584-D is enforceable.

8 (b) If a child was conceived by assisted reproduction  
9 under a gestational surrogacy agreement that does not comply  
10 with sections 584-B, 584-C, and 584-D, the court shall determine  
11 the rights and duties of the parties to the agreement consistent  
12 with the intent of the parties at the time of the execution of  
13 the agreement. Each party to the agreement and any individual  
14 who at the time of the execution of the agreement was a spouse  
15 of a party to the agreement has standing to maintain a  
16 proceeding to adjudicate an issue related to the enforcement of  
17 the agreement.

18 (c) Except as provided in a gestational surrogacy  
19 agreement or in subsection (d) or (e), if the agreement is  
20 breached by the surrogate or one or more intended parents, the



1 non-breaching party is entitled to the remedies available at law  
2 or in equity.

3 (d) Specific performance is not a remedy available for  
4 breach by a surrogate of a provision in the agreement that the  
5 surrogate be impregnated, terminate or not terminate a  
6 pregnancy, or submit to medical procedures.

7 (e) Except as otherwise provided in subsection (d), if an  
8 intended parent is determined to be a parent of the child,  
9 specific performance is a remedy available for:

10 (1) Breach of the agreement by a surrogate which prevents  
11 the intended parent from exercising immediately on the  
12 birth of the child the full rights of parentage; or

13 (2) Breach by the intended parent which prevents the  
14 intended parent's acceptance, immediately on the birth  
15 of the child conceived by assisted reproduction under  
16 the agreement, of the duties of parentage.

17 **§584-M Requirements to validate genetic surrogacy**  
18 **agreement.** (a) Except as otherwise provided in section 584-P,  
19 to be enforceable, a genetic surrogacy agreement shall be  
20 validated by the family court. A proceeding to validate the



1 agreement shall be commenced before the assisted reproduction  
2 related to the surrogacy agreement.

3 (b) The court shall issue an order validating a genetic  
4 surrogacy agreement if the court finds that:

5 (1) The requirements of sections 584-B, 584-C, and 584-D  
6 are satisfied; and

7 (2) All parties entered into the agreement voluntarily and  
8 understand its terms.

9 (c) A person who terminates a genetic surrogacy agreement  
10 under section 584-N shall file notice of the termination with  
11 the court. Upon receipt of the notice, the court shall vacate  
12 any order issued under subsection (b). A terminating person who  
13 does not notify the court of the termination of the agreement  
14 may be subject to sanctions at the discretion of the court.

15 **§584-N Termination of genetic surrogacy agreement. (a)**

16 An intended parent who is a party to a genetic surrogacy  
17 agreement may terminate the agreement at any time before a  
18 gamete or embryo transfer by giving notice of termination in a  
19 record to all other parties. If a gamete or embryo transfer  
20 does not result in a pregnancy, a party may terminate the  
21 agreement at any time before a subsequent gamete or embryo



1 transfer. The notice of termination shall be attested by a  
2 notarial officer or witnessed.

3 (b) A genetic surrogate who is a party to a genetic  
4 surrogacy agreement may withdraw consent to the agreement at any  
5 time before seventy-two hours after the birth of a child  
6 conceived by assisted reproduction under the agreement. To  
7 withdraw consent, the genetic surrogate shall execute a notice  
8 of termination in a record stating the surrogate's intent to  
9 terminate the agreement. The notice of termination shall be  
10 attested by a notary public or witnessed and shall be delivered  
11 to each intended parent at any time before seventy-two hours  
12 after the birth of the child.

13 (c) On termination of the genetic surrogacy agreement  
14 pursuant to subsection (a) or (b), the parties are released from  
15 all obligations under the agreement except that each intended  
16 parent remains responsible for all expenses incurred by the  
17 surrogate through the date of termination which are reimbursable  
18 under the agreement. Unless the agreement provides otherwise,  
19 the surrogate is not entitled to any non-expense related  
20 compensation paid for serving as a surrogate.



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

6           **§584-O Parentage under a validated genetic surrogacy**  
7 **agreement.** (a) Unless a genetic surrogate exercises the right  
8 under section 584-N to terminate a genetic surrogacy agreement,  
9 each intended parent is a parent of a child conceived by  
10 assisted reproduction under an agreement validated under section  
11 584-M.

12           (b) Unless a genetic surrogate exercises the right under  
13 section 584-N to terminate the genetic surrogacy agreement, on  
14 proof of a court order issued under section 584-M validating the  
15 agreement, the court shall issue an order:

16           (1) Declaring that each intended parent is a parent of a  
17 child conceived by assisted reproduction under the  
18 agreement and ordering that parental rights and duties  
19 vest exclusively in each intended parent;



- 1           (2) Declaring that the genetic surrogate and the  
2           surrogate's spouse or former spouse, if any, are not  
3           parents of the child;
- 4           (3) Designating the content of the birth record in  
5           accordance with 584-23 and directing the department of  
6           health to designate each intended parent as a parent  
7           of the child;
- 8           (4) To protect the privacy of the child and the parties,  
9           declaring that the court record is not open to  
10          inspection except as authorized under section 584-F;
- 11          (5) If necessary, that the child be surrendered to the  
12          intended parent or parents; and
- 13          (6) For other relief that the court deems necessary and  
14          proper.
- 15          (c) If a genetic surrogate terminates under section 584-  
16 N(b) a genetic surrogacy agreement, parentage of the child  
17 conceived by assisted reproduction under the agreement shall be  
18 determined under section 584-3.
- 19          (d) If a child born to a genetic surrogate is alleged not  
20 to have been conceived by assisted reproduction, the court shall  
21 order genetic testing to determine the genetic parentage of the



1 child. If the child was not conceived by assisted reproduction,  
2 parentage shall be determined under section 584-3. Unless the  
3 genetic surrogacy agreement provides otherwise, if the child was  
4 not conceived by assisted reproduction the surrogate is not  
5 entitled to any non-expense related compensation paid for  
6 serving as a surrogate.

7 (e) Unless a genetic surrogate exercises the right under  
8 section 584-N to terminate the genetic surrogacy agreement, if  
9 an intended parent fails to file notice required under section  
10 584-N(a), the genetic surrogate or department of human services  
11 may file with the court, not later than sixty days after the  
12 birth of a child conceived by assisted reproduction under the  
13 agreement, notice that the child has been born to the genetic  
14 surrogate. Unless the genetic surrogate has properly exercised  
15 the right under section 584-N to withdraw consent to the  
16 agreement, on proof of a court order issued under section 584-M  
17 validating the agreement, the court shall order that each  
18 intended parent is a parent of the child.

19 **§584-P Effect of non-validated genetic surrogacy**  
20 **agreement.** (a) A genetic surrogacy agreement, whether or not  
21 in a record, that is not validated under section 584-M is



1 enforceable only to the extent provided in this section and  
2 section 584-R.

3 (b) If all parties agree, a court may validate a genetic  
4 surrogacy agreement after assisted reproduction has occurred but  
5 before the birth of a child conceived by assisted reproduction  
6 under the agreement.

7 (c) If a child conceived by assisted reproduction under a  
8 genetic surrogacy agreement that is not validated under section  
9 584-M is born and the genetic surrogate, consistent with section  
10 584-N(b), withdraws her consent to the agreement before seventy-  
11 two hours after the birth of the child, the court shall  
12 adjudicate the parentage of the child under section 584-3.

13 (d) If a child is conceived by assisted reproduction under  
14 a genetic surrogacy agreement that is not validated under  
15 section 584-M is born and a genetic surrogate does not withdraw  
16 her consent to the agreement, consistent with section 584-N(b)  
17 before seventy-two hours after the birth of the child, the  
18 genetic surrogate is not automatically a parent and the court  
19 shall adjudicate parentage of the child based on the best  
20 interests of the child, taking into account the intent of the  
21 parties at the time of the execution of the agreement.



1 (e) The parties to a genetic surrogacy agreement have  
2 standing to maintain a proceeding to adjudicate parentage under  
3 this section.

4 §584-Q Parentage of deceased intended parent under genetic

5 surrogacy agreements. (a) Except as otherwise provided in  
6 sections 584-O or 584-P, on birth of a child conceived by  
7 assisted reproduction under a genetic surrogacy agreement, each  
8 intended parent is, by operation of law, a parent of the child,  
9 notwithstanding the death of an intended parent during the  
10 period between the transfer of a gamete or embryo and the birth  
11 of the child.

12 (b) Except as otherwise provided in sections 584-O or 584-  
13 P, an intended parent is not a parent of a child conceived by  
14 assisted reproduction under a genetic surrogacy agreement if the  
15 intended parent dies before the transfer of a gamete or embryo  
16 unless:

- 17 (1) The agreement provides otherwise; and
- 18 (2) The transfer of the gamete or embryo occurs not later  
19 than thirty-six months after the death of the intended  
20 parent, or the birth of the child occurs not later



1           than forty-five months after the death of the intended  
2           parent.

3           **§584-R Breach of genetic surrogacy agreement. (a)**

4           Subject to section 584-N(c), if a genetic surrogacy agreement is  
5           breached by a genetic surrogate or one or more intended parents,  
6           the non-breaching party is entitled to the remedies available at  
7           law or in equity.

8           (b) Specific performance is not a remedy available for  
9           breach by a genetic surrogate of a requirement of a validated or  
10          non-validated genetic surrogacy agreement that the surrogate be  
11          impregnated, terminate or not terminate a pregnancy, or submit  
12          to medical procedures.

13          (c) Except as otherwise provided in subsection (b),  
14          specific performance is a remedy available for:

15          (1) Breach of a validated genetic surrogacy agreement by a  
16          genetic surrogate of a requirement which prevents an  
17          intended parent from exercising the full rights of  
18          parentage seventy-two hours after the birth of the  
19          child; or



1 (2) Breach by an intended parent which prevents the  
2 intended parent's acceptance of duties of parentage  
3 seventy-two hours after the birth of the child."

4 SECTION 2. Section 584-3, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "[~~§~~584-3~~]~~ How parent and child relationship  
7 established. (a) The parent and child relationship between a  
8 child and:

9 (1) The natural mother may be established by proof of her  
10 having given birth to the child, or under this  
11 chapter;

12 (2) The natural father may be established under this  
13 chapter;

14 (3) An adoptive parent may be established by proof of  
15 adoption~~[-]~~;

16 (4) An intended parent may be established as provided in  
17 part \_\_\_\_\_.

18 (b) For the purposes of this section, "intended parent"  
19 has the same meaning as defined in section 584-A."



1 SECTION 3. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4 SECTION 4. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 5. This Act shall take effect upon its approval.

7

INTRODUCED BY: Will Zyw  
JTS



# S.B. NO. 2632

**Report Title:**

Parentage; Surrogacy Agreements; Intended Parents; Surrogates

**Description:**

Updates the Uniform Parentage Act in Hawaii to recognize intended parents under valid surrogacy agreements as parents. Specifies the requirements of gestational and genetic surrogacy agreements.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

