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## Proposed law would govern surrogate births

Maryland would join states that provide legal protections

March 28, 2013 | By Michael Dresser, The Baltimore Sun

When Whitney Watts of Columbia agreed to bear twins on behalf of an infertile Boston couple two years ago, she entered a murky area of Maryland law.

Nothing forbade her from signing a contract to carry babies conceived through in vitro fertilization and implanted in her uterus. But neither were there guarantees that Maryland courts would enforce the contract if something went wrong. To this day, such questions are left up to individual judges.



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Watts' experience had a happy ending, despite serious complications that arose midway through her pregnancy. The couple covered her unexpected medical and other expenses, she said, and they are now the happy parents of a son and daughter.

The rights of such surrogates, the people who contract with them and the children born from the arrangements would for the first time be spelled out in Maryland law under a bill making its way through the General Assembly.

Sen. Delores Kelley, sponsor of the bill, said Maryland has become a center for fertility treatments because of an abundance of specialists. The legislation is needed, she said, to bring law and order to a legal "Wild West."

"Without law is when you end up with a rogue practitioner, and you don't have a leg to stand on and no remedy you can count on if you have a problem," said Kelley, a Baltimore County Democrat. "The courts have actually said the General Assembly needs to speak."

The legislation, known as the Maryland Collaborative Reproduction Act, was approved by the state Senate on Monday and is now before the House of Delegates.

Attorneys in the emerging specialty of surrogacy law say the measure would codify the best practices in the field and help the Maryland state code catch up with the advances of science. But opponents object to giving sanction to a practice they find morally objectionable.

"This is a slippery slope. ... It needs a lot more study," said Sen. Edward R. Reilly, an Anne Arundel County Republican who was on the losing end of a 33-14 vote in the Senate. "Next you will have the selling of kidneys and livers and eyes and things of that nature."

The bill would apply to "gestational surrogacy," in which a woman agrees to carry an embryo created through the in vitro fertilization of another woman's eggs. The arrangement is by far the most common form of surrogacy in the United States.

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The legislation does not cover traditional surrogacy, in which a woman agrees to become pregnant through artificial insemination of her own eggs, carries the child but gives it up for adoption by another parent or parents. A Maryland attorney general's opinion said being compensated for that amounted to illegal baby-selling, according to Diane S. Hinson, a Chevy Chase attorney who helped draft the Kelley bill. But the opinion specifically excluded gestational surrogacy.

The bill spells out the legal rights of the gestational carrier and makes clear that she is not the legal mother. It grants full parental rights to the intended parents and provides inheritance rights and other protections for the children born as a result of such agreements.

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Dr. Gilbert Mottla, a physician in the Annapolis office of the Shady Grove Fertility Service, estimated that 200 children are born in Maryland each year through gestational surrogacy.

"Some are volunteers. Some are sisters. Some are friends. Not all are compensated," he said.

Even when the surrogates are paid, Mottla said, it is seldom a purely commercial transaction.

"There's a real spirit of altruism in all surrogates. It's nine months of pregnancy. It's a lot to go through," he said.

Peggy Swain, a lawyer in Towson who specializes in family practice, said that so far there have been no reported cases in Maryland of disputes arising between intended parents and their gestational surrogates. But the legislation would help prevent such misunderstandings by clearly spelling out the rights and duties of all parties, she said.

Like Maryland, about half the states have no statute governing such agreements, said Hinson, whose firm, Creative Family Connections, specializes in matching would-be parents and surrogates. Some states have laws permitting surrogacy, with various levels of restrictions. A half-dozen have restrictive laws, invalidating such contracts. New York's law provides criminal sanctions for entering into contracts in which the gestational carrier is promised a fee for acting as a surrogate.

In Maryland, there is no law saying women can't be compensated for serving as birth mothers to other parents' children. According to Swain, surrogates can typically earn \$20,000 to \$25,000 above expenses for bearing the children of intended parents.

Watts, now 26, says she went through a lot — including a 55-day stay at Johns Hopkins Hospital to keep the babies alive. And she did receive a fee. But she said money was not her main motivation. She said she is the daughter of parents who struggled with infertility and wanted to help a couple who otherwise couldn't have children.

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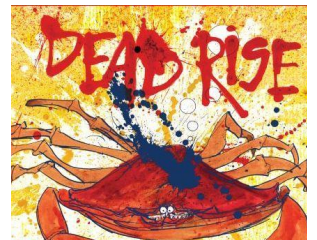
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