SLS 13RS-382 **ORIGINAL**

Regular Session, 2013

SENATE BILL NO. 162

BY SENATOR GARY SMITH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CHILDREN. Provides for surrogacy contracts. (8/1/13)

AN ACT

To amend and reenact R.S. 40:34(B)(1)(a)(viii), (h)(v), (i), and (j), to enact Chapter 1-C of Code Title IV, of Code Book III, of Title 9 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 9:2718 through 2720.15, and to repeal R.S. 9:2713, relative to surrogacy contracts; to provide for amendments to birth certificates; to provide for definitions relative to surrogacy contracts; to provide for genetic surrogacy contracts; to provide for the enforceability of gestational surrogacy contracts; to provide for the parties to a gestational surrogacy contract; to provide for contractual requirements for a gestational surrogacy contract; to provide for a proceeding to approve a gestational surrogacy contract; to provide for the check of the criminal records of the parties to a gestational surrogacy contract; to provide for a pre-implantation order relative to a gestational surrogacy contract; to provide for matters relative to multiple attempts at in utero implantation; to provide for confidentiality of the proceedings relative to a gestational surrogacy contract; to provide for continuing and exclusive jurisdiction to the proceedings relative to a gestational surrogacy contract; to provide for the termination of a gestational surrogacy contract by notice; to provide for remedies for the failure to perform under

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a gestational surrogacy contract; to provide for the termination of a gestational surrogacy contract and for the effects of divorce, nullity, and death on a gestational surrogacy contract; to provide for the effect of a subsequent marriage of the gestational surrogate on a gestational surrogacy contract; to provide for a post-birth order; to provide for DNA testing when the child is alleged not to be the child of the intended parents; to provide for time limitations and finality; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 1-C of Code Title IV, of Code Book III, of Title 9 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 9:2718 through 2720.15, is hereby enacted to read as follows:

CHAPTER 1-C SURROGACY CONTRACTS

PART I. DEFINITIONS

§2718. Definition of terms

As used in this Chapter, the following terms shall have the meanings ascribed to them in this Section unless otherwise provided for or unless the context otherwise indicates:

(1) "Gamete" means either a sperm or an egg.

(2) "Genetic surrogacy" means the process by which a woman attempts to carry and give birth to a child using her own gametes and either the gametes of a person who intends to parent the child or donor gametes, when there is an agreement to relinquish the custody of and all rights and obligations to the child.

(3) "Gestational surrogacy" means the process by which a woman attempts to carry and give birth to a child by means of in vitro fertilization using the gametes of the intended parents and to which the gestational surrogate has made no genetic contribution.

(4) "Gestational surrogate" means a woman who agrees to engage in a gestational surrogacy.

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(5) "In utero implantation" means the medical procedure whereby the genetic mother's egg is fertilized with the sperm of the genetic father, with the resulting embryo implanted in the uterus of the gestational surrogate.

(6) "Intended parents" means married persons who contribute their gametes to be used in assisted reproduction, and who enter into an enforceable gestational surrogacy contract, as defined in this Chapter, with a gestational surrogate pursuant to which they will be the legal parents of the child resulting from that assisted reproduction.

PART II. GENETIC SURROGACY

§~~2713.~~ **2719.** Contract for ~~surrogate motherhood~~ **genetic surrogacy**; nullity

~~A.~~ A contract for ~~surrogate motherhood as defined herein~~ **genetic surrogacy** shall be absolutely null ~~and shall be void and unenforceable as contrary to public policy~~.

~~B. "Contract for surrogate motherhood" means any agreement whereby a person not married to the contributor of the sperm agrees for valuable consideration to be inseminated, to carry any resulting fetus to birth, and then to relinquish to the contributor of the sperm the custody and all rights and obligations to the child.~~

Comments - 2013

(a) This Section continues the longstanding disapproval of contracts for genetic surrogacy, which began in 1987 in the wake of the controversial "Baby M" case. See In re Baby M, 537 A.2d 1227 (N.J. 1988). A surrogacy arrangement that would allow a mother to agree to relinquish her biological child in advance of its birth violates the public policy of this state and is, therefore, unenforceable, whether the contract is gratuitous or onerous.

(b) If individuals choose to ignore the provisions of this Chapter and engage in prohibited forms of surrogacy, this Chapter provides them no legal protection. Parentage, custody, and other questions will be determined in accordance with the general provisions of Louisiana law. See, e.g., C.C. Art. 184.

PART III. GESTATIONAL SURROGACY

§2720. Enforceability of gestational surrogacy contract

A. In accordance with the requirements of this Part, a gestational surrogate, her spouse if she is married, and the intended parents may enter into a written contract, known as a gestational surrogacy contract.

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B. A gestational surrogacy contract is enforceable only if approved by a court in advance of in utero implantation, as provided in this Part.

Comment - 2013

Subsection B makes it clear that entering into a gestational surrogacy contract is a significant legal act that must be approved by a court, just as an adoption of a minor must be judicially approved. This Part provides for state involvement, through judicial oversight, of the gestational surrogacy contract before, during, and after the assisted reproduction process. The purpose of early involvement is to ensure that the parties are appropriate for a gestational surrogacy contract, that they understand the consequences of what they are undertaking, and that the best interests of a child born of the gestational surrogacy contract are considered before the arrangement is approved. Parties who enter into a gestational surrogacy contract not meeting the requirements of this Part may not have their contract judicially approved; in such cases, the law provides no rights or remedies governing their disputes.

§2720.1. Parties to a gestational surrogacy contract

A gestational surrogate shall, at the time the gestational surrogacy contract is executed:

(1) Be at least twenty-five years of age.

(2) Have given birth to at least one child.

§2720.2. Contractual requirements

A. In an enforceable gestational surrogacy contract, the gestational surrogate shall:

(1) Agree to become pregnant by means of in utero implantation, using the gametes of the intended parents, and to give birth to the resulting child.

(2) Agree to submit to reasonable medical evaluation and treatment during the term of the pregnancy, to adhere to reasonable medical instructions about prenatal health, and to execute medical records releases under R.S. 40:1299.96 in favor of the intended parents.

(3) Certify that she has undergone at least two counseling sessions, separated by at least thirty days, with a licensed social worker, licensed psychologist, medical psychologist, licensed psychiatrist, or licensed counselor, to discuss the proposed surrogacy.

(4) Agree, along with her spouse if she is married, to relinquish all rights and duties as the parents of a child born as a result of in utero implantation.

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B. In an enforceable gestational surrogacy contract, the intended parents shall:

(1) Acknowledge that the gestational surrogate has sole authority with respect to medical decision-making during the term of the pregnancy consistent with the rights of a pregnant woman carrying her own biological child.

(2) Agree to accept custody of and to assume full parental rights and responsibilities for the child immediately upon the child's birth, regardless of any impairment of the child.

(3) Be recognized as the legal parents of the child.

C. The parties shall agree upon a preliminary estimate of reasonable expenses and their allocation in accordance with R.S. 9:2720.5.

Comments - 2013

(a) The gestational surrogacy contract regulated under this Part is a contract subject to the provisions governing Conventional Obligations or Contracts in Title IV, Book III of the Louisiana Civil Code.

(b) The contract must provide that the intended parents will be the parents of any child born pursuant to the contract while all others involved relinquish all parental rights and duties. In accordance with Paragraph A(4), the gestational surrogate is relieved of any legal responsibility for the child.

(c) Paragraph B(1) is not intended to modify current law regarding a pregnant woman's prenatal care. A pregnant gestational surrogate's medical rights are consistent with the rights of a pregnant woman carrying her own biological child.

(d) In requiring the parties to estimate expenses during the contracting process and to have this agreed-upon financial arrangement approved by the court, this Chapter mirrors the financial provisions of Louisiana adoption law. Mothers who relinquish their children for adoption in this state may not financially profit from the transaction, and are limited to recovery of actual and reasonable expenses. This and subsequent provisions of this Chapter subject contracts for gestational surrogacy to the same limitations on financial remuneration. See, e.g., Ch.C. Art. 1223.

(e) This Section speaks only to what must be provided for in the gestational surrogacy contract. There are additional requirements that must be met before a court may approve a gestational surrogacy agreement. See, e.g., R.S. 9:2720.1 (detailing requirements of eligibility for the gestational surrogate) and R.S. 9:2720.3 (setting out residence and other procedural requirements).

§2720.3. Proceeding to approve surrogacy contract

A. Prior to in utero implantation, the intended parents or the gestational surrogate and her husband, if she is married, may initiate a summary

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proceeding in the court exercising jurisdiction over the adoption of minors where the intended parents or the gestational surrogate reside, seeking to have the court approve a gestational surrogacy contract.

B. A proceeding to approve a gestational surrogacy contract shall be maintained only if:

(1) The gestational surrogate and the intended parents have been domiciled in this State for at least one hundred eighty days.

(2) The intended parents, the gestational surrogate, and her spouse, if she is married, are all parties to the proceeding.

(3) A copy of the proposed gestational surrogacy contract is attached to the motion.

Comments - 2013

(a) A proceeding to approve a gestational surrogacy contract must be initiated in the court exercising jurisdiction over the adoption of minors because of the similarity between these proceedings. Depending on the parish, the appropriate court may include a family court, juvenile court, district court, or civil district court.

(b) To discourage forum shopping, Paragraph (B)(1) requires that the proceeding be initiated in Louisiana if the intended parents and the gestational surrogate have been residents for at least one hundred and eighty days.

§2720.4. Institution of records check

A. Upon the initiation of the summary proceeding, the court shall immediately issue the following orders:

(1) That the local sheriff or the office of state police, Louisiana Bureau of Criminal Identification and Information, conduct a records check for all federal arrests and convictions and all state arrests and convictions for each of the intended parents and the gestational surrogate and her spouse, if she is married.

(2) That the Department of Children and Family Services conduct a records check for validated complaints of child abuse or neglect in this or any other state in which either of the intended parents and the gestational surrogate and her spouse, if she is married, has been domiciled since becoming a major.

(3) That the Judicial Administrator's Office of the Louisiana Supreme

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Court conduct a records check for court orders entered into the Louisiana Protective Order Registry involving each of the intended parents and the gestational surrogate and her spouse, if she is married.

B. Each order shall state the full name, date of birth, social security number, and former and current state of domicile since becoming a major of each subject of the check.

C. The sheriff or the office of state police, Louisiana Bureau of Criminal Identification and Information, the Department of Children and Family Services, and the Judicial Administrator's Office of the Louisiana Supreme Court shall accord priority to these orders and shall provide a certificate to the court indicating all information discovered, or that no information has been found.

§2720.5. Pre-Implantation Order

A. Within sixty days of the initiation of a proceeding to approve a gestational surrogacy contract, the court shall set the matter for hearing, and after the hearing may issue an order, known as the Pre-Implantation Order, approving the gestational surrogacy contract and declaring that the intended parents shall be recognized as the legal parents of a child born pursuant to the gestational surrogacy contract.

B. The court shall issue a Pre-Implantation Order upon finding that:

(1) The requirements of R.S. 9:2720-2720.3 have been satisfied and the reports of criminal records, validated complaints of child abuse or neglect, and Louisiana Protective Order Registry checks show that there is no risk of harm to the child.

(2) Provisions have been made for all reasonable health care and legal expenses associated with the gestational surrogacy contract until the birth of the child, including responsibility for those expenses if the contract is terminated.

(3) The gestational surrogate will receive no compensation other than:

(a) Reasonable medical expenses, including hospital, testing, nursing,

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midwifery, pharmaceutical, travel, or other similar expenses, incurred by the gestational surrogate for prenatal care and those medical and hospital expenses incurred incident to the birth.

(b) Reasonable expenses incurred for mental health counseling services provided to the gestational surrogate prior to the birth and up to six months after birth.

(c) Reasonable living expenses incurred by the gestational surrogate before the birth of the child and for no more than sixty days after the birth during which, on the written advice of a physician, the gestational surrogate is unable to work or otherwise support herself for medical reasons due to complications associated with the pregnancy or birth of the child.

(d) Reasonable travel costs related to the pregnancy and delivery, court costs, and attorney fees incurred by the gestational surrogate.

(4) The parties understand the contract and give free consent.

Comments - 2013

(a) This pre-implantation authorization process for a gestational surrogacy contract is roughly analogous to prevailing adoption procedures. Just as adoption contemplates the transfer of parentage of a child from the birth parents to the adoptive parents, a gestational surrogacy contract involves the transfer from the gestational mother to the intended parents. This Chapter is designed to protect the interests of the child to be born under the gestational surrogacy contract as well as the interests of the gestational surrogate and the intended parents.

(b) This Section seeks to protect the interests of the child in several ways. The major protection of the child is the authorization procedure itself. This Chapter requires closely supervised gestational surrogacy arrangements to ensure the security and well-being of the resulting child. Once a proceeding has been initiated, Subsection A permits requires the court to approve a gestational surrogacy contract only if the requirements of this Part are met. If it approves, the court must declare that the intended parents will be the parents of any child born pursuant to, and during the term of, the contract.

(c) The expense provisions of this Section largely track those applicable to allowable expenses in connection with the adoption of minors, with some modifications. See Ch.C. Art. 1223.

§2720.6. Multiple implantation attempts

If there are multiple attempts at in utero implantation, the gestational surrogacy contract and the Pre-Implantation Order shall continue in full force and effect in accordance with the parties' agreement until terminated under

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R.S. 9:2720.9 or 2720.11, or until a live birth occurs pursuant to the gestational surrogacy contract.

§2720.7. Confidentiality

All proceedings governed by this Chapter shall be heard by the judge in chambers or in a closed hearing, and no one shall be admitted to the hearings except the parties in interest, their attorneys, and officers of the court. The court, in its discretion, may grant the request of a petitioner to permit others to be present at the hearing. The court records of these proceedings and the identities of the parties to a gestational surrogacy contract shall be sealed and are subject to disclosure, release or inspection only upon application to the court and in conformity with the applicable requirements of confidentiality applicable to adoptions in the Children's Code.

§2720.8. Continuing and exclusive jurisdiction

Subject to the jurisdictional requirements of Uniform Child Custody Jurisdiction and Enforcement Act, the court having jurisdiction over the proceeding to approve a gestational surrogacy contract pursuant to this Part shall have exclusive, continuing jurisdiction of all matters arising out of the gestational surrogacy contract.

Comment - 2013

This Section is designed to minimize the possibility of parallel litigation in different states and the consequent risk of kidnapping for strategic purposes.

§2720.9. Termination of contract by notice

A. Before each in utero implantation, the gestational surrogate or either of the intended parents may terminate the gestational surrogacy contract by filing a motion with the court giving notice of termination and serving all other parties with the motion. Upon filing of the motion, the court shall issue an order vacating the Pre-Implantation Order.

B. Neither a gestational surrogate nor her spouse, if she is married, is liable to the intended parents for terminating a gestational surrogacy contract pursuant to this Section.

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C. Absent timely notice of termination by an intended parent or the gestational surrogate, no court shall terminate a gestational surrogacy contract after issuance of a valid Pre-Implantation Order except for good cause shown after a hearing. No court shall terminate a gestational surrogacy contract after a successful in utero implantation.

Comments - 2013

(a) Subsection A permits a party to terminate a gestational surrogacy contract after the Pre-Implantation Order by canceling the arrangement before in utero implantation has occurred. This provides for cancellation during a time when the interests of the parties would not be unduly prejudiced by termination. The intended parents certainly have an expectation interest during this time, but the nature of this interest is little different from that which they would have while they were attempting to create a pregnancy through traditional means.

(b) It is certainly possible that if the gestational surrogate terminates the gestational surrogacy contract after issuance of a Pre-Implantation Order, the intended parents may have already expended substantial sums to undergo the fertilization process. Fertilization costs may not be recovered from the gestational surrogate, however, as any resulting embryos are genetically related to the intended parents, and could be used by the intended parents in future attempts at assisted reproduction.

(c) Once a human embryo exists, it is subject to the rules regulating human embryos in R.S. 9:121-133.

(d) The use of the word "each" in Subsection A indicates that the possibility of termination by notice remains before each implantation attempt, even if there are multiple attempts.

(e) Good cause may include a finding of some change in circumstances that would have prevented the court from issuing the Pre-Implantation Order. A change in the results of criminal history, child abuse, or domestic violence registry checks after issuance of the Pre-Implantation Order, for instance, may provide good cause for termination.

§2720.10. Remedies

After in utero implantation, a failure to perform under the gestational surrogacy contract does not give rise to the right to dissolution. The parties' rights and responsibilities are otherwise governed by the rules of the Titles on Obligations in General and Conventional Obligations or Contracts.

Comment - 2013

Before each in utero implantation, the gestational surrogate or either intended parent may terminate the gestational surrogacy contract by giving the timely notice provided for in R.S. 9:2720.9. After implantation, the remedy of contractual dissolution would be inequitable. If the intended parents failed to pay the agreed-upon expenses, for instance, allowing the gestational surrogate to take

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advantage of extra-judicial dissolution procedures would not be an appropriate remedy given the nature of the multiple and conflicting interests involved. The damages, specific performance, and other provisions of the Title on Conventional Obligations or Contracts, however, do apply to gestational surrogacy contracts.

§2720.11. Termination of contract and effects of divorce, nullity, death

A judgment of divorce or judicial declaration of nullity of a marriage between the intended parents, entered before in utero implantation, terminates the gestational surrogacy contract. Upon the filing of a motion notifying the court of the judgment of divorce or declaration of nullity, the court shall issue an order vacating the Pre-Implantation Order. If an intended parent dies before in utero implantation, the deceased individual is not a parent of the resulting child unless the child was born within three years of the death of the decedent and the deceased agreed in writing that if the in utero implantation were to occur after death, the deceased individual would be a parent of the child and that the child would have all rights, including the capacity to inherit from the decedent.

Comments - 2013

(a) This Section provides an effect for divorce or declaration of nullity only before in utero implantation. A judgment of divorce or judicial declaration of nullity of a marriage between the intended parents, entered after in utero implantation, does not terminate the gestational surrogacy contract. Custody of the resulting child would be determined by reference to the child custody provisions of Louisiana Civil Code Book I, Title V, Chapter 2, Section 3. Likewise, if an intended parent dies after in utero implantation, the tutorship provisions of the Louisiana Civil Code, found in Book I, Title VIII, would apply to provide for rules governing the person and property of the resulting minor child.

(b) This Section tracks the policy and language of R.S. 9:391.1, which regulates children conceived after the death of a parent using the decedent's gametes.

§2720.12. Effect of subsequent marriage

After the issuance of a Pre-Implantation Order, subsequent marriage of the gestational surrogate does not affect the validity of a gestational surrogacy contract. The consent of the spouse is not required, and he is not a presumed father of the resulting child, notwithstanding any legal presumption to the contrary.

Comment - 2013

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If, after the original court order approves the gestational surrogacy contract, the gestational surrogate marries, the contract continues to be valid and the consent of her new spouse is not required. The new spouse is not a party to the original action and should not be the presumed legal father of the resulting child. Under this Part, the intended parents are the child's legal parents. The spouse of the gestational surrogate will not hold the status of a legal parent unless he is the genetic father or adopts the child.

§2720.13. Post-Birth Order

A. Upon birth of a child to a gestational surrogate within three hundred days after in utero implantation, the intended parents or their successors, the gestational surrogate, or her spouse shall file a motion requesting issuance of a Post-Birth Order. The motion shall be accompanied by a certified copy of the child's original birth certificate and an affidavit executed by the intended parents containing an accounting of fees and charges paid or agreed to be paid by or on behalf of the intended parents in connection with the gestational surrogacy contract.

B. If neither the intended parents, their successors, the gestational surrogate, or her spouse file the motion described in Subsection A, the Department of Children and Family Services may file a motion notifying the court that a child has been born to the gestational surrogate within three hundred days after in utero implantation and the court shall set the motion for hearing.

C. The court may order a hearing and, after finding that the parties have complied with this Part, shall issue a Post-Birth Order:

(1) Confirming that the intended parents are the legal parents of the child and are financially responsible for the child.

(2) If necessary, ordering that the child be surrendered to the intended parents.

(3) Directing that a new birth certificate be created and that the intended parents be listed on the birth certificate as the parents of the child pursuant to R.S. 40:32 et seq., and that the original birth certificate be sealed and subject to release or inspection only upon application to the court for good

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cause shown.

§2720.14. DNA testing

If the child is alleged not to be the child of the intended parents, supported by a sworn affidavit alleging specific facts which either tend to prove or deny filiation, the court shall order genetic testing to determine the parentage of the child. If the court finds after a contradictory hearing that the child is the genetic child of the surrogate, the court shall issue an order recognizing her as a legal parent of the child. If any party refuses to submit to such tests, the court may resolve the question of filiation against such party or enforce its order if the rights of others and the interests of justice so require.

Comments - 2013

(a) Such an allegation may be raised in a number of different proceedings, including a filiation, disavowal, or contestation action. See, e.g., C.C. Arts. 187, 191, 197, 198. The prescriptive or peremptive period applicable to such an action will be determined by the applicable Civil Code Article for the particular form of action instituted.

(b) DNA testing for paternity determinations is authorized and regulated by R.S. 9:396.

§2720.15. Finality; time limitations

A. A party to the gestational surrogacy contract may bring an action to annul a Post-Birth Order. However, except as otherwise provided in this Part, no action to annul a Post-Birth Order may be brought except on the grounds of fraud or duress.

B. An action to annul a Post-Birth Order based upon a claim of fraud or duress:

(1) Perpetrated by anyone other than an intended parent shall be brought within one year from the date of the signing of the final decree or mailing of the notice of the judgment when required.

(2) Perpetrated by an intended parent shall be brought within two years from the date of the signing of the final decree or mailing of the notice of the judgment when required.

Comment - 2013

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The narrow grounds and relatively short window for nullifying a Post-Birth Order here are drawn, with some modifications, from Louisiana's grounds for annulling a final decree of adoption. There, as here, the parties' arrangement has been subject to substantial judicial scrutiny, and all parties involved have a special need for finality.

Section 2. R.S. 40:34(B)(1)(a)(viii), (h)(v), (i), and (j) are hereby amended and reenacted to read as follows:

§34. Vital records forms

* * *

B. The forms shall be printed and supplied or provided by electronic means by the state registrar and the required contents are:

(1) Contents of birth certificate. The certificate of birth shall contain, as a minimum, the following items:

(a) Full name of child.

* * *

(viii) In the case of a child born of a surrogate birth parent ~~who is related by blood or affinity to a biological parent,~~ **as a result of an enforceable gestational surrogacy contract, as defined in R.S. 9:2720,** the surname of the child's biological parents shall be the surname of the child.

* * *

(h)

* * *

(v) In the case of a child born of a surrogate birth parent ~~who is related by blood or affinity to a biological parent,~~ **as a result of an enforceable gestational surrogacy contract, as defined in R.S. 9:2720,** the full name of the biological ~~parent~~ **father** ~~who is proven to be the father by DNA testing~~ shall be listed as the father.

(i) Maiden name of mother; however, if the child was born of a surrogate birth parent ~~who is related by blood or affinity to a biological parent,~~ **as a result of an enforceable gestational surrogacy contract, as defined in R.S. 9:2720,** the maiden name of the biological ~~parent~~ **mother** ~~who is proven to be the mother by~~

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~~DNA testing~~ shall be listed as the mother and the name of the surrogate birth parent is not required.

(j) In the case of a child born of a surrogate birth parent ~~who is related by blood or affinity to a biological parent,~~ **as a result of an enforceable gestational surrogacy contract, as defined in R.S. 9:2720,** the biological parents ~~proven to be the mother and father by DNA testing~~ shall be considered the parents of the child.

Section 3. R.S. 9:2713 is hereby repealed.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Julie J. Baxter.

DIGEST

Present law provides that a contract for surrogate motherhood shall be absolutely null and shall be void and unenforceable as contrary to public policy. Present law provides that "Contract for surrogate motherhood" means any agreement whereby a person not married to the contributor of the sperm agrees for valuable consideration to be inseminated, to carry any resulting fetus to birth, and then to relinquish to the contributor of the sperm the custody and all rights and obligations to the child.

Proposed law retains present law in part. Proposed law provides that a contract for genetic surrogacy shall be absolutely null. Proposed law provides that "genetic surrogacy" means the process by which a woman attempts to carry and give birth to a child using her own gametes and either the gametes of a person who intends to parent the child or donor gametes, when there is an agreement to relinquish the custody of and all rights and obligations to the child.

Proposed law provides for the enforcement of gestational surrogacy contracts. Proposed law provides that "gestational surrogacy" means the process by which a woman attempts to carry and give birth to a child by means of in vitro fertilization using the gametes of the intended parents and to which the gestational surrogate has made no genetic contribution.

Proposed law provides contractual requirements for an enforceable gestational surrogacy contract.

Proposed law provides for a proceeding to approve a gestational surrogacy contract.

Proposed law provides for a records check of the parties to a gestational surrogacy contract.

Proposed law provides for a judicial "Pre-Implantation Order" prior to an in utero implantation.

Proposed law provides for situations when multiple attempts at in utero implantation are necessary.

Proposed law provides for the confidentially of the proceedings to the hearings relative to a gestational surrogacy contract.

Proposed law provides for the continuing and exclusive jurisdiction of a court for matters relative to a gestational surrogacy contract.

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Proposed law provides for the termination of a gestational surrogacy contract by notice.

Proposed law provides for remedies for the failure to perform under a gestational surrogacy contract.

Proposed law provides for the termination of a gestational surrogacy contract and for the effects of divorce, nullity, and death on a gestational surrogacy contract.

Proposed law provides for the effect of a subsequent marriage of the gestational surrogate on a gestational surrogacy contract.

Proposed law provides for a post-birth order.

Proposed law provides for DNA testing when the child is alleged not to be the child of the intended parents.

Proposed law provides for time limitations and finality.

Present law provides for the surname of the child, the name of the father, and the name of the mother when a child is born of a surrogate birth parent. Present law provides that the surrogate birth parent "is related by blood or affinity to a biological parent".

Proposed law also provides for the surname of the child, the name of the father, and the name of the mother when a child is born of a surrogate birth parent. Proposed law eliminates the provision that provides that the surrogate birth parent "is related by blood or affinity to a biological parent". Proposed law provides that the child is born of a surrogate birth parent "as a result of an enforceable gestational surrogacy contract, as defined in R.S. 9:2720".

Proposed law repeals present law R.S. 9:2713 that provides for a contract for surrogate motherhood.

Effective August 1, 2013.

(Amends R.S. 40:34(B)(1)(a)(viii), (h)(v), (i), and (j); adds R.S. 9:2718 – 2720.15; repeals R.S. 9:2713)

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