

Regular Session, 2014

HOUSE BILL NO. 187

BY REPRESENTATIVE LOPINTO AND SENATOR GARY SMITH

CHILDREN: Provides for surrogacy in Louisiana

1 AN ACT

2 To amend and reenact R.S. 40:34(B)(1)(a)(viii), (h)(v), (i), and (j), to enact Chapter 1-C of  
3 Code Title IV, of Code Book III, of Title 9 of the Louisiana Revised Statutes of  
4 1950, to be comprised of R.S. 9:2718 through 2720.15, and to repeal R.S. 9:2713,  
5 relative to surrogacy contracts; to provide for amendments to birth certificates; to  
6 provide for definitions relative to surrogacy contracts; to provide for genetic  
7 surrogacy contracts; to provide for the enforceability of gestational surrogacy  
8 contracts; to provide for the parties to a gestational surrogacy contract; to provide for  
9 contractual requirements for a gestational surrogacy contract; to provide for a  
10 proceeding to approve a gestational surrogacy contract; to provide for the check of  
11 the criminal records of the parties to a gestational surrogacy contract; to provide for  
12 a pre-embryo transfer order relative to a gestational surrogacy contract; to provide  
13 for matters relative to multiple attempts at in utero embryo transfer; to provide for  
14 confidentiality of the proceedings relative to a gestational surrogacy contract; to  
15 provide for continuing and exclusive jurisdiction to the proceedings relative to a  
16 gestational surrogacy contract; to provide for the termination of a gestational  
17 surrogacy contract by notice; to provide for remedies for the failure to perform under  
18 a gestational surrogacy contract; to provide for the termination of a gestational  
19 surrogacy contract and for the effects of divorce, nullity, and death on a gestational  
20 surrogacy contract; to provide for the effect of a subsequent marriage of the

1 gestational carrier on a gestational surrogacy contract; to provide for a post-birth  
2 order; to provide for DNA testing when the child is alleged not to be the child of the  
3 intended parents; to provide for time limitations and finality; and to provide for  
4 related matters.

5 Be it enacted by the Legislature of Louisiana:

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

9 CHAPTER 1-C SURROGACY CONTRACTS

10 PART I. DEFINITIONS

11 §2718. Definition of terms

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

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

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

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

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

26 (5) "In utero embryo transfer" means the medical procedure whereby the  
27 genetic mother's egg is fertilized with the sperm of the genetic father, with the  
28 resulting embryo transferred into the uterus of the gestational carrier.



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

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

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

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

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

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

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

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

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

24          §2720.3. Proceeding to approve surrogacy contract

25               A. Prior to in utero embryo transfer, the intended parents or the gestational  
26               carrier and her husband, if she is married, may initiate a summary proceeding in the  
27               court exercising jurisdiction over the adoption of minors where the intended parents  
28               or the gestational carrier reside, seeking to have the court approve a gestational  
29               surrogacy contract.

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

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

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

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

9                   (4) An independent board certified physician in obstetrics and gynecology  
10                  or in reproductive endocrinology, not affiliated with a surrogacy agency, deems the  
11                  use of a gestational carrier medically necessary to assist in reproduction.

12           §2720.4. Institution of records check

13                   A. Upon the initiation of the summary proceeding, the court shall:

14                           (1) Order and be entitled to the criminal history record and identification files  
15                           of the Louisiana Bureau of Criminal Identification and Information on each of the  
16                           intended parents and the gestational carrier and her spouse, if she is married, as a  
17                           means of performing background checks on those individuals. The bureau shall,  
18                           upon request and after receipt of fingerprint cards and other identifying information  
19                           from the court, make available to the court information contained in the bureau's  
20                           criminal history record and identification files, which pertains to each of the intended  
21                           parents and the gestational carrier and her spouse, if she is married. In addition, in  
22                           order to determine an applicant's suitability, the fingerprints shall be forwarded by  
23                           the bureau to the Federal Bureau of Investigation for a national criminal history  
24                           record check. The bureau shall charge a processing fee as provided in R.S.  
25                           15:587(B)(1).

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

1           (3) Order that the Judicial Administrator's Office of the Louisiana Supreme  
2           Court conduct a records check for court orders entered into the Louisiana Protective  
3           Order Registry involving each of the intended parents and the gestational carrier and  
4           her spouse, if she is married.

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

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

13          §2720.5. Pre-Embryo Transfer Order

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

20          B. The court shall issue a Pre-Embryo Transfer Order upon finding that:

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

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

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

1           (a) Reasonable medical expenses, including hospital, testing, nursing,  
2           midwifery, pharmaceutical, travel, or other similar expenses, incurred by the  
3           gestational carrier for prenatal care and those medical and hospital expenses incurred  
4           incident to the birth.

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

7           (c) Reasonable living expenses incurred by the gestational carrier before the  
8           birth of the child and for no more than sixty days after the birth.

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

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

12          §2720.6. Multiple embryo transfer attempts

13           If there are multiple attempts at in utero embryo transfer, the gestational  
14           surrogacy contract and the Pre-Embryo Transfer Order shall continue in full force  
15           and effect in accordance with the parties' agreement until terminated under R.S.  
16           9:2720.9 or 2720.11, or until a live birth occurs pursuant to the gestational surrogacy  
17           contract.

18          §2720.7. Confidentiality

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

1        §2720.8. Continuing and exclusive jurisdiction

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

6        §2720.9. Termination of contract by notice

7                A. Before each in utero embryo transfer, the gestational carrier or either of  
8        the intended parents may terminate the gestational surrogacy contract by filing a  
9        motion with the court giving notice of termination and serving all other parties with  
10       the motion. Upon filing of the motion, the court shall issue an order vacating the Pre-  
11       Embryo Transfer Order.

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

15               C. Absent timely notice of termination by an intended parent or the  
16       gestational carrier, no court shall terminate a gestational surrogacy contract after  
17       issuance of a valid Pre-Embryo Transfer Order except for good cause shown after  
18       a hearing. No court shall terminate a gestational surrogacy contract after a successful  
19       in utero embryo transfer.

20       §2720.10. Remedies

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

25       §2720.11. Termination of contract and effects of divorce, nullity, death

26               A judgment of divorce or judicial declaration of nullity of a marriage between  
27       the intended parents, entered before in utero embryo transfer, terminates the  
28       gestational surrogacy contract. Upon the filing of a motion notifying the court of the  
29       judgment of divorce or declaration of nullity, the court shall issue an order vacating

1        the Pre-Embryo Transfer Order. If an intended parent dies before in utero embryo  
2        transfer, the deceased individual is not a parent of the resulting child unless the child  
3        was born within three years of the death of the decedent and the deceased agreed in  
4        writing that if the in utero embryo transfer were to occur after death, the deceased  
5        individual would be a parent of the child and that the child would have all rights,  
6        including the capacity to inherit from the decedent.

7        §2720.12. Effect of subsequent marriage

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

12        §2720.13. Post-Birth Order

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

20                B. If neither the intended parents, their successors, the gestational carrier, or  
21        her spouse file the motion described in Subsection A of this Section, the Department  
22        of Children and Family Services may file a motion notifying the court that a child  
23        has been born to the gestational carrier within three hundred days after in utero  
24        embryo transfer and the court shall set the motion for hearing.

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

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

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

3           (3) Directing that a new birth certificate be created and that the intended  
4           parents be listed on the birth certificate as the parents of the child pursuant to R.S.  
5           40:32 et seq., and that the original birth certificate be sealed and subject to release  
6           or inspection only upon application to the court for good cause shown.

7           §2720.14. DNA testing

8           If the child is alleged not to be the child of the intended parents, supported  
9           by a sworn affidavit alleging specific facts which either tend to prove or deny  
10          filiation, the court shall order genetic testing to determine the parentage of the child.

11          If the court finds after a contradictory hearing that the child is the genetic child of the  
12          carrier, the court shall issue an order recognizing her as a legal parent of the child.

13          If any party refuses to submit to such tests, the court may resolve the question of  
14          filiation against such party or enforce its order if the rights of others and the interests  
15          of justice so require.

16          §2720.15. Finality; time limitations

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

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

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

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

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

1 §34. Vital records forms

2 \* \* \*

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

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

7 (a) Full name of child.

8 \* \* \*

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

13 \* \* \*

14 (h)

15 \* \* \*

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

20 (i) Maiden name of mother; however, if the child was born of a surrogate  
21 birth parent ~~who is related by blood or affinity to a biological parent~~, as a result of  
22 an enforceable gestational surrogacy contract, as defined in R.S. 9:2720, the maiden  
23 name of the biological ~~parent~~ mother ~~who is proven to be the mother by DNA testing~~  
24 shall be listed as the mother ~~and the name of the surrogate birth parent is not~~  
25 ~~required~~.

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

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

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Lopinto

HB No. 187

**Abstract:** Prohibits genetic surrogacy contracts and provides for the enforceability of gestational surrogacy contracts.

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 (R.S. 9:2718) defines the following terms: "gamete", "genetic surrogacy", "gestational surrogacy", "gestational carrier", "in utero embryo transfer", and "intended parents".

Proposed law (R.S. 9:2719) provides that a contract for genetic surrogacy shall be absolutely null.

Proposed law (R.S. 9:2720) provides that a gestational surrogacy contract is only enforceable if approved by a court before in utero implantation.

Proposed law (R.S. 9:2720.1) requires a gestational surrogate to be at least 25 years of age and to have already given birth to at least one child at the time the gestational surrogacy contract is executed.

Proposed law (R.S. 9:2720.2) requires the gestational surrogate to do the following in a gestational surrogacy contract:

- (1) Agree to become pregnant by in utero implantation, using the gametes of the intended parents, and give birth to the resulting child.
- (2) Agree to submit to reasonable medical testing and instructions regarding prenatal health and to execute a medical records release in favor of the intended parents.
- (3) Certify that she has attended at least two counseling sessions, separated by at least 30 days, with a mental health professional.
- (4) Agree to relinquish all rights of the child born as a result of the in utero implantation. If the surrogate is married, her spouse must also relinquish all rights.

Proposed law further requires the intended parents to do the following in a gestational surrogacy contract:

- (1) Acknowledge that the gestational surrogate has sole authority with respect to medical decision making during the pregnancy.

- (2) Agree to accept custody and full parental rights of the child, regardless of any impairment of the child.
- (3) Be recognized as the legal parents of the child.

Proposed law requires the parties to agree on a preliminary estimate of reasonable expenses.

Proposed law (R.S. 9:2720.3) allows the parties to the gestational surrogacy contract to seek court approval of a gestational surrogacy contract before in utero implantation by initiating a summary proceeding in the court exercising jurisdiction over adoptions where the intended parents or gestational surrogate reside.

Proposed law (R.S. 9:2720.4) requires the court to order background checks on each of the intended parents, the gestational surrogate, and her spouse, if married.

Proposed law (R.S. 9:2720.5) requires the court to set a hearing within 60 days of the initiation of a proceeding to approve a gestational surrogacy contract, and requires the court to issue a Pre-Implantation Order approving the gestational surrogacy contract upon finding the following:

- (1) All requirements of proposed law regarding gestational surrogacy contracts have been satisfied and that the background checks show 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.
- (3) The gestational surrogate will only be compensated for reasonable medical expenses, mental health counseling expenses, reasonable living expenses during the pregnancy and not to exceed six months after the birth of the child, and reasonable travel costs.
- (4) The parties understand the contract and give free consent.

Proposed law (R.S. 9:2720.6) provides that the gestational surrogacy contract and the Pre-Implantation Order shall remain in full force and effect in accordance with the parties agreement or until a live birth occurs when there are multiple attempts at in utero implantation.

Proposed law (R.S. 9:2720.7) requires all proceedings and court records relative to the gestational surrogacy contract be held and maintained confidentially.

Proposed law (R.S. 9:2720.8) provides for the continuing and exclusive jurisdiction of the court approving a gestational surrogacy contract for matters relative to a gestational surrogacy contract.

Proposed law (R.S. 9:2720.9) allows the intended parents or the gestational surrogate to terminate a gestational surrogacy contract before in utero implantation by filing notice of termination with the court and serving all parties. Further provides that neither a gestational surrogate, nor her spouse, is liable to the intended parents for terminating a gestational surrogacy contract. Also prohibits the court from terminating a gestational surrogacy contract after issuing a valid Pre-Implantation order, except for good cause, or after a successful in utero implantation.

Proposed law (R.S. 9:2720.10) provides for remedies for the failure to perform under a gestational surrogacy contract.

Proposed law (R.S. 9:2720.11) requires the court to issue an order vacating the Pre-Implantation order when a judgment of divorce or judicial declaration of nullity of a

marriage between the intended parents is entered before in utero implantation. Further provides that an intended parent who dies before in utero implantation is considered a parent of a resulting child only when the child is born within three years of the death of the intended parent and the deceased agreed in writing that the deceased would be a parent of the child if the in utero implantation occurred after death.

Proposed law (R.S. 9:2720.12) provides that the subsequent marriage of the gestational surrogate has no effect on the validity of a gestational surrogacy contract.

Proposed law (R.S. 9:2720.13) requires the intended parents or the gestational surrogate to file a motion requesting issuance of a Post-Birth Order upon birth of a child within 300 days of in utero implantation. Authorizes DCFS to file the motion if the parties fail to do so.

Proposed law requires the court to issue a Post-Birth Order, after finding the parties have complied with the requirements of proposed law, which shall contain the following:

- (1) Confirmation that the intended parents are the legal parents.
- (2) An order that the child be surrendered to the intended parents.
- (3) An order for the creation of a new birth certificate listing the intended parents as the parents of the child and for the original birth certificate to be sealed.

Proposed law (R.S. 9:2720.14) provides for DNA testing when the child is alleged not to be the child of the intended parents.

Proposed law (R.S. 9:2720.15) restricts the basis of annulment of a Post-Birth Order to allegations of fraud and duress. Requires an action to annul be brought within one year from the date of the signing of the final decree or mailing of the notice of judgment when it is alleged that someone other than the intended parents perpetrated the fraud or duress, or two years from the date of signing if an intended parent is alleged to have perpetrated the fraud or duress.

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. Further limits a surrogate birth parent to one who "is related by blood or affinity to a biological parent".

Proposed law retains present law except that it eliminates the provision limiting a surrogate birth parent to one who "is related by blood or affinity to a biological parent" and makes changes consistent with proposed law.

Present law prohibits a "contract for surrogate motherhood" defined as 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 repeals present law.

Effective August 1, 2014.

(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)