

Existing law provides that a contract for surrogate motherhood shall be absolutely null and shall be void and unenforceable as contrary to public policy. Existing 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) would have defined the following terms: "compensation", "gamete", "genetic surrogacy", "gestational surrogacy", "gestational mother", "in utero embryo transfer", and "intended parents".

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

Proposed law (R.S. 9:2720) would have provided that a gestational surrogacy contract is only enforceable if approved by a court before in utero implantation. Further would have prohibited a gestational surrogacy contract for compensation and would have prohibited a gestational surrogacy contract that requires the gestational mother to consent to terminate a pregnancy if prenatal testing reveals certain disabilities or to reduce multiple fetuses.

Proposed law (R.S. 9:2720.1) would have required a gestational mother to be at least 25 years of age, but not more than 35 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) would have required the gestational mother to do all of 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 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 prior to executing a gestational surrogacy contract.
- (4) Certify that she agrees 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 would have required the intended parents to do all of the following in a gestational surrogacy contract:

- (1) Acknowledge that the gestational mother has sole authority with respect to medical decisionmaking 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 would have required the parties to agree on a preliminary estimate of anticipated expenses.

Proposed law (R.S. 9:2720.3) would have allowed 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 mother reside.

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

Proposed law (R.S. 9:2720.5) would have required the court to set a hearing within 60 days of the initiation of a proceeding to approve a gestational surrogacy contract, and would have required the court to issue an Order Preceding Embryo Transfer approving the gestational surrogacy contract upon finding all of 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 or the gestational mother.
- (2) Provisions have been made for all reasonable healthcare and legal expenses associated with the gestational surrogacy contract.
- (3) The gestational mother will only be compensated for actual medical expenses, mental health counseling expenses, actual lost wages of the gestational mother due to prescribed bed rest, actual travel costs, and any monetary recovery obtained because of death or loss of reproductive organs or capability to gestational mother because of the in utero embryo transfer and pregnancy.
- (4) The parties understand the contract and freely give consent.

Proposed law (R.S. 9:2720.6) would have provided that the gestational surrogacy contract and the Order Preceding Embryo Transfer 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) would have required all proceedings and court records relative to the gestational surrogacy contract be held and maintained confidentially.

Proposed law (R.S. 9:2720.8) would have provided 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) would have allowed the intended parents or the gestational mother to terminate a gestational surrogacy contract before in utero implantation by filing notice of termination with the court and serving all parties. Further would have provided that neither a gestational mother, nor her spouse, is liable to the intended parents for terminating a gestational surrogacy contract. Also would have prohibited the court from terminating a gestational surrogacy contract after issuing a valid Order Preceding Embryo Transfer, except for good cause, or after a successful in utero implantation.

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

Proposed law (R.S. 9:2720.11) would have required the court to issue an order vacating the Order Preceding Embryo Transfer when a judgment of divorce or judicial declaration of nullity of a marriage between the intended parents is entered before in utero implantation. Would have also provided 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) would have provided that the subsequent marriage of the gestational mother has no effect on the validity of a gestational surrogacy contract.

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

Proposed law would have required 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) would have provided for DNA testing when the child is alleged not to be the child of the intended parents.

Proposed law (R.S. 9:2720.15) would have restricted the basis of annulment of a Post-Birth Order to allegations of fraud and duress. Would have required 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 would have retained existing law except that it would have eliminated the provision limiting a surrogate birth parent to one who "is related by blood or affinity to a biological parent" and would have made changes consistent with proposed law.

Present law (R.S. 14:286) provides for the crime of sale of minor children, including selling or surrendering a minor child to another for money or any thing of value, or paying for the procurement of an act of voluntary surrender for the adoption of a child.

Proposed law would have retained existing law and would have added any act that is not in compliance with the requirements for gestational surrogacy contracts under R.S. 9:2718, et seq., or any act by a person assisting in a genetic surrogacy contract for compensation as defined in R.S. 9:2718, et seq., to the enumerated list of actions constituting the crime of sale of minor children.

Proposed law would have also prohibited any person from offering money or any thing of value to a gestational mother to consent to an abortion, whether or not she is a party to an enforceable or unenforceable agreement for genetic or gestational surrogacy. Would have also provided for application to those contracts already entered into on the effective date of this act.

Proposed law (R.S. 40:94, et seq.) would have established a database collection system for information relative to gestational surrogacy contracts, including information pertaining to complications of pregnancy, miscarriages, or terminations. Would have provided procedures for the collection of data, penalties for failure to comply, and confidentiality of the data collected.

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 would have repealed existing law.

(Proposed to amend R.S.14:286(D), R.S. 40:34(B)(1)(a)(viii), (h)(v), (i), and (j), and R.S. 44:4.1(B)(26); add R.S. 9:2718-2720.15, R.S. 14:286(E), and R.S. 40:93-97; and repeal R.S. 9:2713)

VETO MESSAGE: "A year ago, I vetoed legislation which would have created commercial surrogacy contracts in Louisiana. In the time since, supporters of similar legislation have worked to address the bioethical concerns which led to that veto. While some progress has been made, and the legislation has been improved, I must nonetheless veto this legislation out of an abundance of concern regarding the ramifications of government-endorsed surrogacy contracts and how this legislation impacts the way we value human life.

All Louisianians are at liberty today to engage in informal agreements regarding surrogacy - this is simply a question of whether we ought to codify and regulate such agreements, and if so, what these regulations ought to entail.

My heart goes out to those who face the tragedies of miscarriage and infertility. The inability to conceive or bear children is a deep wound in our society, unnoticed by most, and suffered by too many. The desire to have a child is rooted in the love that created and sustains each of us - and when we seek the blessing of children, it is our best selves speaking to action. A state reflecting that goodness, and that love, will protect the dignity of human life - women and children at the foremost - and seek to open the doors to that fulfillment in family.

However, despite the good intentions and hard efforts of the author, this legislation still raises concerns for many in the pro-life community.

Thus, I cannot in good conscience, sign this bill. For these reasons and with deep conviction, I have vetoed House Bill No. 187 and hereby return it to the House of Representatives."