

2016 Regular Session

HOUSE BILL NO. 1102

BY REPRESENTATIVE BISHOP

CHILDREN: Provides relative to gestational carriers

1 AN ACT

2 To amend and reenact R.S. 14:286(D), R.S. 40:34(B)(1)(a)(viii), (h)(v), (i), and (j), and R.S.  
3 44:4.1(B)(26), to enact Chapter 1-C of Code Title IV of Code Book III of Title 9 of  
4 the Louisiana Revised Statutes of 1950, comprised of R.S. 9:2718 through 2720.15,  
5 R.S. 14:286(E), and Part VII of Chapter 2 of Title 40 of the Louisiana Revised  
6 Statutes of 1950, comprised of R.S. 40:93 through 97, and to repeal R.S. 9:2713,  
7 relative to gestational carriers; to provide for amendments to birth certificates; to  
8 provide for definitions relative to gestational carrier contracts; to provide for genetic  
9 gestational carrier contracts; to provide for the enforceability of gestational carrier  
10 contracts; to provide for the parties to a gestational carrier contract; to provide for  
11 contractual requirements for a gestational carrier contract; to provide for a  
12 proceeding to approve a gestational carrier contract; to provide for the check of the  
13 criminal records of the parties to a gestational carrier contract; to provide for an  
14 order preceding embryo transfer relative to a gestational carrier contract; to provide  
15 for matters relative to multiple attempts at in utero embryo transfer; to provide for  
16 confidentiality of the proceedings relative to a gestational carrier contract; to  
17 provide for continuing and exclusive jurisdiction to the proceedings relative to a  
18 gestational carrier contract; to provide for the termination of a gestational carrier  
19 contract by notice; to provide for remedies for the failure to perform under a  
20 gestational carrier contract; to provide for the termination of a gestational carrier

1 contract and for the effects of divorce, nullity, and death on a gestational carrier  
2 contract; to provide for the effect of a subsequent marriage of the gestational mother  
3 on a gestational carrier contract; to provide for a post-birth order; to provide for  
4 DNA testing when the child is alleged not to be the child of the intended parents; to  
5 provide for time limitations and finality; to prohibit certain acts relative to a  
6 gestational carrier contract occurring on or after the effective date; to provide for  
7 data collection; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

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

12 CHAPTER 1-C. GESTATIONAL CARRIER CONTRACTS

13 PART I. DEFINITIONS

14 §2718. Definition of terms

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

18 (1) "Compensation" means a payment of money, objects, services, or  
19 anything else having monetary value. Compensation shall not include  
20 reimbursement of actual expenses, as provided for in R.S. 9:2720.5(B)(3), to the  
21 gestational mother or payment for goods or services incurred by the intended parents  
22 as a result of the pregnancy and that would not have been incurred but for the  
23 pregnancy.

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

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

1           (4) "Gestational carrier" means the process by which a woman attempts to  
2           carry and give birth to a child born as a result of in utero transfer of a human embryo  
3           who has no genetic contribution from the gestational mother.

4           (5) "Gestational mother" means a woman who agrees to engage in a  
5           gestational carrier.

6           (6) "In utero embryo transfer" means the medical procedure whereby the  
7           genetic mother's egg is fertilized with the sperm of the genetic father, with the  
8           resulting embryo transferred into the uterus of the gestational mother.

9           (7) "Intended parents" means a man and a woman who are married to each  
10          other in accordance with Louisiana law who contribute their gametes and who enter  
11          into an enforceable gestational carrier contract, as defined in this Chapter, with a  
12          gestational mother pursuant to which they will be the legal parents of the child  
13          resulting from that assisted reproduction.

#### 14                   PART II. GENETIC GESTATIONAL CARRIER

##### 15           §2719. Contract for a genetic gestational carrier; nullity

16           A contract for a genetic gestational carrier shall be absolutely null.

#### 17                   PART III. GESTATIONAL CARRIER

##### 18           §2720. Enforceability of gestational carrier contract

19           A. In accordance with the requirements of this Part, an agreement to be  
20           known as a gestational carrier contract is enforceable only if it is in writing and  
21           signed by the gestational mother, her spouse if she is married, and both of the  
22           intended parents.

23           B. A gestational carrier contract is enforceable only if approved by a court  
24           in advance of in utero embryo transfer, and is in accordance with all of the  
25           requirements of this Part.

26           C. No person shall enter into a gestational carrier contract for compensation  
27           as defined in R.S. 9:2718 or that is not in compliance with all of the requirements of  
28           this Part. Any such contract executed in the state of Louisiana or any other state

1        shall be absolutely null and unenforceable in the state of Louisiana as contrary to  
2        public policy.

3                D. No person shall enter into a gestational carrier contract that requires the  
4        gestational mother to consent to terminate a pregnancy resulting from in utero  
5        embryo transfer for any reason, including a prenatal diagnosis of an actual or  
6        potential disability, impairment, genetic variation, or any other health condition or  
7        a discrimination based on gender, or for the purposes of the reduction of multiple  
8        fetuses. Any such provision in a contract executed in the state of Louisiana or any  
9        other state shall be absolutely null and unenforceable in the state of Louisiana as  
10       contrary to public policy.

11       §2720.1. Parties to a gestational carrier contract

12                A gestational mother shall, at the time the gestational carrier contract is  
13        executed:

14                (1) Be at least twenty-five years of age, and no older than thirty-five years  
15        of age.

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

17       §2720.2. Contractual requirements

18                A. In an enforceable gestational carrier contract, the gestational mother shall  
19        do all of the following:

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

22                (2) Agree to reasonable medical evaluation and treatment during the term of  
23        the pregnancy, to adhere to reasonable medical instructions about prenatal health,  
24        and to execute medical records releases under R.S. 40:1165.1 in favor of the intended  
25        parents.

26                (3) Certify that prior to executing the gestational carrier contract she has  
27        undergone at least two counseling sessions, separated by at least thirty days, with a  
28        licensed clinical social worker, licensed psychologist, medical psychologist, licensed  
29        psychiatrist, or licensed counselor, to discuss the proposed gestational carrier.

1           (4) Certify, along with her spouse if she is married, that she will relinquish  
2           all rights and duties as the parents of a child born as a result of in utero embryo  
3           transfer.

4           B. In an enforceable gestational carrier contract, the intended parents shall  
5           be a man and woman who are married to each other in accordance with Louisiana  
6           law and shall certify in writing that they do all of the following:

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

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

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

14          C. The gestational carrier contract shall include a preliminary estimate of  
15          anticipated expenses and their allocation in accordance with R.S. 9:2720.5.  
16          §2720.3. Proceeding to approve gestational carrier contract

17          A. Prior to in utero embryo transfer, the intended parents or the gestational  
18          mother and her husband, if she is married, may initiate a summary proceeding in the  
19          court exercising jurisdiction over the adoption of minors where the intended parents  
20          or the gestational mother reside, seeking to have the court approve a gestational  
21          carrier contract.

22          B. A proceeding to approve a gestational carrier contract shall be maintained  
23          only if all of the following occur:

24          (1) The gestational mother and each of the intended parents have been  
25          domiciled in this state for at least one hundred eighty days.

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

28          (3) A copy of the proposed gestational carrier contract is attached to the  
29          motion.

1           (4) An independent board certified physician in obstetrics and gynecology  
2           or in reproductive endocrinology, who has medically treated the intended mother  
3           over a period of time such that the physician is competent to reach medical  
4           conclusions about the intended mother's medical condition and submits a signed  
5           affidavit certifying that in utero embryo transfer with a gestational mother is  
6           medically necessary to assist in reproduction.

7           (5) For purposes of this Section, "medically necessary" means that the  
8           intended mother has been diagnosed to be infertile, or to have a physical condition  
9           such that a pregnancy would create serious risk of death or substantial and  
10          irreversible impairment of a major bodily function beyond the risk customary to  
11          pregnancy and child birth.

12          §2720.4. Institution of records check

13           A. Upon the initiation of the summary proceeding, the court shall do all of  
14          the following:

15           (1) Order and be entitled to the criminal history record and identification  
16          files of the Louisiana Bureau of Criminal Identification and Information on each of  
17          the intended parents and the gestational mother and her spouse, if she is married, as  
18          a means of performing background checks on those individuals. The bureau shall,  
19          upon request and after receipt of fingerprint cards and other identifying information  
20          from the court, make available to the court information contained in the bureau's  
21          criminal history record and identification files, which pertains to each of the intended  
22          parents and the gestational mother and her spouse, if she is married. In addition, in  
23          order to determine an applicant's suitability, the fingerprints shall be forwarded by  
24          the bureau to the Federal Bureau of Investigation for a national criminal history  
25          record check. The bureau shall charge a processing fee as provided in R.S.  
26          15:587(B)(1).

27           (2) Order that the Department of Children and Family Services conduct a  
28          records check for validated complaints of child abuse or neglect in this or any other

1 state in which either of the intended parents and the gestational mother and her  
2 spouse, if she is married, has been domiciled since becoming a major.

3 (3) Order that the judicial administrator's office of the Louisiana Supreme  
4 Court conduct a records check for court orders entered into the Louisiana Protective  
5 Order Registry involving each of the intended parents and the gestational mother and  
6 her spouse, if she is married.

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

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

15 §2720.5. Order Preceding Embryo Transfer

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

22 B. The court shall issue an Order Preceding Embryo Transfer upon finding  
23 that all of the following have occurred:

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

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

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

5           (a) Actual medical expenses, including hospital, testing, nursing, midwifery,  
6           pharmaceutical, travel, or other similar expenses, incurred by the gestational mother  
7           for prenatal care and those medical and hospital expenses incurred incident to the  
8           birth.

9           (b) Actual expenses incurred for mental health counseling services provided  
10          to the gestational mother prior to the birth and up to six months after birth.

11          (c) Actual lost wages of the gestational mother, not covered under a  
12          disability insurance policy, when bed rest has been prescribed for the gestational  
13          mother for some maternal or fetal complication of pregnancy and the gestational  
14          mother, who is employed, is unable to work during the prescribed period of bed rest.

15          (d) Actual travel costs related to the pregnancy and delivery, court costs, and  
16          attorney fees incurred by the gestational mother.

17          (e) Payment of a judicially sanctioned settlement or judgment rendered in  
18          favor of the gestational mother or her heirs as a result of her death, loss of  
19          reproductive organs or capability, or any other health complication caused by the in  
20          utero embryo transfer, pregnancy or resulting childbirth, miscarriage, or termination  
21          of pregnancy.

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

23          §2720.6. Multiple embryo transfer attempts

24          If there are multiple attempts at in utero embryo transfer, the gestational  
25          carrier contract and the Order Preceding Embryo Transfer shall continue in full force  
26          and effect in accordance with the parties' agreement until terminated under R.S.  
27          9:2720.9 or 2720.11, or until a live birth occurs pursuant to the gestational carrier  
28          contract.



1        §2720.7. Confidentiality

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

10       §2720.8. Continuing and exclusive jurisdiction

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

15       §2720.9. Termination of contract by notice

16               A. Before each in utero embryo transfer, the gestational mother or either of  
17       the intended parents may terminate the gestational carrier contract by filing a motion  
18       with the court giving notice of termination and serving all other parties with the  
19       motion. Upon filing of the motion, the court shall issue an order vacating the Order  
20       Preceding Embryo Transfer.

21               B. Neither a gestational mother nor her spouse, if she is married, is liable to  
22       the intended parents for terminating a gestational carrier contract pursuant to this  
23       Section.

24               C. Absent timely notice of termination by an intended parent or the  
25       gestational mother, no court shall terminate an enforceable gestational carrier  
26       contract after issuance of a valid Order Preceding Embryo Transfer except for good  
27       cause shown after a hearing. No court shall terminate a gestational carrier contract  
28       after a successful in utero embryo transfer.

1        §2720.10. Remedies

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

6        §2720.11. Termination of contract and effects of divorce, nullity, and death

7                A judgment of divorce or judicial declaration of nullity of a marriage between  
8        the intended parents, entered before in utero embryo transfer, terminates the  
9        gestational carrier contract. Upon the filing of a motion notifying the court of the  
10       judgment of divorce or declaration of nullity, the court shall issue an order vacating  
11       the Order Preceding Embryo Transfer. If an intended parent dies before in utero  
12       embryo transfer, the deceased individual is not a parent of the resulting child unless  
13       the child was born within three years of the death of the decedent and the deceased  
14       agreed in writing that if the in utero embryo transfer were to occur after death, the  
15       deceased individual would be a parent of the child and that the child would have all  
16       rights, including the capacity to inherit from the decedent.

17       §2720.12. Effect of subsequent marriage

18                After the issuance of an Order Preceding Embryo Transfer, subsequent  
19       marriage of the gestational mother does not affect the validity of a gestational carrier  
20       contract. The consent of the spouse is not required, and he is not a presumed father  
21       of the resulting child, notwithstanding any legal presumption to the contrary.

22       §2720.13. Post-Birth Order

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

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

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

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

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

12                   (3) Directing that a new birth certificate be created and that the intended  
13                   parents be listed on the birth certificate as the parents of the child pursuant to R.S.  
14                   40:32 et seq., and that the original birth certificate be sealed and subject to release  
15                   or inspection only upon application to the court for good cause shown.

16           §2720.14. DNA testing

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

25           §2720.15. Finality; time limitations

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



1 (i) Maiden name of mother; however, if the child was born of a surrogate  
 2 birth parent ~~who is related by blood or affinity to a biological parent, as a result of~~  
 3 an enforceable gestational carrier contract, as provided in R.S. 9:2720, the maiden  
 4 name of the biological parent mother ~~who is proven to be the mother by DNA testing~~  
 5 shall be listed as the mother ~~and the name of the surrogate birth parent is not~~  
 6 required.

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

11 \* \* \*

12 Section 3. R.S. 14:286(D) is hereby amended and reenacted and R.S. 14:286(E) is  
 13 hereby enacted to read as follows:

14 §286. Sale of minor children and other prohibited activities; penalties

15 \* \* \*

16 D.(1) It shall be unlawful for any person to enter into, induce, arrange,  
 17 procure, knowingly advertise for, or otherwise assist in a gestational carrier contract,  
 18 whether written or unwritten, that is not in compliance with the requirements  
 19 provided for in R.S. 9:2718, et seq.

20 (2) No person who is a party to, or acting on behalf of the parties to a  
 21 gestational carrier contract shall make or agree to make any disbursements in  
 22 connection with the gestational carrier contract other than the following:

23 (a) Payment of actual medical expenses, including hospital, testing, nursing,  
 24 midwifery, pharmaceutical, travel, or other similar expenses, incurred by the  
 25 gestational mother for prenatal care and those medical and hospital expenses  
 26 incurred incident to birth.

27 (b) Payment of actual expenses incurred for mental health counseling  
 28 services provided to the gestational mother prior to the birth and up to six months  
 29 after birth.

1           (c) Payment of actual lost wages of the gestational mother, not covered under  
2           a disability insurance policy, when bed rest has been prescribed for the gestational  
3           mother for some maternal or fetal complication of pregnancy and the gestational  
4           mother, who is employed, is unable to work during the prescribed period of bed rest.

5           (d) Payment of actual travel costs related to the pregnancy and delivery,  
6           court costs, and attorney fees incurred by the gestational mother.

7           (3) It shall be unlawful for any person to enter into, induce, arrange, procure,  
8           knowingly advertise for, or otherwise assist in an agreement for genetic gestational  
9           carrier, with or without compensation, whether written or unwritten. For purposes  
10           of this Section, "genetic gestational carrier" and "compensation" shall have the same  
11           meaning as defined in R.S. 9:2718.

12           (4) It shall be unlawful for any person to give or offer payment of money,  
13           objects, services, or anything of monetary value to induce any gestational mother,  
14           whether or not she is party to an enforceable or unenforceable agreement for genetic  
15           gestational carrier or gestational carrier contract, to consent to an abortion as defined  
16           in R.S. 40:1061.9.

17           ~~D.E.~~ A person convicted of violating any of the provisions of this Section  
18           shall be punished by a fine not to exceed fifty thousand dollars or imprisonment with  
19           or without hard labor for not more than ten years, or both.

20           Section 4. Part VII of Chapter 2 of Title 40 of the Louisiana Revised Statutes of  
21           1950, comprised of R.S. 40:93 through 97, is hereby enacted to read as follows:

22           PART VII. GESTATIONAL CARRIER DATA COLLECTION

23           §93. Gestational carrier data collection; purpose

24           The purpose of this Part shall be the compilation of relevant maternal life and  
25           health factors and data concerning gestational carrier to the extent that it is  
26           authorized by law.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1        §94. Forms for collection of data

2                The state registrar shall prescribe forms for the collection of information and  
3        statistics with respect to enforceable gestational carrier contracts. Such forms shall  
4        require but not be limited to the following information:

5                (1) The age, marital status, and state and parish of domicile of the gestational  
6        mother.

7                (2) The parish in which the in utero embryo transfer took place.

8                (3) The full name and address of the physician or physicians performing or  
9        attending to the following phases of the gestational carrier:

10               (a) In utero embryo transfer.

11               (b) Prenatal and postnatal care.

12               (c) Birth.

13               (d) Miscarriage.

14               (e) Induced abortion.

15               (4) The age, marital status, and state and parish of domicile of the intended  
16        mother and father.

17               (5) The medical reason necessitating the gestational carrier.

18               (6) The medical procedures employed in the birth, miscarriage, or  
19        termination of pregnancy for medical emergency as provided by R.S. 40:1061.23.

20               (7) The length and weight of the child born as a result of gestational carrier.

21               (8) The length and weight of an unborn child miscarried after the initiation  
22        of a gestational carrier.

23               (9) Other significant conditions or health complications of the unborn child  
24        and gestational mother.

25               (10) The results of pathological examinations of any unborn child who died  
26        as a result of pregnancy complications or termination incidental to a gestational  
27        carrier.

1 §95. Completion of forms; filing with vital records registry

2 The physician performing the in utero embryo transfer or termination of the  
3 pregnancy by birth, miscarriage, or abortion shall provide the information required  
4 by the provisions of R.S. 40:94. Such completed forms shall be transmitted by the  
5 physician to the vital records registry within fifteen days of the performance of the  
6 medical procedures.

7 §96. Failure to complete form; penalty

8 The Department of Health and Hospitals shall promulgate by rule the penalty  
9 for the failure to complete the forms as provided in R.S. 40:95.

10 §97. Confidentiality

11 The vital statistics records required by this Part and the identities of the  
12 parties to a gestational carrier contract shall be confidential and shall not be subject  
13 to disclosure, release, or inspection except upon application to a competent court and  
14 in conformity with the applicable requirements of confidentiality applicable to  
15 adoptions in the Children's Code. The reporting of the data for public health  
16 purposes shall redact any identifying information and any public report shall indicate  
17 patient numbers as assigned pursuant to rules promulgated by the Department of  
18 Health and Hospitals.

19 Section 5. R.S. 44:4.1(B)(26) is hereby amended and reenacted to read as follows:

20 §4.1. Exceptions

21 \* \* \*

22 B. The legislature further recognizes that there exist exceptions, exemptions,  
23 and limitations to the laws pertaining to public records throughout the revised  
24 statutes and codes of this state. Therefore, the following exceptions, exemptions, and  
25 limitations are hereby continued in effect by incorporation into this Chapter by  
26 citation:

27 \* \* \*

28 (26) R.S. 40:3.1, 31.14, 31.27, 39.1, 41, 73, 94, 95, 526, 528, 1007, 1098.8,  
29 1232.7, 1299.6, 1299.35.10, 1299.44, 1299.85, 1299.87, 1300.14, 1300.54,



1 1379.1.1(D), 1379.3, 2009.8, 2009.14, 2010.5, 2017.9, 2018, 2019, 2020, 2106,  
2 2109.1, 2138, 2532, 2845.1

3 \* \* \*

4 Section 6. R.S. 9:2713 is hereby repealed in its entirety.

5 Section 7. The provisions of Section 3 of this Act shall not apply to contracts entered  
6 into prior to the effective date of this Act.

7 Section 8. The Louisiana State Law Institute is hereby directed to prepare comments  
8 to the provisions of this Act.

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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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HB 1102 Engrossed

2016 Regular Session

Bishop

**Abstract:** Prohibits genetic gestational carrier contracts and certain gestational carrier contracts, provides for the enforceability of gestational carrier contracts, and provides for data collection of certain information relative to gestational carrier contracts.

Present law provides that a contract for gestational carrier 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. 9:2719) repeals present law and provides that a contract for a genetic gestational carrier shall be absolutely null.

Proposed law (R.S. 9:2720) provides that a gestational carrier contract is only enforceable if approved by a court before in utero implantation. Further prohibits a gestational carrier contract for compensation and prohibits a gestational carrier 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) requires 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 carrier contract is executed.

Proposed law (R.S. 9:2720.2) requires the gestational mother to do all of the following in a gestational carrier 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 carrier is married, her spouse must also relinquish all rights.

Proposed law further requires the intended parents to do all of the following in a gestational carrier contract:

- (1) Acknowledge that the gestational mother 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 anticipated expenses.

Proposed law (R.S. 9:2720.3) allows the parties to the gestational carrier contract to seek court approval of a gestational carrier 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) requires 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) requires the court to set a hearing within 60 days of the initiation of a proceeding to approve a gestational carrier contract, and requires the court to issue an Order Preceding Embryo Transfer approving the gestational carrier contract upon finding all of the following:

- (1) All requirements of proposed law regarding gestational carrier 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 health care and legal expenses associated with the gestational carrier 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) provides that the gestational carrier 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) requires all proceedings and court records relative to the gestational carrier 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 carrier contract for matters relative to a gestational carrier contract.

Proposed law (R.S. 9:2720.9) allows the intended parents or the gestational mother to terminate a gestational carrier contract before in utero implantation by filing notice of termination with the court and serving all parties. Further provides that neither a gestational mother, nor her spouse, is liable to the intended parents for terminating a gestational carrier contract. Also prohibits the court from terminating a gestational carrier 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) provides for remedies for the failure to perform under a gestational carrier contract.

Proposed law (R.S. 9:2720.11) requires 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. 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 mother has no effect on the validity of a gestational carrier contract.

Proposed law (R.S. 9:2720.13) requires 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. 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 gestational carrier 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 gestational carrier birth parent to one who "is related by blood or affinity to a biological parent" and makes 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 anything of value, or paying for the procurement of an act of voluntary surrender for the adoption of a child.

Proposed law retains present law and adds any act that is not in compliance with the requirements for gestational carrier contracts under R.S. 9:2718, et seq., or any act by a person assisting in a genetic gestational carrier 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 further prohibits any person from offering money or anything of value to a woman to consent to an abortion, whether or not she is a party to an enforceable or unenforceable agreement for genetic or gestational carrying. Further provides for application to those contracts already entered into on the effective date of this Act.

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

(Amends 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); Adds R.S. 9:2718-2720.15, R.S. 14:286(E), and R.S. 40:93-97; Repeals R.S. 9:2713)