
HOUSE CONCURRENT RESOLUTION

REQUESTING THE DEPARTMENT OF THE ATTORNEY GENERAL TO CONDUCT A
STUDY ON SURROGACY AND GESTATIONAL CARRIER AGREEMENTS.

1 WHEREAS, modern technology allows a woman to carry and give
2 birth to a child as a surrogate or gestational carrier following
3 the artificial insemination of an egg or the implantation of an
4 already fertilized egg; and

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6 WHEREAS, surrogacy is a contractual relationship between
7 two or more consenting adults in which a woman agrees to act as
8 the surrogate or gestational carrier for the child of another
9 person; and

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11 WHEREAS, while surrogacy does occur in Hawaii, it is not
12 regulated; and

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14 WHEREAS, in light of the fact that the Hawaii Revised
15 Statutes do not make specific reference to surrogacy or
16 gestational carrier agreements, there may be ambiguity regarding
17 the issue of legal custody in such agreements; and

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19 WHEREAS, thirteen other states have enacted laws regarding
20 surrogacy or gestational carrier agreements; and

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22 WHEREAS, in some states, children born as the result of
23 surrogacy agreements are considered the legal children of the
24 surrogates until the intended parents obtain court orders
25 regarding custody; and

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27 WHEREAS, in other states, the intended parents are
28 automatically the legal parents of children born as the result
29 of surrogacy agreements; and
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1 WHEREAS, some states prohibit surrogacy altogether because
2 policymakers have determined that compensation for the carrying
3 of a child is the sale of a person; now, therefore,
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5 BE IT RESOLVED by the House of Representatives of the
6 Twenty-ninth Legislature of the State of Hawaii, Regular Session
7 of 2017, the Senate concurring, that the Department of the
8 Attorney General is requested to conduct a study on surrogacy
9 and gestational carrier agreements; and
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11 BE IT FURTHER RESOLVED that the Department of the Attorney
12 General is requested, at minimum, to determine whether:
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- 14 (1) Hawaii law currently authorizes individuals,
15 regardless of marital status or gender, to enter into
16 surrogacy and gestational carrier agreements;
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- 18 (2) Financial consideration paid to a surrogate or
19 gestational carrier makes a surrogacy or gestational
20 carrier agreement impermissible under the Constitution
21 of the United States or other applicable law; and
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- 23 (3) The Hawaii Revised Statutes should be amended to
24 specifically address surrogacy and gestational carrier
25 agreements, and, if so:
 - 26 (A) Whether the amendments to the Hawaii Revised
27 Statutes should be modeled after the laws or
28 regulations of one or more other states, and, if
29 so, which state or states;
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 - 31 (B) What is the best way to protect the rights of
32 surrogates, gestational carriers, intended
33 parents, and children; and
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 - 35 (C) Whose name or names should appear on the birth
36 certificate as the parent or parents of a child
37 born as a result of a surrogacy or gestational
38 carrier agreement; and
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41 BE IT FURTHER RESOLVED that the Department of the Attorney
42 General is requested to prepare a report that includes findings
43 and recommendations, including any proposed legislation, and



1 submit the report to the Legislature no later than twenty days
2 before the convening of the Regular Session of 2018; and

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4 BE IT FURTHER RESOLVED that certified copies of this
5 Concurrent Resolution be transmitted to the Attorney General and
6 the Governor.

