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Vice-Ministry for the Promotion of Justice

Bill _____ of 2023

"Whereby uterine surrogacy for gestation in Colombia is regulated".

CHAPTER I

OBJECT, DEFINITIONS AND PROHIBITIONS

Article 1. Object. The purpose of this law is to regulate uterine surrogacy for gestation in Colombia, establishing the parameters that regulate the assistance and clinical process, the type of agreement between the parties, the filial relations and the protection of the surrogate and the product of gestation, in guarantee of the rights to freedom of development of the personality and the sexual and reproductive rights as an integral part of the fundamental right to health, in accordance with the principles of human dignity, reproductive autonomy and equality.

Article 2. Definitions. For the purposes of the present law it is understood:

Uterine surrogacy agreement for altruistic gestation. Agreement in which the commissioning party does not commit to a remuneration to the gestational carrier, or more usually, only recognizes a compensation to the latter for the consequential damages and lost profits generated as a result of the gestation.

Uterine surrogacy agreement for gestation. It is the bilateral, free, random and solemn contract, by means of which the commissioning party and the gestating party, agree on the uterine surrogacy for gestation, in the terms described in the present Law. It is only understood as included in this definition, any contract that contemplates uterine surrogacy for total gestation, by means of an agreement of uterine surrogacy for altruistic gestation.

Gamete donors. A person who provides his or her eggs or sperm to be used by another person for the purposes of an assisted human reproduction technique.

Uterine surrogacy for total gestation. Gestation in which the gestating party does not provide her own genetic material (egg), so that the child born is not genetically related to her, but the commissioning party provides the genetic material through which the gestation will take place. This gestation involves medical assistance by means of assisted human reproduction techniques.

Uterine surrogacy for gestation. Procedure by means of which the commissioning party with the impossibility to conceive, or to carry to term a pregnancy without risk to the health of the pregnant person or the unborn child, medically certified, assumes in favor of the pregnant party a compensation for the latter to use her biological capacity of gestation to give

birth to a human being and deliver the product of gestation in accordance with the terms established in this law.

Parenting Party. The person(s) who agrees with the gestational carrier to enter into a surrogacy agreement for gestation, with the intention of having parentage over the newborn after birth. Such person(s) may or may not be genetically related to the newborn.

Gestating party. The person who accepts to gestate a child (or children) in place of the commissioning party and for whom no filiation effects are generated. For the purposes of the present Law, it is understood that the gestating party does not provide its own genetic material.

Article 3. Prohibitions. For the prevention of exploitation of the pregnant party and the guarantee of the best interests of the minor, it is prohibited:

1. *Uterine surrogacy for commercial gestation.* A surrogacy agreement for gestational surrogacy in which the commissioning party pays the gestational surrogate a remuneration that goes beyond compensation. This payment may be described as remuneration for "pain and suffering", or it may simply be a fee charged by the surrogate for gestation.
2. *Uterine surrogacy for cross-border gestation.* The surrogacy agreement for gestational surrogacy shall be null and void, entered into between a national and a foreigner who does not meet the qualifying requirements referred to in Article 6 of this law.

The execution of this type of agreements will be understood to constitute the punishable conduct of trafficking of children and adolescents, as contemplated in Article 188C of Law 500 of 2000.

3. *Exploitation.* The consent given by the parties to the agreement to any form of exploitation of those contained in Article 188a of the Criminal Code shall not constitute grounds for exemption from criminal liability.
4. *Coercion.* The act of willingness to be a party to a gestational surrogacy agreement must be free of force capable of vitiating consent.
5. *Bilateral withdrawal.* The parties to the surrogacy agreement for gestational surrogacy may not withdraw from the execution of the same, once the medical procedures involving the manipulation of reproductive material are initiated. The contract may only be terminated early, in the cases described in the present law. On the other hand, the commissioning party may not refuse to receive the product of the gestation, nor may the gestational carrier refuse to deliver the product of the gestation.
6. *Discrimination on the basis of gender and sexual orientation.* Any distinction, exclusion, restriction or preference of a person on the grounds of sexual

orientation, gender identity or gender expression or that impairs the recognition, enjoyment or exercise, on equal terms, of their fundamental rights is prohibited.

7. *Number of participations in gestational surrogacy.* No person may be a gestational surrogate party to more than two (2) gestational surrogacy agreements authorized under the terms of this Act.
8. *Denial of filiation.* If the agreement has been verified and recognized as valid by the Colombian Institute of Family Welfare, once the child is born, the commissioning party cannot deny its filial bond with the person born, and the pregnant woman cannot oppose the child remaining with the commissioning party.

CHAPTER II

OF THE ELEMENTS OF VALIDITY AND CONTENT OF THE AGREEMENT OF THE

UTERINE SURROGACY FOR GESTATIONAL SURROGACY

Article 4. Qualified persons. The persons indicated in the present chapter are capable of entering into the surrogacy agreement for gestation regulated by the present Law.

Article 5. Parties. The surrogacy agreement for gestational surrogacy shall have two (2) contractual parties: the gestational carrier and the commissioning party.

Article 6. Qualifying requirements of the commissioning party. Only persons who meet the following conditions may be a party to a surrogacy agreement for gestational surrogacy:

1. Colombian nationality
2. Be between twenty-five (25) and forty-five (45) years of age.
3. Be affiliated to the Colombian social security system, within the contributory regime or whoever is acting in its stead.
4. Being a single person, a couple, married or in permanent union in accordance with Colombian law, with any impossibility to conceive, or to carry to term a pregnancy without risk to the health of the pregnant person or the unborn child, medically certified.
5. The commissioning party must provide their gametes or reproductive material, to guarantee the genetic link with the product of gestation, unless both in the married couple or in permanent union or the single person is diagnosed with a disease or disorder that affects fertility.
6. In the case of foreigners:
 - a. Be resident in Colombia for at least 3 years prior to the conclusion of the surrogacy agreement for gestational surrogacy.
 - b. Be affiliated to the Colombian social security system, within the contributory regime or whoever takes its place.
 - c. In the case of couples to be married or in permanent union, in accordance with Colombian law, with a Colombian citizen and reside in the national

territory at least 3 years prior to the conclusion of the surrogacy agreement for gestation.

7. To have suitability for the upbringing of the child, as father or mother, or both as appropriate, in accordance with the provisions of numeral 6 of article 14 of the present law.

Article 7. Qualifying requirements of the gestational carrier. Only persons who meet the following conditions may be a gestational surrogate party to a gestational surrogacy agreement:

1. Colombian nationality
2. In the case of foreigners, to be resident in Colombia for at least five (5) years prior to the conclusion of the surrogacy agreement for gestation.
3. Be between twenty-five (25) and thirty-four (34) years of age.
4. Be affiliated to the Colombian social security system, within the contributory regime or whoever is in charge of it.
5. To have physical aptitude to be able to gestate, accredited through:
 - a. A state of health that allows her to undergo the process of insemination and gestation without endangering her life or the viability of the gestation, beyond those expected for an obstetric event.
 - b. Have completed a live birth at least once prior to the conclusion of the Surrogacy Agreement for gestational surrogacy.
 - c. Not to have been pregnant in the last two years.
 - d. Not having undergone a surrogacy process for gestation more than one (1) time.
 - e. Comply with the provisions of numeral 5 of article 16 of the present law.

Article 8. Informed consent. For the approval of the Agreement of uterine surrogacy for gestation, the Colombian Institute of Family Welfare, as indicated in Articles 13 to 15 of the present Law, shall verify that the pregnant party understands the physical, psychological and legal implications and consequences derived from the subscription of the agreement, by means of an informed consent, which shall include as a minimum:

1. The risks of assisted reproduction techniques procedures.
2. The expected and possible changes in the pregnant party's body, health and condition of well-being during preparation for insemination, gestation, labor, delivery, puerperium and postpartum.
3. The effects of medications and interventions necessary for the insemination and gestation process.
4. Possible obstetric events that pose a risk to the life and reproductive future of the pregnant woman.
5. Information on the implications and consequences of preconception screening, including genetic screening.
6. The right of the pregnant party to reserve the confidentiality of the clinical history and to anonymization if deemed necessary.

7. The establishment of variables for the exercise of embryo reduction and voluntary interruption of pregnancy.
8. All those situations related to or derived from insemination involving partial and definitive risks and damages derived from gestation, such as loss of fertility, changes in the conditions of sexuality, sexual and reproductive health.
9. The acceptance that the pregnant party has no legal relationship of filiation with the product of gestation.

Article 9. Object of the agreement. The agreement for gestational surrogacy is an agreement of wills in which the commissioning party who is unable to conceive, or to carry to term a pregnancy without risk to the health of the pregnant person or the unborn child, medically certified, assumes in favor of the gestational party a compensation for the latter to use her biological capacity of gestation to give birth to a human being and to deliver the product of the gestation in accordance with the terms established in this law.

Article 10. Cause of the agreement. The cause consists of the mediation that the gestating party grants to the commissioning party in order to achieve a gestation when it is impossible for the latter to achieve it by its own means.

Under no circumstances may a surrogacy agreement for gestational surrogacy be entered into for profit or with a view to generating financial gain, beyond the terms of the compensation described in this Law, regardless of its denomination, under penalty of being declared null and void and subject to any criminal penalties that may apply.

Article 11. Compensation. In accordance with what has been described with respect to the object and cause of the surrogacy agreement for gestation, the same shall not have commercial purposes, for profit or with a view to generate financial gain.

The compensation provided for in this Law may only compensate medical expenses, transfers, legal and psychological counseling, and all those that are a direct consequence of surrogacy for gestation, including those derived from treatments to cause pregnancy, childbirth and postpartum.

The compensation includes those consequential damages and lost profits that are a direct cause of the efforts to be made by the surrogate for the purpose of fulfilling its obligations under the Surrogacy Agreement for gestational surrogacy. Including secondary damages or unforeseen complications in the process.

The compensation shall be at the expense of the principal, and includes:

1. All medical expenses related, directly or indirectly, to the successful completion of the pregnancy, including periodic, scheduled or emergency medical examinations and treatment.
2. Expenses during the months of pregnancy and postpartum, including footwear and clothing to be purchased by the pregnant woman as a result of pregnancy and special food if required.
3. Income foregone, in whole or in part, by the pregnant party as a result of the pregnancy.

4. Ground or air transportation related to pregnancy.
5. Assistance services to be contracted by the pregnant party in order to successfully carry the pregnancy to term.
6. Other expenses incurred by the gestational surrogate during the surrogacy process as long as they are directly related to the fulfillment of the gestational surrogacy agreement.

Article 12. Prohibited clauses. The clauses of the surrogacy agreement for gestational surrogacy that limit or violate sexual and reproductive rights as an integral part of the fundamental right to health, in accordance with the principles of human dignity, reproductive autonomy and equality, shall be null and void and shall be considered unwritten, such as:

1. Those that prevent the pregnant party from being released from the fulfillment of its obligations, prior to fertilization or during the first twenty-four (24) weeks of gestation.
2. At any time during gestation if the continuity of the pregnancy: (i) constitutes a danger to the life of the pregnant party, (ii) when there is a serious malformation of the fetus, which makes its life outside the uterus unviable, and (iii) in cases in which non-consensual insemination or a defect in the qualified consent during the insemination procedure is identified.
3. Those that oblige the pregnant party to perform acts or omissions that attempt against the free development of her personality, including but not limited to nutritional, social, professional, sexual or religious behaviors.
4. Those that include a penalty clause or sanction to the managing party.
5. Those that go against the current legislation on dignified, respected and humanized childbirth.
6. Those seeking compensation in the form of service recognition or bonuses for gestation.

Article 13. Early Termination. The Surrogacy Agreement for gestational surrogacy shall only be terminated early in the following cases:

1. Death of the pregnant party.
2. Voluntary termination of pregnancy, either freely or medically indicated.
3. Spontaneous termination of pregnancy.
4. When the assisted reproductive technique does not achieve pregnancy status.

In the cases described in numbers 2, 3 and 4, the gestational surrogate shall return all those goods and effects that have been provided by the gestational surrogate for the execution of the gestational surrogacy Agreement. This restitution does not include monetary refunds of any nature.

In the cases described in numbers 3 and 4, the parties to the gestational surrogacy agreement may, by mutual agreement and with medical certification, restart the medical procedures to execute the gestational surrogacy agreement.

Article 14. Death of the principal. In case of death of the principal, the rules for the restoration of rights described in the Code of Childhood and Adolescence shall be applied.

In this event, the surrogacy agreement for gestation shall not be deemed terminated until the gestational carrier delivers the product of gestation to the legal guardian of the latter.

Article 15. Guarantees. The principal shall constitute a life insurance policy in which the pregnant party and her relatives up to the second degree of consanguinity shall be the beneficiaries.

Paragraph. The content of the life insurance shall be regulated by the Colombian Institute of Family Welfare, within two (2) years from the publication of this law in the Official Gazette.

CHAPTER III

AUTHORIZATION OF THE AGREEMENT OF UTERINE SURROGACY FOR GESTATIONAL SURROGACY

Article 16. Validity of the agreement. Every agreement of uterine surrogacy for gestation shall have to be authorized by the Colombian Institute of Family Welfare, in accordance with the provisions set forth in the present law and its regulations.

Article 17. Authorization of the agreement. The Colombian Institute of Family Welfare shall authorize the agreement of uterine surrogacy for gestation, for which purpose it shall verify the agreement of surrogacy for gestation:

1. That the surrogacy agreement for gestational surrogacy guarantees the best interests of the child that may be born through this method.
2. That the commissioning party acknowledges and accepts the legal bond of filiation that is established between her and the person born, as a consequence of the agreement for gestational surrogacy, immediately after the birth.
3. The pregnant party accepts that she has no legal relationship of filiation with the product of gestation.
4. All parties have given their free, prior, full and informed consent to participate in the surrogacy process for gestational surrogacy.
5. Physical, mental and psychosocial health evaluations of the pregnant woman and her fitness to act as a pregnant party have been carried out.
6. Suitability assessments have been conducted, including, but not limited to, physical, mental and psychosocial health assessments of the principal party
7. It has been verified that the principal is incapable of conceiving, or of carrying a pregnancy to term without risk to the health of the pregnant person or the unborn child.
8. It is realized that at least one of the principals contributes its reproductive material.

Paragraph. The verification carried out by the Colombian Institute of Family Welfare to authorize the Uterine Surrogacy Agreement for gestation must include the

corresponding gender perspective that allows making visible the social valuation of people by virtue of the assigned or assumed gender, and that evidences the unequal power relations originated in these differences.

Verification of the legality of the object and cause. The Colombian Institute of Family Welfare shall be in charge of verifying that the agreements of uterine surrogacy for gestation entered into have a lawful object and cause.

In the event it determines that the object or cause does not comply with the conditions described in this Law, it may request the parties to make the adjustments it deems pertinent so that the contractual documents comply with the requirements described in this Law.

The parties must adopt the modifications, under penalty of being understood that the contractual documents presented are legally invalid, in the terms described in article 1741 of the Civil Code.

Paragraph 1. The Colombian Institute of Family Welfare shall have two (2) years from the publication in the Official Gazette of the present law to create a sub-directorate which shall be in charge of the verification and approval of the agreements of uterine surrogacy for gestation, as well as the corresponding inclusion of information in the Unified System of Information on Childhood.

Paragraph 2. An agreement that is executed without the authorization of the Colombian Institute of Family Welfare shall be considered null and void. Such conduct shall constitute the crime established in Article 188C of Law 500 of 2000.

CHAPTER IV

OF THE CARE PROCESS AND THE HANDLING OF REPRODUCTIVE TISSUES AND EMBRYOS.

Article 19. Reproductive material. In order to carry out the assistance process of uterine surrogacy as part of an assisted human reproduction technique, the following provisions shall be taken into account:

1. The pregnant party may not be an egg donor for the pregnancy resulting from the agreement.
2. At least one of the principals must provide their genetic material. In the case of single persons, gamete donation banks may be used when human reproductive material is required for biological reasons.
3. Reproductive tissues and embryos may not be genetically manipulated for eugenic or research purposes.
4. The tissues and embryos not used in the surrogacy process for gestational surrogacy are the property of the commissioning party.
5. Decisions related to human genetic material should respect the principles of diversity of individuals and human genetic material.
6. Informed consent is required for each of the assistance procedures that will be performed on the pregnant woman's body and will be given exclusively by her.

7. The consent for the process of procurement, preparation and preservation of reproductive tissues of the principal shall be given exclusively by the principal.
8. In the event that intrauterine interventions are required during gestation, in which the life of the pregnant woman is at risk, the physical and mental integrity of the pregnant woman shall prevail.
9. In the event that intrauterine interventions such as fetal surgery are required, consent for the performance of the procedure must be obtained from the principals, in concurrence with the consent of the pregnant woman.
10. Regarding vaginal or cesarean delivery, with respect to dignified and humanized delivery, the participation of the principals in the definition of the delivery plan must be recognized, respecting the agreements established between the parties and establishing a differential approach for the delivery, postpartum and puerperium plan, as long as the fundamental rights of the pregnant party are not affected.

CHAPTER V

AFFILIATION

Article 20. Filiation. The civil filiation is established between the born and the commissioning party independently of the genetic contribution, on the basis of the procreational will, and by means of the proof of the birth, the identity of the commissioning party and the document approving the Agreement of uterine surrogacy for gestation.

The commissioning party may not contest the filiation of the child born as a result of a gestational surrogacy agreement.

Article 21. Non-affiliation. The gestating party has no filiation with the product of the pregnancy. Neither do those donors whose reproductive tissue has been used as part of the assisted human reproduction technique.

Article 22. Certificate of live birth and civil registry. In all the cases in which the birth is the product of a surrogacy agreement for gestation, the certificate of live birth must be filled out in a differentiated manner, in the sections of antecedent for the civil registry in which the filiation link with the commissioning party must be registered, and the data of the birth, in what is related to the data of the gestational party.

Paragraph. The Ministry of Health will make the corresponding and necessary modifications so that the filling out of the Certificate of Live Birth will show the filial relationship and the follow-up data of the gestational carrier.

Article 23. Section 5 is hereby added to Article 44 of Decree Law 1260 of 1970, as follows:

ARTICLE 44. <INSCRIPTION IN THE BIRTH REGISTRY>. In the registry of births shall be registered:

1. Births occurring in the national territory.
2. Births occurring abroad, of persons born to a Colombian father and mother.

3. Births occurring abroad, of persons born to a Colombian father or mother by birth or by adoption, or to foreigners residing in the country, if requested by an interested party.

4. Recognitions of natural children, legitimizations, adoptions, alterations of parental authority, emancipations, age entitlements, marriages, marriage contracts, judicial interdictions, guardianship discernments, rehabilitations, marriage annulments, divorces, separations of bodies and property, changes of name, declarations of pseudonym, declarations of absence, deaths and declarations of presumption of death, and in general, all facts and acts related to the civil status and capacity of persons.

5. The births that occur on the occasion of the celebration of uterine surrogacy agreements for gestation.

Article 24. Article 49 of Decree Law 1260 of 1970 is hereby amended to read as follows:

ARTICLE 49. <CERTIFICATION OF BIRTH>. The birth shall be accredited before the official in charge of keeping the registry of civil status by means of a certificate of the physician or nurse who assisted the mother in the delivery, and in the absence of such, by means of a sworn statement of two competent witnesses.

In cases of birth by virtue of the conclusion of a surrogacy agreement for gestation, the certificate of the physician or nurse who assisted the pregnant party in the delivery shall also include the data of the commissioning party.

Physicians and nurses shall issue the certification free of charge.

The witnesses shall testify before the official on the facts of which they have knowledge and the reason for the same, and shall subscribe the inscription. The oath shall be understood to have been taken by the sole fact of the signature.

CHAPTER VI OF SOCIAL SECURITY

Article 25. Follow-up of the puerperium. The pregnant woman has the right to receive comprehensive postpartum care and the corresponding medical follow-up according to the technical parameters established by the Ministry of Health for pregnant women.

Follow-up of the puerperium should include surveillance for perinatal death events.

Article 26. Social security of the pregnant party. The pregnant party shall have the right to medical incapacity corresponding to the period of recovery of the physiological conditions prior to gestation, that is to say, the puerperium period.

Article 27. Social security of the principal. Article 127-A is added to Law 1098 of 2006, as follows:

Article 127-A. Social security of the commissioning party. The commissioning party in the framework of a surrogacy agreement for gestational surrogacy shall be entitled to the enjoyment and payment of the leave established in Article 236 of the Substantive Labor Code, from the birth of the gestational product.

The product of gestation shall have the right to be affiliated to the corresponding social security system from the moment of birth.

Article 28. Paragraph 6 is added to Article 236 of the Substantive Labor Code, as follows:

Paragraph 6. The licenses and incentives contemplated in the present article for the adequate attention and care of the newborn shall apply, as applicable, to the commissioning party within the framework of the surrogacy agreement for gestational surrogacy.

Article 29. Article 236-A is hereby added to the Substantive Labor Code, as follows:

Article 236-A: Pre-birth leave of the pregnant party in agreement of uterine surrogacy for gestation. The pregnant party shall be entitled to the benefits contemplated for the pre-birth maternity leave contemplated in Article 236 of the Substantive Labor Code.

Article 30. Article 239 of the Substantive Labor Code is hereby amended to read as follows:

ARTICLE 239. PROHIBITION OF DISMISSAL. <Article modified by article 2 of Law 1822 of 2017. The new text is as follows:>

1. <CONDITIONALLY EXEMPTIONAL NUMBER> No female worker may be dismissed on the grounds of pregnancy, **be part of a surrogacy agreement for gestation** or breastfeeding without prior authorization from the Ministry of Labor that supports a just cause.

2. <Number modified by Article 1 of Law 2141 of 2021. The new text is as follows:> Dismissal due to pregnancy or breastfeeding is presumed when it has taken place within the period of pregnancy and/or within eighteen (18) weeks after childbirth.

Dismissal on the grounds of being a party to a surrogacy agreement for gestational surrogacy is presumed when the pregnant party has given written notice of the conclusion of the agreement to the employer.

3. <Number modified by Article 1 of Law 2141 of 2021. The new text is as follows:> The workers referred to in numeral one (1) of this article, who are dismissed without the authorization of the competent authorities, shall be entitled to the additional payment of an indemnity equal to sixty (60) working days, in addition to the indemnities and benefits to which they may be entitled in accordance with their employment contract.

This same indemnity shall apply in the case of dismissal of an employee whose spouse, partner or permanent partner is pregnant or within eighteen (18) weeks after childbirth and is not formally employed, apart from the indemnities and benefits payable under the employment contract.

4. In the case of a working woman who for some exceptional reason does not take the mandatory week of maternity leave, and/or some of the seventeen (17) weeks of leave, she shall be entitled to the payment of the weeks that she did not take. In case of multiple births, she shall be entitled to the payment of two (2) additional weeks and, in case the child is premature, to the payment of the difference in time between the date of delivery and the term birth.

5. <Numeral added by Article 1 of Law 2141 of 2021. The new text is as follows:> The dismissal of any worker whose spouse, partner or permanent partner is in a state of pregnancy or within eighteen (18) weeks after childbirth and is not formally employed is prohibited. This prohibition shall be triggered by the notification to the employer of the pregnancy status of the spouse, partner or permanent partner, and a statement, understood to be made under oath, that she is unemployed. The notification may be made orally or in writing. In both cases the worker will have up to one (1) month to attach proof of the pregnancy status of the spouse or permanent partner. For this purpose, medical certificates or the results of tests performed in clinical laboratories endorsed and supervised by the competent authorities will be valid.

CHAPTER VII OTHER DISPOSITIONS

Article 31. Right to know. The person born as a consequence of a gestational surrogacy agreement has the right to access the information related to the verification and validation process carried out by the Colombian Institute of Family Welfare, once he/she reaches the age of majority.

Article 32. Financing of Uterine Surrogacy for gestation and related procedures. The services of attention and integral accompaniment provided within the programs of control to the pregnant woman or prenatal control provided by the Health Provider Companies shall continue to be provided by the health system, unless the principal party assumes the prepaid medicine services for these.

In any case, the client will be exclusively responsible for the care related to preconception studies, and the procedures related to insemination in the case of uterine surrogacy for gestation, as well as the compensation and the required specialized follow-up, with the exception of those indicated as an integral part of the infertility treatment according to Law 1953 of 2019 and its respective regulation, or the rule that modifies or updates it.

Article 33. Financing of the functions of the Colombian Family Welfare Institute. The National Government shall appropriate the necessary resources from the General Budget of the Nation to guarantee compliance with the functions assigned to the Colombian Family Welfare Institute by virtue of the present law.

Article 34. Validity. This law shall be in force 2 years after its publication in the Official Gazette.