



## **SB 440, Which Codifies Gestational Surrogacy Agreements, Makes Bad Public Policy Worse**

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Applicable Bill: **SB 440**

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### ***HISTORY of Surrogacy Agreements:***

In 1987 the New Jersey Superior Court upheld a surrogacy agreement, stripped away all parental or visitation rights from the surrogate mother and allowed the intended parents to legally adopt the child. Within a year later, the New Jersey Supreme Court reversed the decision of the lower court, nullified the contract, nullified the adoption rights of the intended parents and restored some visitation and parental rights to the surrogate parent.

As a consequence, many state legislatures took legislative action. Most states quickly prohibited or severely restricted surrogacy contracts. Some states went so far as to impose criminal fines or imprisonment for those individuals who arranged surrogate contracts. Other states passed laws allowing surrogacy contracts under judicial review. North Carolina has never enacted any laws pertaining to surrogacy contracts.

### ***SB 440 Requirements***

1. The pregnancy must be caused by a medical procedure including intrauterine insemination, in vitro fertilization and transfer of embryos, and intracytoplasmic sperm injection. The pregnancy cannot occur by sexual intercourse.
2. The surrogate must be 21 years of age and must have given birth to at least one child.
3. The fee must be “reasonable.”
4. The court must approve the contract prior to the surrogate’s pregnancy.
5. The contract cannot be terminated by the surrogate once she becomes pregnant.
6. The “intended parents” must be a father and a mother who are married to each other.

### ***Public Policy Demands Opposition to SB 440***

1. **SB 440, if enacted, would codify the sale of human beings.** Adoption fees paid to the biological mother are restricted to expenses related to the pregnancy and are carefully monitored by the courts. SB 440 requires simply that the fee be “reasonable.” Furthermore, the bill allows for monies to be paid to the donor for sperm or eggs which will be used to create the embryo implanted into the surrogate’s womb.
2. **SB 440 could lead to the further exploitation of the poor.** By codifying surrogacy agreements rather than banning them, enactment of SB 440 would further allow women and the children they produce to be used as services and objects for purchase by the wealthy.

**ARGUMENTS IN FAVOR OF SB 440 AND REBUTTAL:**

**1. Argument – Surrogacy Agreements Exist. We should at least regulate them.**

**Rebuttal** - Surrogacy Agreements do not have to exist. They could be banned by the legislature as a violation of public policy against the sale of human beings.

**2. Argument - Monies paid in Surrogacy Agreements are no different than those paid in Adoption Agreements.**

**Rebuttal** – North Carolina law requires a full accounting to the court of all expenses paid to the biological mother when a child is adopted. SB 440 requires simply that the fee be “reasonable,” a term left undefined by the statute.

**3. Argument – SB 440 would simply help infertile couples obtain a child.**

**Rebuttal** – SB 440 does not require the “intended parents” to produce any evidence of infertility before the contract is validated by the court.

**4. Argument – SB 440 would simply assist couples in having their own children**

**Rebuttal** – SB 440 does not require any genetic connection between the child and “intended parents.”

**ACTION: Please OPPOSE Senate Bill 440.**