

2026 Regular Session

HOUSE BILL NO. 1141

BY REPRESENTATIVE TERRY LANDRY

HEALTH: Provides for comprehensive regulation relative to gestational carrier agreements

1 AN ACT

2 To amend and reenact Chapter 1-C of Code Title IV of Code Book III of Title 9 of the
3 Louisiana Revised Statutes of 1950, comprised of R.S. 9:2718 through 2720.15, and
4 R.S. 44:4.1(B)(27) and to enact R.S. 9:2720.16 through 2720.23, R.S. 40:97 and
5 Chapter 2-B of Title 40 of the Louisiana Revised Statutes of 1950, to be comprised
6 of R.S. 40:101 through 127, relative to gestational carriers; to provide for the
7 licensing and regulation of gestational carrier agencies and programs; to provide for
8 definitions; to establish eligibility requirements for parties to gestational carrier
9 agreements; to provide for the content, execution, and enforceability of gestational
10 carrier agreements; to establish procedures for administrative pre-parentage
11 certification and judicial parentage determinations; to require licensure of gestational
12 carrier agencies; to create the Louisiana Gestational Carrier Agency Regulatory
13 Program within the Louisiana Department of Health; to mandate escrow, financial
14 controls, and disclosure requirements; to establish screening, counseling,
15 independent-counsel, insurance-verification, recordkeeping, and enforcement
16 standards; to authorize civil, administrative, and criminal penalties; to provide a
17 private right of action; to license gestational carrier matching and coordinating
18 entities; to provide for documentation of gestational carrier agreements; to establish
19 a gestational carrier registry; to provide for fees; to establish a civil penalty; to create
20 a public records exception; and to provide for related matters.

1 Be it enacted by the Legislature of Louisiana:

2 Section 1. Section 2 of this Act amends and reenacts Chapter 1-C of Code Title IV
3 of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950, comprised of R.S.
4 9:2718 through 2720.15 in its entirety. Due to the length of this Chapter, present law is not
5 included as overstruck text.

6 Section 2. Chapter 1-C of Code Title IV of Code Book III of Title 9 of the Louisiana
7 Revised Statutes of 1950, comprised of R.S. 9:2718 through 2720.15, is hereby amended and
8 reenacted and R.S. 9:2720.16 through 2720.23 are hereby enacted to read as follows:

9 CHAPTER 1-C. LOUISIANA FAMILY BUILDING AND MATERNAL HEALTH

10 PROTECTION ACT

11 PART I. GENERAL PROVISIONS

12 §2718. Short title

13 This Chapter shall be known and may be cited as the "Louisiana Family
14 Building and Maternal Health Protection Act", "Family Building and Maternal
15 Health Act", or "FBMHA".

16 §2719. Legislative findings and purpose

17 A. The Legislature of Louisiana finds that advances in assisted reproductive
18 technology have made gestational carrier arrangements a medically viable path to
19 parenthood for individuals and couples who are unable to conceive or carry a
20 pregnancy to term and the existing statutory framework in this state does not
21 adequately address the legal complexities arising from gestational carrier
22 arrangements which leaves intended parents, gestational carriers, and children
23 without clear and predictable legal protections.

24 B. It is the policy of this state to respect the reproductive autonomy of
25 individuals and to enforce voluntarily and knowingly executed gestational carrier
26 agreements that comply with the requirements of this Chapter and establishing
27 parentage through a clear statutory framework promotes the best interests of children
28 born through gestational carrier arrangements by ensuring certainty of legal
29 parentage from the moment of birth.

1 C. This state has a compelling interest in protecting all parties to a
2 gestational carrier arrangement, particularly the gestational carrier, by requiring
3 independent legal counsel, medical evaluation, and psychological consultation before
4 any agreement is enforceable.

5 D. This Chapter operates within the framework of Louisiana's Human
6 Embryo Statutes which define an in vitro fertilized human ovum as a juridical person
7 with specified rights and protections. As the Fourth Circuit recognized in *Loeb v.*
8 *Vergara*, 313 So. 3d 346 (La. App. 4th Cir. 2021), an in vitro fertilized ovum is not
9 classified as a "child" for purposes of the Uniform Child Custody Jurisdiction and
10 Enforcement Act . Therefore, the legislature finds that the recognition of gestational
11 carrier agreements and compensated arrangements pursuant to this Chapter is framed
12 as consistent with and not in derogation of this state's policy of protecting embryos.

13 E. Nothing in this Chapter is intended to commodify embryos, gametes, or
14 children. Compensation and agency involvement are regulated to protect all
15 participants, promote transparency, and deter exploitation, while honoring the
16 juridical protections the legislature has separately accorded to in vitro fertilized
17 human ovum.

18 F. State law provides that the state registrar shall collect data on enforceable
19 gestational carrier contracts, including characteristics of the carrier and intended
20 parents, treating physicians, medical procedures performed, and outcomes. That
21 existing data collection infrastructure is a valuable foundation for the expanded
22 reporting requirements of this Chapter and Chapter 2-B of Title 40 of the Louisiana
23 Revised Statutes of 1950, R.S. 40:101 through 127. The legislature intends that the
24 reporting obligations in those Chapters shall build upon and modernize the
25 framework of R.S. 40:94 to cover compensated arrangements, agency involvement,
26 and outcomes data sufficient to support ongoing legislative oversight and evidence
27 based policy development.

28 G. The Legislature of Louisiana also finds that regulation of compensated
29 gestational carrier arrangements through a transparent, safeguarded market

1 framework is the most effective means of achieving the state's interests in protecting
2 gestational carriers from exploitation, ensuring informed consent and independent
3 counsel, maintaining accurate vital records and health data, and securing the
4 parentage rights of children. The legislature finds that permitting compensation and
5 recognizing agency involvement, subject to the conditions of this Chapter and
6 Chapter 2-B of Title 40, R.S. 40:101 through 127, advances those interests and is not
7 inconsistent with Louisiana's embryo-protective public policy.

8 H. Jurisprudence of this state recognizes broad legislative authority to vest
9 regulatory, licensing, standards-setting, and quasi-judicial functions in executive
10 agencies provided that district courts retain original jurisdiction over civil matters
11 historically adjudicated by the judiciary. The Louisiana Supreme Court held in
12 *Wooley v. State Farm Fire & Casualty Insurance Co.*, 893 So. 2d 746 (La. 2005),
13 that approval of insurance policy forms by the Commissioner of Insurance is a
14 regulatory determination in the executive branch and not a "civil matter" within
15 Article V, Section 16(A) of the Constitution of Louisiana and that administrative
16 law judges exercising quasi-judicial authority in that context do not
17 unconstitutionally exercise judicial power. That same principle extends to permitting
18 decisions under environmental statutes. The legislature accordingly finds that the
19 assignment of licensing, screening compliance, escrow oversight, disclosure review,
20 and enforcement authority to the Louisiana Department of Health pursuant to
21 Chapter 2-B of Title 40, R.S. 40:101 through 127, is a regulatory and executive
22 function historically associated with professional licensing and consumer protection
23 agencies not a civil matter historically adjudicated by district courts and is
24 constitutionally permissible under Article V, Section 16(A) of the Constitution of
25 Louisiana and the separation-of-powers doctrine.

26 I. The Louisiana Department of Health, through its Health Standards Section
27 and its statutory authority pursuant to R.S. 40:2140 et seq. already exercises the type
28 of licensing, standards-setting, inspection, and record-keeping authority
29 contemplated for gestational carrier agency regulation. The Louisiana Department

1 of Health licenses health facilities and agencies, certifies providers for Medicare and
2 Medicaid participation, conducts surveys and inspections, and conditions license
3 renewal on compliance with data reporting requirements. The legislature therefore
4 finds that vesting gestational carrier agency regulation in the Louisiana Department
5 of Health through Chapter 2-B of Title 40, R.S. 40:101 through 127, is consistent
6 with the Louisiana Department of Health's existing mission, expertise, and statutory
7 authority, and requires no new institutional infrastructure beyond the creation of a
8 licensing category and associated rulemaking in accordance with R.S. 49:950 et seq.

9 J. The purpose of this Chapter is to:

10 (1) Provide a comprehensive statutory framework for gestational carrier
11 agreements, framed as consistent with Louisiana's Human Embryo Statutes and the
12 juridical protections those statutes accord to in vitro fertilized human ovum as
13 construed in *Loeb v. Vergara*, 313 So. 3d 346 (La. App. 4th Cir. 2021).

14 (2) Establish clear eligibility criteria, procedural safeguards, and judicial
15 processes for the determination of parentage while preserving the district court's
16 original jurisdiction over parentage as a civil matter under Article V, Section 16(A)
17 of the Constitution of Louisiana.

18 (3) Align state law with contemporary medical practice and the legal
19 standards recognized in other jurisdictions of the United States.

20 (4) Expand and modernize the data reporting infrastructure of R.S. 40:94 to
21 cover compensated arrangements and agency involvement, in furtherance of
22 legislative oversight and evidence based policy

23 (5) Recognize and regulate gestational carrier agencies as a licensed category
24 of health related intermediaries pursuant to the authority of the Louisiana
25 Department of Health, consistent with *Wooley v. State Farm*, 893 So. 2d 746 (La.
26 2005), and the legislature's broad authority to delegate regulatory and quasi-judicial
27 functions to executive agencies in accordance with R.S. 49:950 et seq.

28 (6) Create a regulated, transparent market for gestational carrier
29 arrangements in which compensation and agency involvement are lawful, subject to

1 the substantive and procedural conditions of this Chapter and Chapter 2-B of Title
2 40, R.S. 40:101 through 127, to protect all participants, especially gestational
3 carriers, while honoring Louisiana's public policy to protect embryos.

4 §2720. Definitions

5 As used in this Chapter:

6 (1) "Assisted reproduction" means a method of causing pregnancy other than
7 sexual intercourse including but not limited to intrauterine insemination, donation
8 of eggs or embryos, in vitro fertilization, embryo transfer, and intracytoplasmic
9 sperm injection.

10 (2) "Compensation" means payment of any valuable consideration in excess
11 of reimbursement of reasonable expenses directly incurred in connection with a
12 gestational carrier agreement.

13 (3) "Donor" means an individual who contributes gametes for use in assisted
14 reproduction and who does not intend to be a parent of any resulting child.

15 (4) "Embryo" means a fertilized egg at any stage of development prior to
16 birth.

17 (5) "Gamete" means a sperm or an egg.

18 (6) "Gestational carrier" means a woman, who is not an intended parent, who
19 agrees to become pregnant through assisted reproduction using an embryo not
20 genetically related to her, and who relinquishes any claim to parentage of the
21 resulting child in favor of the intended parent or intended parents.

22 (7) "Gestational carrier agreement" or "agreement" means a written contract
23 satisfying the requirements of this Chapter between a gestational carrier, her spouse
24 if any, and the intended parent. In an arrangement facilitated by an agency, the
25 operative instrument is an agency-coordinated gestational carrier agreement as
26 defined in this Section. The agency is not a signatory party to the gestational carrier
27 agreement or agency-coordinated gestational carrier agreement and may not be
28 designated a required party. The agency's role is limited to the administrative
29 functions specified in this Section.

1 (8) "Gestational carrier's spouse" means the individual, if any, who is legally
2 married to the gestational carrier at the time the agreement is executed.

3 (9) "Intended parent" means an individual, married or unmarried who
4 manifests intent to be legally bound as a parent of a child conceived through a
5 gestational carrier arrangement pursuant to a compliant agreement pursuant to this
6 Chapter.

7 (10) "Licensed healthcare provider" means a physician, surgeon, or advanced
8 practice registered nurse licensed under the laws of this state or any other state who
9 provides medical services related to assisted reproduction.

10 (11) "Licensed mental health professional" means a psychiatrist,
11 psychologist, licensed clinical social worker, licensed professional counselor, or
12 licensed marriage and family therapist licensed under the laws of this state or any
13 other state.

14 (12) "Parentage order" means a court order establishing the legal relationship
15 between a child and the intended parent.

16 (13) "Reasonable expenses" means verifiable, out-of-pocket expenses
17 directly attributable to the gestational carrier arrangement including medical, legal,
18 psychological, travel, lodging, lost wages due to pregnancy-related medical
19 necessity, childcare during medical appointments, and maternity clothing costs.

20 (14) "Gestational carrier agency" means any partnership, limited liability
21 company, corporation, nonprofit organization, professional association, or other legal
22 entity that recruits, solicits, matches, coordinates, or facilitates gestational carrier
23 arrangements between gestational carriers and intended parents or that collects,
24 holds, manages, or disburses funds in connection with such arrangements. The term
25 has the same meaning as in R.S. 40:103. A natural person acting as an individual
26 and not through or on behalf of a partnership, limited liability company, corporation,
27 or other legal entity is not a gestational carrier agency. An attorney acting
28 exclusively as legal counsel, a licensed healthcare provider acting exclusively in a
29 clinical capacity, and a licensed mental health professional acting exclusively in a

1 therapeutic or evaluative capacity are not gestational carrier agencies by reason of
2 those activities.

3 (15) "Parents-agency enrollment agreement" means a written contract
4 between a licensed gestational carrier agency and the intended parent or intended
5 parents executed before or concurrently with matching that includes all of the
6 following information:

7 (a) The scope of the agency's enrollment, screening, and matching services.

8 (b) The agency's complete fee schedule, refund policy, and payment
9 milestones.

10 (c) The escrow arrangements required by R.S. 40:106 including the
11 preexecution counseling fund required by R.S. 9:2720.2(D)(1).

12 (d) All mandated safeguards applicable to intended parents including the
13 disclosure requirements of R.S. 40:2199.10, insurance obligations pursuant to R.S.
14 40:114, counseling requirements pursuant to R.S. 9:2720.2(C), and independent
15 counsel obligations pursuant to R.S. 40:112.

16 (e)(i) The agency's obligations pursuant to Chapter 2-B of Title 40, R.S.
17 40:101 through 127.

18 (ii) The parents-agency enrollment agreement is governed by this Chapter
19 and R.S. 40:101 et seq.

20 (f) The gestational carrier is not a party to the parents-agency enrollment
21 agreement and no obligation of the gestational carrier may be created in that
22 instrument.

23 (16) "Carrier-agency engagement agreement" means a written contract
24 between a licensed gestational carrier agency and a gestational carrier executed
25 before or concurrently with matching that includes all of the following information:

26 (a) The gestational carrier's eligibility criteria and the agency's screening
27 obligations pursuant to R.S. 9:2720.5 and R.S. 40:111 including verification of the
28 medical clearance required by R.S. 9:2720.1.

1 (b) A pre-set compensation and expense grid that specifies the base
2 compensation range and all expense and reimbursement categories to be negotiated
3 in accordance with R.S. 9:2720.13. The grid shall be incorporated by reference into
4 any agency-coordinated gestational carrier agreement executed with matched
5 intended parents.

6 (c) Behavioral expectations during the arrangement including prenatal care
7 compliance and substance-avoidance obligations consistent with R.S. 9:2720.8.

8 (d) Expectations consistent with the gestational carrier's absolute medical
9 decision-making authority pursuant to R.S. 9:2720.8 and the termination prohibition
10 of R.S. 9:2720.9.

11 (e) The gestational carrier's agreement to enter an agency-coordinated
12 gestational carrier agreement with any intended parents matched by the agency, on
13 terms consistent with the pre-set grid and all statutory requirements of this Chapter,
14 subject to review by the gestational carrier's independent legal counsel before
15 execution.

16 (f) The agency's counseling cost payment obligations pursuant to R.S.
17 9:2720.2.

18 (g) The gestational carrier's right to withdraw from the matching process at
19 any time before execution of an agency-coordinated gestational carrier agreement
20 without penalty. The carrier-agency engagement agreement is governed by this
21 Chapter and R.S. 40:101 et seq.

22 (h) No provision of the carrier-agency engagement agreement may waive,
23 reduce, or condition any statutory right of the gestational carrier pursuant to this
24 Chapter, and any such provision is void as against public policy.

25 (i) In the event of a conflict between the carrier-agency engagement
26 agreement and an agency-coordinated gestational carrier agreement, the
27 agency-coordinated gestational carrier agreement controls as to all rights and
28 obligations of the gestational carrier with respect to the intended parents.

1 (17) "Agency-coordinated gestational carrier agreement" means the
2 gestational carrier agreement produced, coordinated, and submitted by a licensed
3 gestational carrier agency in connection with an agency-facilitated arrangement,
4 which meets all of the following:

5 (a) Is in the statutory form required by R.S. 9:2723 and satisfies all
6 requirements of this Chapter.

7 (b) Incorporates the compensation and expense grid established in the
8 carrier-agency engagement agreement.

9 (c) Is signed by the intended parent or intended parents, the gestational
10 carrier, and the gestational carrier's spouse, if applicable, as the principal parties.

11 (d) Names the licensed gestational carrier agency only for the limited
12 purposes of fee routing and disbursement pursuant to R.S. 40:106 data reporting to
13 the Louisiana Department of Health, in accordance with R.S. 40:127 and birth
14 notification pursuant to R.S. 9:2720.22.

15 (e) Is subject to independent review by the gestational carrier's own legal
16 counsel before the carrier executes the agreement consistent with R.S. 9:2720.1.

17 (f) Controls over both the parents-agency enrollment agreement and the
18 carrier-agency engagement agreement as to all rights and obligations of the
19 gestational carrier with respect to the intended parents.

20 (g) The agency-coordinated gestational carrier agreement is the operative
21 legal instrument establishing parentage rights and obligations and is not merely a
22 form produced for administrative convenience. The agency is not a signatory party
23 to the agency-coordinated gestational carrier agreement and does not acquire
24 parental, custodial, or guardian rights by reason of coordinating or producing the
25 agreement.

26 (18) "Medically necessary" means that at least one intended parent has been
27 diagnosed as infertile or has a physical condition such that pregnancy would create
28 a serious risk of death or substantial and irreversible impairment of a major bodily
29 function beyond the customary risks of pregnancy and childbirth as determined

1 jointly by two licensed physicians one being a board certified obstetrician
2 gynecologist and one being a board certified reproductive endocrinologist or a
3 physician specializing in fertility medicine. The two physicians shall each
4 independently examine the qualifying intended parent and provide a signed written
5 opinion confirming the diagnosis. One physician shall not satisfy both physician
6 requirements.

7 PART II. ELIGIBILITY REQUIREMENTS

8 §2720.1. Gestational carrier eligibility

9 A. A gestational carrier shall, at the time of execution of the agreement meet
10 the following requirements:

11 (1) Be at least twenty-four years old and not more than forty years old at the
12 time of execution of the agreement.

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

14 (3) Have been evaluated and cleared for pregnancy by a licensed healthcare
15 provider experienced in reproductive medicine which clearance shall be based upon
16 a review of the gestational carrier's complete medical history including:

17 (a) Prior pregnancy and obstetric history, including any complications,
18 losses, or cesarean deliveries.

19 (b) Current and prior physical health conditions including chronic illnesses,
20 surgeries, and medications.

21 (c) Mental health history including any prior diagnoses, treatments,
22 hospitalizations, or conditions that could affect the gestational carrier's capacity to
23 provide informed consent or her ability to carry a pregnancy to term.

24 (d) Substance use history including current or prior use of alcohol, tobacco,
25 controlled substances, or prescription medications not otherwise disclosed.

26 (e) Known genetic conditions or hereditary diseases that may be relevant to
27 the health of the carrier or the pregnancy.

28 (f) Any other condition the licensed healthcare provider determines to be
29 clinically relevant. The licensed healthcare provider shall provide a signed written

1 clearance letter confirming that a complete medical history in all applicable
2 categories was reviewed and that the gestational carrier is medically suitable to carry
3 a pregnancy. The clearance letter, which shall not include the gestational carrier's
4 full medical records, shall be affixed to the agreement and retained in the
5 arrangement file pursuant to R.S. 40:115.

6 (4) Have agreed to complete the mandatory counseling sessions required by
7 R.S. 9:2720.2 after execution of the agreement and prior to any embryo transfer
8 procedure, as evidenced by the agreement's inclusion of the counseling obligation
9 required by R.S. 9:2723(B).

10 (5) Have received independent legal advice from an attorney of the
11 gestational carrier's own choosing, not selected or compensated by the intended
12 parent or intended parents, regarding the terms and legal consequences of the
13 agreement.

14 (6) Not be receiving medicaid, supplemental security income, or similar
15 public assistance as a primary source of healthcare coverage unless the agreement
16 provides for independent healthcare coverage throughout the pregnancy and for not
17 less than twelve months postpartum.

18 (7) Not be disqualified on the basis of any familial or genetic relationship to
19 any intended parent subject to the provisions of Subsection C of this Section.

20 B. The gestational carrier's spouse, if any, shall also meet all of the
21 following:

22 (1) Complete the mandatory counseling sessions required by R.S.
23 9:2720.2(B) after execution of the agreement and prior to any embryo transfer
24 procedure.

25 (2) Receive legal advice regarding the agreement from a licensed attorney
26 who may be the same attorney representing the gestational carrier.

27 (3) Execute the gestational carrier agreement.

28 C. A gestational carrier is not disqualified solely because she is related by
29 blood, marriage, or adoption to one or both intended parents. Family members

1 including but not limited to a sister, aunt, cousin, mother, daughter, or other relative
2 of an intended parent may serve as gestational carriers subject to all eligibility
3 requirements of this Chapter and the following additional provisions which are
4 mandatory and shall not be waived by agreement of the parties:

5 (1) The gestational carrier and the intended parent or intended parents shall
6 be represented by independent legal counsel with no familial, financial, or
7 professional relationship to one another. The gestational carrier's attorney shall, in
8 addition to the review required by R.S. 9:2720.1(A)(5), specifically advise the
9 gestational carrier in writing on the heightened potential for family pressure, the
10 long-term relational consequences of serving as a familial gestational carrier, and the
11 gestational carrier's absolute right to withdraw at any time before embryo transfer
12 without legal obligation to any family member. A copy of the attorney's written
13 advice shall be appended to the agreement.

14 (2) In addition to the two mandatory counseling sessions required by R.S.
15 9:2720.2(A), a familial carrier shall complete a third individual counseling session
16 specifically focused on the relational dynamics of the familial arrangement including
17 potential for family pressure, boundary-setting, post-birth relationship expectations,
18 and long-term emotional considerations. The third session shall be conducted by the
19 same licensed mental health professional who conducted the mandatory sessions, or
20 a different licensed mental health professional chosen by the carrier, and shall occur
21 after execution of the agreement and no later than seven days before the
22 commencement of any embryo transfer procedure. A certification of the third
23 session shall be provided in the same form as required by R.S. 9:2720.2(A)(3) and
24 (A)(4) and transmitted to the agency or, in a non-agency arrangement, to both parties'
25 counsel, before the transfer is scheduled.

26 (3) The licensed mental health professional conducting the gestational
27 carrier's counseling sessions shall specifically assess and make a written finding on
28 whether there are any indicators of family pressure, undue influence, or coercion
29 associated with the familial relationship. A finding of indicators of coercion that the

1 licensed mental health professional cannot certify have been resolved shall disqualify
2 the arrangement authorized by this Subsection. The licensed mental health
3 professional's written findings shall be appended to the agreement.

4 (4) Compensation to a familial carrier is lawful pursuant to R.S. 9:2720.13
5 and shall not be reduced, conditioned, or structured differently solely because of the
6 familial relationship. No provision of the agreement may require the carrier to waive
7 or reduce her compensation because of her family relationship to any intended parent
8 and any such provision is void as against public policy.

9 (5) When a licensed gestational carrier agency facilitates a familial
10 arrangement, the agency shall include in the disclosure packet required by R.S.
11 40:101, et seq. that the arrangement is a familial carrier arrangement, the safeguards
12 apply through this Subsection, and the agency has independently confirmed that the
13 gestational carrier's decision to proceed was voluntary and free from coercion. This
14 disclosure shall be signed separately by the gestational carrier and shall be retained
15 in the arrangement file.

16 §2720.2. Mandatory counseling sessions

17 A. No embryo transfer procedure may be commenced in furtherance of the
18 arrangement, unless after execution of the gestational carrier agreement and prior to
19 the commencement of any embryo transfer procedure, the gestational carrier certifies
20 in writing under penalty of perjury that she has undergone at least two counseling
21 sessions with a licensed mental health professional to discuss the gestational carrier
22 arrangement pursuant to all of the following requirements:

23 (1) Both required counseling sessions shall be conducted at least thirty days
24 apart. No embryo transfer procedure shall commence until the second session is
25 completed and certified.

26 (2) Both counseling sessions shall be conducted by a licensed mental health
27 professional who has professional training or experience in third-party reproduction,
28 gestational carrier arrangements, or reproductive psychology and has no financial
29 relationship with, is not employed by, and has not been referred to the gestational

1 carrier by the intended parent or intended parents or any gestational carrier agency
2 involved in the arrangement.

3 (3) The counseling sessions shall address the following topics:

4 (a) The nature, risks, and process of gestational carrier arrangements
5 including medical procedures involved.

6 (b) The legal relationship between the gestational carrier and the intended
7 parent or intended parents and the child including the relinquishment of parental
8 rights.

9 (c) The psychological and emotional effects that may arise during and after
10 the pregnancy including potential attachment to the child and the experience of
11 relinquishment.

12 (d) The gestational carrier's right to make independent medical decisions
13 during the pregnancy including the right to refuse termination of the pregnancy as
14 provided in R.S. 9:2720.9.

15 (e) The gestational carrier's rights with respect to compensation, expenses,
16 and escrow.

17 (f) Any psychological contraindications or risk factors identified during the
18 sessions.

19 (4) The licensed mental health professional shall, upon completion of the
20 two required sessions, prepare and sign a written report that, identify each session
21 by date and duration, confirm that the sessions were conducted at least thirty days
22 apart, confirm that the mandatory topics in Paragraph (A)(3) of this Section were
23 discussed, identify any psychological contraindications or concerns observed, and
24 state that in the professional's clinical judgment, the gestational carrier demonstrated
25 understanding of the arrangement and the absence of any condition impairing her
26 capacity to give free and informed consent. The written report shall be signed by the
27 gestational carrier acknowledging its accuracy and appended to the gestational
28 carrier agreement.

1 (5) The gestational carrier shall execute a written certification in the form
2 pursuant to R.S. 40:111, stating that she has undergone at least two counseling
3 sessions satisfying the requirements of this Section, the dates and the name and
4 license number of the licensed mental health professional for each session, both
5 sessions were conducted at least thirty days apart, the mandatory topics were
6 addressed, and she freely and voluntarily enters into the gestational carrier
7 agreement. This certification shall be appended to the gestational carrier agreement.

8 B. If the gestational carrier has a spouse who is required to execute the
9 gestational carrier agreement pursuant to R.S. 9:2720.1, the spouse shall also
10 undergo at least two counseling sessions at least thirty days apart with a licensed
11 mental health professional satisfying the qualifications of Paragraph (A)(2) of this
12 Section. The sessions shall address the same mandatory topics prescribed in
13 Paragraph (A)(3) of this Section as applicable to the spouse's role in the arrangement.
14 A written report and certification shall be prepared and executed as provided in
15 Paragraphs (A)(4) and (5) of this Section and appended to the gestational carrier
16 agreement.

17 C. No embryo transfer procedure shall commence in furtherance of the
18 arrangement unless, after execution of the gestational carrier agreement and prior to
19 the commencement of any embryo transfer procedure, each intended parent certifies
20 in writing that he, she, or they have undergone at least two counseling sessions with
21 a licensed mental health professional pursuant to all of the following requirements:

22 (1) Both required counseling sessions shall be conducted at least thirty days
23 apart. No embryo transfer procedure shall commence until the second session is
24 completed and certified.

25 (2) Both counseling sessions shall be conducted by a licensed mental health
26 professional meeting the qualifications in Paragraph (A)(2) of this Section.

27 (3) The counseling sessions shall address the following topics:

28 (a) The medical processes and risks associated with gestational carrier
29 arrangements.

1 (b) The legal rights, responsibilities, and parental relationship of the
2 intended parent or intended parents with respect to the child.

3 (c) The psychological and emotional dimensions of third-party reproduction,
4 including attachment, loss, and ongoing relationship considerations with the
5 gestational carrier.

6 (d) The gestational carrier's absolute right to make independent medical
7 decisions during the pregnancy including the right to refuse termination pursuant to
8 R.S. 9:2720.9 and the implications of that right for the intended parents.

9 (e) Realistic expectations regarding outcomes including the possibility that
10 an embryo transfer may not result in pregnancy or live birth.

11 (4) The licensed mental health professional shall prepare and sign a written
12 report as described in Paragraph (A)(4) of this Section adapted for intended parent
13 or intended parents. Each intended parent shall execute a written certification in the
14 form prescribed by the secretary of the Louisiana Department of Health stating that
15 the intended parent or intended parents have completed two counseling sessions
16 satisfying the requirements of this Subsection, including the dates and the name and
17 license number of the licensed mental health professional for each session. The
18 certification shall be appended to the gestational carrier agreement.

19 D. One of the required counseling sessions for each party may, in the
20 discretion of the licensed mental health professional, be conducted jointly with the
21 other party or parties. However, a joint session does not satisfy more than one of
22 the two required sessions for any individual party. Each party shall still complete not
23 fewer than one session individually without other party present in order to ensure
24 independent reflection and disclosure.

25 E. The cost of all counseling sessions required by this Section shall be the
26 sole obligation of the intended parent or intended parents and shall not be deducted
27 from or offset against the gestational carrier's base compensation. Payment shall be
28 made as follows:

1 (1) When a licensed gestational carrier agency is facilitating the
2 arrangement, the intended parent or intended parents shall deposit into the agency's
3 pre-execution counseling fund before the first counseling session of any party
4 commences an amount sufficient to cover the estimated cost of all mandatory
5 counseling sessions for the gestational carrier, the gestational carrier's spouse if
6 applicable, and the intended parent or intended parents as set forth in the
7 parents-agency enrollment agreement required by R.S. 9:2720(15). The agency shall
8 disburse counseling fees directly to each licensed mental health professional on
9 behalf of the party being counseled from the pre-execution counseling fund within
10 five business days after each session. Any unused portion of the pre-execution
11 counseling fund shall be credited toward the escrow account established by R.S.
12 40:106 upon execution of the agreement or returned to the intended parents within
13 fifteen days if the arrangement does not proceed to execution. The pre-execution
14 counseling fund shall be held in a separate subaccount separated from agency
15 operating funds and subject to the same fiduciary obligations as client funds as
16 provided for in R.S. 40:106.

17 (2) Where no licensed gestational carrier agency is involved, the intended
18 parent or intended parents shall pay counseling costs directly to each licensed mental
19 health professional. The gestational carrier agreement shall include an express
20 obligation of the intended parents to pay all counseling costs and shall specify the
21 timing of payment. If the carrier or her spouse incurs any counseling cost before
22 execution, the intended parents shall reimburse the costs in full at or before
23 execution of the agreement as a condition of the gestational carrier's obligation to
24 proceed.

25 (3) No party shall condition or pressure the gestational carrier to select a
26 specific licensed mental health professional, select a counselor on behalf of the
27 gestational carrier, or pay counseling fees directly to the gestational carrier's
28 counselor in any manner that creates a financial relationship or conflict of interest

1 between the counselor and the intended parents or any agency involved in the
2 arrangement.

3 F. If counseling required by this Section has not been completed before the
4 commencement of an embryo transfer procedure, the gestational carrier may elect
5 to void the agreement and refuse to proceed with the transfer without liability to any
6 party. After an embryo transfer resulting in pregnancy has been performed,
7 noncompliance with this Section shall not render the agreement void or
8 unenforceable as to any parentage determination, but shall give rise to an
9 independent ground for disciplinary action against any gestational carrier agency that
10 facilitated the arrangement pursuant to R.S. 40:101 et seq. and a private cause of
11 action for damages by the gestational carrier against the party or agency responsible
12 for the noncompliance including recovery of all counseling costs, attorney's fees, and
13 any other actual damages sustained.

14 G. The secretary of the Louisiana Department of Health shall prescribe
15 model certification forms for use by gestational carriers, gestational carriers' spouses,
16 and intended parents under this Section within one hundred eighty days of the
17 effective date of this Act. Use of the prescribed model form shall be deemed to
18 satisfy the certification requirement of this Section. The model forms shall be
19 published on the department's website and made available to all parties, licensed
20 healthcare providers, licensed mental health professionals, and gestational carrier
21 agencies.

22 H. Where a licensed gestational carrier agency is facilitating the
23 arrangement:

24 (1) The agency shall inform the gestational carrier in writing the counseling
25 requirements of this Section and the gestational carrier's right to select her own
26 qualified licensed mental health professional, the gestational carrier's right to receive
27 all counseling fees from escrow without those fees being deducted from her base
28 compensation, and the agency's own financial relationships, if any, with any licensed
29 mental health professional to whom the carrier may be referred.

1 (2) The agency shall retain, in the arrangement file, a copy of the written
2 counseling certifications required by Subsections (A)(4),A(5) and (C)(4) for not less
3 than ten years. The agency shall verify that all required certifications have been
4 obtained and are on file before authorizing or coordinating the commencement of
5 any embryo transfer procedure.

6 (3) The agency shall not select, retain, compensate, or direct the licensed
7 mental health professional who counsels the gestational carrier. Any referral by the
8 agency of a licensed mental health professional to the gestational carrier shall be
9 accompanied by full written disclosure of any financial, employment, or referral-fee
10 relationship between the agency and the professional consistent with R.S. 40:113.

11 (4) Violation of this Subsection by a licensed gestational carrier agency
12 constitutes an independent ground for disciplinary action in accordance with R.S.
13 40:120 and a private cause of action by the gestational carrier in accordance with
14 R.S. 40:124, regardless of whether the underlying gestational carrier agreement is
15 otherwise compliant and enforceable.

16 §2720.3. Required terms; necessary parties; medically necessary

17 A. Every gestational carrier agreement shall contain, at a minimum, all of
18 the following terms to be enforceable pursuant to this Chapter:

19 (1) The gestational carrier's agreement to become pregnant by means of in
20 utero embryo transfer using the gametes of at least one of the intended parents, and
21 to give birth to the resulting child.

22 (2) The gestational carrier's agreement to reasonable medical evaluation and
23 treatment during the pregnancy, to adhere to reasonable medical instructions about
24 prenatal health, and to execute medical-records releases in favor of the intended
25 parent or intended parents.

26 (3) Proof that the gestational carrier has completed at least two counseling
27 sessions at least thirty days apart with a licensed mental health professional as
28 required by R.S. 9:2720.2.

1 (4) A certification by the gestational carrier and, if she is married, by her
2 spouse, that she and her spouse, if applicable, will relinquish all parental rights and
3 duties to any child born from the in utero embryo transfer.

4 (5) The gestational carrier's agreement to attend at least one post-birth
5 counseling session within six months following the birth of the child as provided in
6 R.S. 9:2720.8.

7 B. The following persons shall each be named as a party to the gestational
8 carrier agreement and, where applicable, to any parentage proceeding provided by
9 this Chapter:

10 (1) The gestational carrier.

11 (2) The intended parent or intended parents.

12 (3) The gestational carrier's spouse, if she is married at the time of execution
13 of the agreement.

14 §2720.4. Gestational carrier agency; required licensure

15 A. No person or entity may operate as a gestational carrier agency as defined
16 in R.S. 40:103 within this state or in connection with any covered arrangement
17 pursuant to this Chapter, unless the person or entity holds a current valid license
18 issued by the Louisiana Department of Health. The Louisiana Department of Health
19 license is a prerequisite to the solicitation, recruitment, matching, or financial
20 management of any gestational carrier arrangement involving a gestational carrier
21 or intended parent or intended parents residing in this state or an embryo transfer or
22 birth occurring in this state regardless of the state of the agency's domicile or
23 principal place of business.

24 B. Operation as a gestational carrier agency without a license issued in
25 accordance with R.S. 40:101 et seq. does not void or render unenforceable any
26 underlying gestational carrier agreement that otherwise complies with the
27 requirements of this Chapter. However, unlicensed operation subjects the agency
28 and its principals to the civil, administrative, and criminal penalties prescribed in
29 R.S. 40:101 et seq. and to the private right of action set forth in R.S. 40:124.

1 C. The licensing standards, application requirements, financial protections,
2 disclosure obligations, enforcement mechanisms, and penalties applicable to
3 gestational carrier agencies are set forth in Chapter 2-B of Title 40, R.S. 40:101
4 through 127. Nothing in this Section limits the authority of the Louisiana
5 Department of Health to establish additional requirements by rule pursuant to R.S.
6 40:126.

7 §2720.5. Agency compliance obligations; background check; safety

8 A. Before proceeding with any match or referral, a licensed gestational
9 carrier agency shall verify and document in writing that all requirements of R.S.
10 9:2720 through 9:2720.3 have been satisfied with respect to the gestational carrier,
11 her spouse if married, and the intended parent or intended parents. The agency shall
12 retain documentation of this verification in the arrangement file for not less than ten
13 years from the date of the last service provided in connection with the arrangement.

14 B. Before completing any match, a licensed gestational carrier agency shall
15 conduct and document the following background check and safety investigations
16 with respect to the gestational carrier, her spouse if married, and the intended parent
17 or intended parents:

18 (1) A search of criminal records through the Louisiana State Police and any
19 other state or federal database applicable to each individual's state of residence and
20 prior states of residence together with a check of the Louisiana Protective Order
21 Registry and any validated complaints of child abuse or neglect maintained by the
22 Louisiana Department of Children and Family Services or equivalent agency. No
23 match shall proceed if there is a risk of harm to the child or gestational carrier.

24 (2) A search of the Louisiana Central Registry for child abuse and neglect
25 and where any party has resided in another state within the preceding ten years a
26 corresponding check of that state's child abuse and neglect registry. No match shall
27 proceed if any party has a validated finding of child abuse or neglect that has not
28 been successfully expunged or set aside by a court of competent jurisdiction.

1 (3) A check of the Louisiana Protective Order Registry for each party. The
2 existence of any active protective order naming a party as a respondent shall
3 constitute a disqualifying finding unless the agency obtains a written opinion from
4 an independent licensed attorney that the protective order does not present a risk of
5 harm to the gestational carrier or the child and the agency documents this
6 determination in the arrangement file.

7 (4) A check of the Louisiana Sex Offender and Child Predator Registry and
8 the National Sex Offender Public Website for each party. Registration as a sex
9 offender is an absolute disqualifying finding. No match may proceed regardless of
10 the nature of the underlying offense or the date of conviction.

11 C. No licensed gestational carrier agency may proceed with a match or
12 referral unless, based on the investigations required by Subsection B of this Section,
13 the agency determines and documents an affirmative written finding that the reports
14 of criminal records, validated complaints of child abuse or neglect, and Louisiana
15 Protective Order Registry checks show that there is no risk of harm to the child or
16 the gestational carrier. This finding shall be signed by the agency's designated
17 qualified person as defined in R.S. 40:105, dated, and retained in the arrangement
18 file.

19 D. If more than one hundred eighty days elapse between the initial
20 background-check investigations and the date of embryo transfer, the agency shall
21 conduct and document updated checks as set forth in Paragraphs (B)(1) through (4)
22 of this Section before the transfer proceeds.

23 E. Failure by a licensed gestational carrier agency to conduct or document
24 the investigations required by this Section or to make the affirmative finding
25 required by Subsection C of this Section constitutes an independent ground for
26 license suspension or revocation pursuant to R.S. 40:120 and subjects the agency to
27 civil penalties provided in R.S. 40:121 and to private civil liability penalties provided
28 in R.S. 40:124. Noncompliance with this Section does not void or render

1 unenforceable any underlying gestational carrier agreement that otherwise satisfies
2 the requirements of this Chapter.

3 §2720.6. Gestational carrier agency; party and third-party beneficiary status;
4 advertising; screening, escrow, fee disclosure, and conflict standards

5 A. The legislature finds that gestational carrier agencies operating in this
6 state exercise substantial influence over the formation, content, and performance of
7 gestational carrier arrangements. The purpose of this Section is to establish a
8 transparent three-contract architecture for agency-facilitated arrangements that:

9 (1) Clearly separates the agency's relationship with intended parents from its
10 relationship with the gestational carrier.

11 (2) Ensures the gestational carrier enters the operative gestational carrier
12 agreement on terms she has negotiated through a pre-set compensation grid and
13 reviewed with independent counsel.

14 (3) Limits the agency's role in the operative gestational carrier agreement to
15 administrative functions only.

16 (4) Fully integrates with R.S. 40:101 et seq.

17 B. Where a licensed gestational carrier agency facilitates a covered
18 arrangement, the following three instruments shall govern the arrangement:

19 (1) A Parents-Agency Enrollment Agreement

20 (a) The intended parent or intended parents shall execute a parents-agency
21 enrollment agreement with the licensed gestational carrier agency as defined in R.S.
22 9:2720(15) before or concurrently with matching.

23 (b) This instrument governs the relationship between the agency and the
24 intended parents exclusively and creates no rights or obligations on the part of the
25 gestational carrier.

26 (2) Carrier-Agency Engagement Agreement

27 (a) The gestational carrier shall execute a carrier-agency engagement
28 agreement with the licensed gestational carrier agency as defined in R.S. 9:2720(16)
29 before or concurrently with matching.

1 (b) This instrument governs the relationship between the agency and the
2 gestational carrier exclusively and creates no direct rights or obligations on the part
3 of the intended parents. The carrier-agency engagement agreement shall be reviewed
4 by the gestational carrier's independent legal counsel before execution and the
5 agency shall allow not less than five business days between presenting the agreement
6 to the carrier and the execution date.

7 (c) No provision of this instrument may waive, reduce, or condition any
8 statutory right of the gestational carrier pursuant to this Chapter.

9 (3) Agency-Coordinated Gestational Carrier Agreement

10 (a) Following a successful match, the licensed gestational carrier agency
11 shall produce, coordinate, and submit an agency-coordinated gestational carrier
12 agreement as defined in R.S. 9:2720(17) for execution by the intended parent or
13 intended parents, the gestational carrier, and, if applicable, the gestational carrier's
14 spouse.

15 (b) This is the operative legal instrument governing the arrangement. The
16 agency's role in this instrument is limited to the administrative functions specified
17 in R.S. 9:2720(17)(d).

18 (c) The agency is not a signatory party, does not acquire parental or custodial
19 rights, and shall not enforce any provision of the agency-coordinated gestational
20 carrier agreement against the gestational carrier except through the regulatory
21 remedies of R.S. 40:101 et seq.

22 C. In the event of any conflict among the three instruments:

23 (1) The agency-coordinated gestational carrier agreement controls over both
24 the parents-agency enrollment agreement and the carrier-agency engagement
25 agreement as to all rights and obligations of the gestational carrier with respect to the
26 intended parents.

27 (2) The carrier-agency engagement agreement controls over the
28 parents-agency enrollment agreement as to the terms of the pre-set compensation
29 grid incorporated into the agency-coordinated gestational carrier agreement.

1 (3) No provision of either the parents-agency enrollment agreement or the
2 carrier-agency engagement agreement may reduce any statutory protection of the
3 gestational carrier below the minimum established by this Chapter.

4 D. All advertising by a licensed gestational carrier agency in connection with
5 a covered arrangement is governed by R.S. 40:109. As a condition of the agency's
6 recognition pursuant to this Chapter, whether as a signatory party, a third-party
7 beneficiary, or merely as the facilitating agency in the arrangement file, the agency
8 shall include its Louisiana Department of Health license number in all advertising
9 directed at state-resident gestational carriers or state-domiciled intended parents, not
10 make any representation in advertising regarding the terms, compensation ranges,
11 or outcomes of gestational carrier arrangements that is inconsistent with the
12 compensation benchmarks or prohibited conditions of R.S. 9:2720.13 and 9:2720.14,
13 and not advertise to recruit gestational carriers in a manner that targets or exploits
14 economically vulnerable persons. A material misrepresentation in agency
15 advertising that induces a gestational carrier to enter into a covered arrangement
16 shall constitute grounds for rescission of the gestational carrier agreement as to the
17 agency, and for a private damages action by the gestational carrier as provided in
18 R.S. 40:124, without prejudice to the gestational carrier agreement's enforceability
19 against the intended parents.

20 E. Agency screening obligations applicable to covered arrangements are
21 governed in full by R.S. 9:2720.5 and R.S. 40:111. For purposes of the gestational
22 carrier agreement, a party's signature on the agreement constitutes acknowledgment
23 that, to the party's knowledge, the agency has provided written documentation of
24 compliance with the screening requirements of R.S. 9:2720.5. Nondisclosure or
25 misrepresentation of disqualifying screening findings by the agency shall constitute
26 fraud in the inducement of the gestational carrier agreement and shall give rise to
27 rescission rights under R.S. 9:2720.11(A) and damages pursuant to R.S. 40:124.

28 F.(1) The escrow obligations of a licensed gestational carrier agency in
29 connection with client funds are governed exclusively by R.S. 40:106 and 40:107.

1 (2) For purposes of the three instruments governing an agency-facilitated
2 arrangement:

3 (a) All funds relating to gestational carrier compensation, expense
4 reimbursements, insurance reserves, and medical expense reserves shall be deposited
5 into an independent escrow account before any medical procedure commences.

6 (b) Agency fees shall be maintained separately from all client funds and may
7 not be disbursed from the client escrow account.

8 (c) The gestational carrier's right to receive disbursements on schedule under
9 the agency-coordinated gestational carrier agreement is a contractual right
10 enforceable directly against the agency under both this Chapter and R.S. 40:106.

11 (d) Any provision in any of the three instruments purporting to condition or
12 delay disbursement of base compensation or expense reimbursements on any event
13 other than the agreed schedule is void as against public policy under R.S.
14 9:2720.13(B).

15 G. Fee disclosure obligations of a licensed gestational carrier agency are
16 governed by R.S. 40:2199.10. The parents-agency enrollment agreement shall: (1)
17 separately itemize agency fees, third-party service fees, estimated gestational carrier
18 compensation from the pre-set grid, and escrow administration fees; (2) state the
19 agency's complete refund policy in plain language, including the specific
20 circumstances and timeframes under which any fee will be refunded; (3) disclose any
21 fee-sharing, referral-fee, revenue-sharing, or other financial arrangement between the
22 agency and any attorney, healthcare provider, or mental health professional involved
23 in the arrangement; and (4) disclose any financial interest the agency, or any
24 principal of the agency, holds in any business that provides services billed to the
25 intended parents in connection with the arrangement. Failure to make any of the
26 disclosures required by this Subsection renders any undisclosed fee voidable at the
27 election of the intended parents and subjects the agency to private damages liability
28 under R.S. 40:124.

1 H. For purposes of the three instruments, the following conflict-of-interest
2 rules apply:

3 (1) No agency may control, directly or indirectly, the selection of
4 independent legal counsel for the gestational carrier, the intended parents, or the
5 gestational carrier's spouse.

6 (2) No agency may receive any financial benefit from, or have any financial
7 interest in, any legal, medical, or mental health service billed to any party in
8 connection with the arrangement, except as fully disclosed in the parents-agency
9 enrollment agreement.

10 (3) No attorney who owns, controls, manages, or is employed by or
11 contracted with a licensed gestational carrier agency may represent any party to an
12 agency-coordinated gestational carrier agreement facilitated by that agency.

13 (4) No provision of any of the three instruments may purport to waive the
14 foregoing conflict rules on behalf of the gestational carrier.

15 (5) A violation of this Subsection by the agency constitutes grounds for
16 rescission of the parents-agency enrollment agreement and/or the carrier-agency
17 engagement agreement, and for a private damages action pursuant to R.S. 40:124,
18 without prejudice to the agency-coordinated gestational carrier agreement's
19 enforceability between the principal parties.

20 I. A gestational carrier who suffers harm as a result of the agency's violation
21 of this Section or any provision of R.S. 9:2720.2(H), R.S. 9:2720.4, R.S. 9:2720.5,
22 or R.S. 40:101 et seq. may bring a direct civil action against the agency under R.S.
23 40:124 regardless of the agency's role under any of the three instruments. The
24 agency may not invoke any provision of any of the three instruments to limit, waive,
25 or arbitrate the gestational carrier's statutory rights under R.S. 40:124.

26 J. The standards set forth in this Section operate concurrently with, and do
27 not supersede or limit, the licensing requirements, operational standards,
28 enforcement mechanisms, and penalties of R.S. 40:101 et seq. In the event of a
29 conflict between a provision of this Section and a provision of Chapter 2-B of Title

1 40, R.S. 40:101 through 127, the provision that affords greater protection to the
2 gestational carrier shall control. Nothing in this Section shall be construed to limit
3 the authority of the Louisiana Department of Health to promulgate rules establishing
4 additional standards for licensed gestational carrier agencies under R.S. 40:126.

5 §2720.7. Intended parents eligibility

6 A. Each intended parent shall:

7 (1) Agree to complete the mandatory counseling sessions required by R.S.
8 9:2720.2(C) after execution of the agreement and prior to any embryo transfer
9 procedure, as evidenced by the agreement's inclusion of the counseling obligation
10 required by R.S. 9:2723(C).

11 (2) Receive independent legal advice from a licensed attorney regarding the
12 terms and legal consequences of the agreement.

13 (3) Undergo background screening as required by the medical facility
14 performing the embryo transfer.

15 B. An intended parent or intended parents shall demonstrate financial
16 capacity to meet all obligations under the gestational carrier agreement including full
17 compensation to the gestational carrier, all medical and insurance costs, legal costs,
18 escrow funding, and all other expenses required by R.S. 9:2720.13. This
19 requirement is satisfied by meeting the applicable income threshold as provided by
20 this Section and verified by documentation as provided in this Subsection:

21 (1) A single intended parent shall demonstrate gross annual income of not
22 less than eighty thousand dollars from the intended parent's own employment,
23 self-employment, or investment income in the most recently completed calendar
24 year. For purposes of this Subparagraph, "single intended parent" means an intended
25 parent who is not married and is not entering into the agreement jointly with a
26 co-intended parent.

27 (2) Where two intended parents enter into the agreement jointly the
28 combined gross annual income of both intended parents shall be not less than one

1 hundred fifty thousand dollars from their combined employment, self-employment
2 or investment income in the most recently completed calendar year.

3 (3) The income threshold shall be verified by a signed federal income tax
4 return. Documentation shall be reviewed and retained by the licensed gestational
5 carrier agency under R.S. 40:115, or, in a non-agency arrangement, by the intended
6 parents' independent legal counsel and shall be appended to the compliance file.

7 (4) An intended parent who does not satisfy the applicable income threshold
8 may petition the Louisiana Department of Health or apply to a district court in a
9 declaratory judgment action for a waiver upon a showing that the intended parent has
10 sufficient assets, insurance, or other financial resources to meet all obligations under
11 the agreement without material risk of default. A waiver shall be granted only upon
12 a finding supported by financial documentation reviewed by an independent financial
13 professional. The escrow pre-funding requirement of R.S. 40:106 shall in all cases
14 be satisfied regardless of whether a waiver is sought.

15 (5) The income thresholds established in this Subsection are not intended to
16 and shall not be construed to discriminate on the basis of race, national origin,
17 disability, or any other protected characteristic. The income thresholds reflect the
18 legislature's determination that there is financial capacity sufficient to meet all
19 obligations to the gestational carrier including full escrow pre-funding of
20 compensation and expenses. This is a prerequisite to entering into a covered
21 arrangement and is subject to the waiver Paragraph (4) of this Section. The
22 Louisiana Department of Health shall, pursuant to R.S. 40:126, review the income
23 thresholds by rule not less than every four years to determine whether adjustment is
24 warranted based on changes in the cost of covered arrangements.

25 PART III - THE GESTATIONAL CARRIER AGREEMENT

26 §2720.8. Required content

27 A. A gestational carrier agreement shall be in writing, signed by all parties
28 in the presence of a notary public and two competent adult witnesses, and notarized.
29 The agreement shall include, at a minimum, all of the following general provisions:

- 1 (1) The full legal names, dates of birth, and addresses of all parties.
- 2 (2) Identification of the licensed healthcare provider or clinic responsible for
3 the assisted reproduction procedure.
- 4 (3) A description of the medical procedures to be performed and the number
5 of embryo transfer attempts authorized.
- 6 (4) A detailed schedule of all compensation, if any, and reimbursement of
7 reasonable expenses, including the timing of payments and the identity of the escrow
8 agent.
- 9 (5) Proof of health, life, and disability insurance coverage for the gestational
10 carrier throughout the pregnancy and for not less than twelve months postpartum, or
11 an agreement by the intended parent or intended parents to obtain and maintain such
12 coverage.
- 13 (6) Provisions addressing disposition of embryos in the event of the death
14 or incapacity of any party or dissolution of the intended parents' relationship prior
15 to birth.
- 16 (7) Acknowledgment that each party has received independent legal counsel
17 and has agreed to complete the mandatory counseling sessions required by R.S.
18 9:2720.2 after execution and prior to any embryo transfer procedure, with cost
19 obligations as specified in R.S. 9:2720.2(D).
- 20 B. In addition to the provisions required by Subsection A of this Section, in
21 every enforceable gestational carrier agreement the gestational carrier shall agree to,
22 and the agreement must contain, each of the following terms:
- 23 (1) The gestational carrier agrees to become pregnant by means of in utero
24 embryo transfer using the gametes of at least one of the intended parents, or gametes
25 from a donor approved by the intended parent or intended parents where neither
26 intended parent contributes gametes, and to carry and give birth to the resulting child
27 or children.
- 28 (2) The gestational carrier agrees to:

1 (a) Submit to reasonable medical evaluation and treatment during the
2 pregnancy as recommended by her attending licensed healthcare provider.\

3 (b) Adhere to reasonable medical instructions about prenatal health,
4 including but not limited to prenatal care appointments, prescribed medications,
5 dietary and lifestyle recommendations made by her healthcare provider, and
6 avoidance of substances known to be harmful to fetal development.

7 (c) Execute medical-records releases in favor of the intended parent or
8 intended parents to the extent necessary to allow the intended parents to receive
9 information about the pregnancy and the health of the child. Nothing in this
10 provision shall be construed to require the gestational carrier to undergo any medical
11 procedure against her will, and all medical decision-making authority remains with
12 the gestational carrier as further provided in Paragraph (C)(1) of this Section.

13 (3) The gestational carrier certifies that, prior to or concurrently with
14 execution of the agreement, she has disclosed to the licensed healthcare provider
15 who issued the medical clearance required by R.S. 9:2720.1 a complete and accurate
16 medical history covering all categories specified in that provision, and that the
17 clearance letter appended to this agreement reflects that review. The gestational
18 carrier further agrees that during the term of this agreement she will promptly
19 disclose to her attending licensed healthcare provider, and authorize disclosure to the
20 treating reproductive endocrinologist and, to the extent medically relevant, to the
21 intended parent or intended parents, any material change in her medical condition,
22 mental health status, or substance use that arises after execution and that could
23 reasonably affect the safety of the pregnancy, the health of the child, or the
24 gestational carrier's ability to fulfill her obligations under this agreement. Disclosure
25 to the intended parents under this provision is limited to information that is medically
26 relevant to the pregnancy and the child, is made through the attending healthcare
27 provider, and is subject to the confidentiality protections and applicable federal law.
28 The gestational carrier's obligation to disclose under this provision does not alter her
29 medical decision-making authority as provided in R.S. 9:2720.8, and no disclosure

1 required herein may be used as a basis to condition, reduce, or withhold any
2 compensation to which the carrier is entitled under this agreement.

3 (4) The gestational carrier agrees, and certifies her agreement in writing
4 under penalty of perjury, that after execution of this agreement and prior to the
5 commencement of any embryo transfer procedure she will undergo at least two
6 counseling sessions at least thirty days apart, with a licensed mental health
7 professional satisfying the qualifications of R.S. 9:2720.2(A)(2), to discuss the
8 gestational carrier arrangement. The certification of completion, in the form
9 prescribed by the secretary of the Louisiana Department of Health, shall be executed
10 after the sessions are completed and shall be provided to the agency or, in a
11 non-agency arrangement, to both parties' counsel, before any embryo transfer
12 procedure is scheduled.

13 (5) The gestational carrier certifies, and if she is married her spouse also
14 certifies, that she and her spouse, if applicable, will relinquish all parental rights and
15 duties to any child born from the in utero embryo transfer, and will not assert any
16 claim to parentage of such child. This certification shall be executed in the form
17 prescribed by the secretary of the Louisiana Department of Health and shall be
18 appended to the agreement.

19 (6) The gestational carrier agrees to attend at least two post-birth counseling
20 sessions with a licensed mental health professional within six months of the birth of
21 the child. Post-birth counseling sessions shall address, at minimum, the gestational
22 carrier's emotional and psychological adjustment following the birth and
23 relinquishment, and any support needs identified by the licensed mental health
24 professional. The cost of all post-birth counseling sessions required by this provision
25 shall be paid by the intended parent or intended parents from escrow or directly, and
26 shall be treated as a reasonable expense under the agreement.

27 C. In every enforceable gestational carrier agreement, the intended parent or
28 intended parents must certify in writing that they agree to each of the following
29 terms:

1 (1) The gestational carrier and the intended parent or intended parents
2 acknowledge that medical decisions during the pregnancy shall be made jointly by
3 the gestational carrier and the intended parent or intended parents to the greatest
4 extent practicable. In the event the gestational carrier and the intended parent or
5 intended parents cannot agree on a medical decision, the final decision regarding any
6 medical procedure, treatment, or intervention relating to the pregnancy shall be made
7 by the gestational carrier's attending obstetrician or other treating licensed physician,
8 who shall exercise independent clinical judgment as to what course of action is
9 conducive to the health and well-being of both the gestational carrier and the unborn
10 child or children. No provision of the agreement shall override or limit this
11 allocation of decision-making authority. The absolute prohibition on requiring the
12 gestational carrier to consent to termination of a pregnancy, regardless of any
13 disagreement between the parties, is separately governed by R.S. 9:2720.9.

14 (2) The intended parent or intended parents agree to accept physical custody
15 of and assume full parental rights and responsibilities for the child immediately upon
16 birth, regardless of any physical or mental impairment of the child, and regardless
17 of any impairment, condition, or characteristic of the child that was not anticipated
18 at the time the agreement was executed.

19 (3) The intended parent or intended parents agree to be recognized as the
20 sole legal parent or parents of the child born through the gestational carrier
21 arrangement, and to take all steps necessary to establish and record that legal
22 parentage, including cooperating in the administrative pre-parentage certification
23 process under R.S. 9:2720.16 and any judicial parentage proceeding the parties may
24 elect to bring.

25 (4) Where there are two intended parents, both intended parents shall have
26 in place, before the gestational carrier agreement is executed, a valid will or other
27 legally effective succession or custody plan, executed in accordance with the laws
28 of this state or the jurisdiction of their domicile, that meets all of the following
29 criteria:

1 (a) Identifies the individual or individuals who would assume custody of and
2 parental responsibility for the child in the event both intended parents die before the
3 birth of the child or within a period specified in the agreement following birth.

4 (b) Makes express provision for the child's care and support in such event.

5 (c) Is not revocable without simultaneously executing a replacement plan
6 satisfying the requirements of this provision. Where there is a single intended
7 parent, that intended parent shall have in place a valid will or succession plan
8 identifying a guardian for the child in the event the intended parent dies before or
9 shortly after the birth of the child. Proof of the existence of such a will or succession
10 plan, in the form of a written certification by an independent licensed attorney, shall
11 be appended to the gestational carrier agreement at execution.

12 D. No provision of the agreement shall limit the gestational carrier's right to
13 make medical decisions regarding her own body, except as modified by the joint
14 decision-making framework of Paragraph (C)(1) of this Section, compel her to
15 engage in conduct she objects to on medical advice, or waive any party's right to seek
16 judicial determination of any disputed matter.

17 §2720.9. Prohibition on termination of pregnancy

18 A. No gestational carrier agreement, amendment, addendum, side letter, or
19 any other instrument executed in connection with a gestational carrier arrangement
20 may require, compel, coerce, incentivize, or in any manner obligate a gestational
21 carrier to consent to or undergo termination of a pregnancy. This prohibition applies
22 without limitation or qualification to termination sought or requested for any reason,
23 including but not limited to:

24 (1) Prenatal diagnosis of a disability, disorder, or disease.

25 (2) The presence of a genetic variation or chromosomal condition.

26 (3) A fetal health condition or prognosis.

27 (4) Sex selection or selection based on any other physical characteristic of
28 the fetus.

29 (5) Fetal reduction in a multiple-gestation pregnancy.

1 B. Any provision of a gestational carrier agreement that purports to require,
2 compel, or obligate the gestational carrier to terminate a pregnancy, or to impose any
3 penalty, forfeiture of compensation, reduction of reimbursement, or other adverse
4 consequence upon the gestational carrier for refusing to terminate a pregnancy, is
5 absolutely null and of no legal effect. Such a provision shall not be ratified, cured,
6 or enforced by agreement of the parties, by subsequent conduct, or by any other
7 means. The absolute nullity of such a provision shall not affect the validity of the
8 remainder of the gestational carrier agreement which shall be construed as if the null
9 provision had never been included.

10 C. No party to a gestational carrier agreement, and no gestational carrier
11 agency or other intermediary, shall threaten, penalize, condition, or otherwise take
12 adverse action against a gestational carrier by reason of her refusal to terminate a
13 pregnancy, regardless of the terms of any agreement. Any such threat, conditioning,
14 or adverse action shall constitute an independent ground for rescission of the
15 gestational carrier agreement and shall give rise to a cause of action for damages
16 under this Chapter and under R.S. 40:101 et seq.

17 D. Nothing in this Section shall be construed to compel, authorize, or
18 prohibit the gestational carrier from independently electing to terminate a pregnancy
19 in the exercise of her own medical decision-making authority.

20 §2720.10. Execution; timing; interstate effect

21 A. The agreement shall be executed before any assisted reproduction
22 procedure is performed. At least fifteen calendar days shall elapse between the
23 gestational carrier's receipt of the final proposed agreement and the date of
24 execution. All signatures shall be obtained in the presence of a notary public
25 licensed in this state and two competent adult witnesses, who shall also sign the
26 agreement in the presence of the notary public.

27 B. An agreement executed in compliance with the laws of another state shall
28 be given full faith and credit if it substantially complies with the requirements of this
29 Chapter.

1 §2720.11. Enforceability; administrative and judicial

2 A. A gestational carrier agreement that is in the statutory form required by
3 this Chapter and that satisfies either of the conditions set forth in Subsection B of this
4 Section is enforceable as a contract in accordance with state law. An agreement that
5 does not satisfy either condition is not automatically void but may be subject to
6 rescission, reformation, or equitable relief, with the best interests of any resulting
7 child as the paramount consideration.

8 B. A gestational carrier agreement is enforceable if it satisfies either of the
9 following conditions:

10 (1) The agreement has been handled through a licensed gestational carrier
11 agency and the Louisiana Department of Health has issued a Louisiana Department
12 of Health Compliance Certificate for the agreement certifying that the agreement is
13 in the statutory form required by this Chapter and that the requirements of R.S.
14 9:2720 through 9:2720.6 have been satisfied.

15 (2) A court of competent jurisdiction has entered an order confirming that
16 the agreement complies with this Chapter and is enforceable, in a declaratory
17 judgment action brought under Code of Civil Procedure Article 1871 et seq. or in
18 any other civil proceeding in which parentage or enforceability is at issue.

19 C. An agreement for which the Louisiana Department of Health Compliance
20 Certificate has been issued under R.S. 9:2720.12 is presumed valid and enforceable
21 as between the parties. The presumption is rebuttable by clear and convincing
22 evidence of fraud, duress, material misrepresentation, or a violation of the absolute
23 prohibitions of this Chapter. The presumption does not preclude any party from
24 seeking judicial relief provided for in Subsection F of this Section or from raising
25 any constitutional challenge in a district court.

26 D. A gestational carrier agreement shall not be rescinded by any party after
27 a licensed healthcare provider has performed an embryo transfer that results in
28 pregnancy, regardless of whether the agreement holds a Louisiana Department of
29 Health compliance certificate or a judicial confirmation order. Specific performance

1 is available as a remedy for breach, except that no court shall order a gestational
2 carrier to submit to a medical procedure against her will or to continue or terminate
3 a pregnancy.

4 E. The intended parent or intended parents are solely responsible for all
5 reasonable and agreed-upon expenses arising from the agreement regardless of
6 whether a live birth results regardless of whether an administrative proceeding of
7 court proceeding is used to establish enforceability and regardless of whether an the
8 Louisiana Department of Health compliance certificate has been issued.

9 F. Issuance of a Louisiana Department of Health compliance certificate and
10 Administrative Pre-Parentage Certification does not preclude, and shall not be
11 construed to limit, any party's right to seek a judicial parentage determination from
12 a district court of competent jurisdiction, bring an action in district court for
13 rescission, reformation, equitable relief, or damages under this Chapter or applicable
14 state contract law, challenge the constitutional validity of the agreement or of this
15 Chapter in district court, or seek judicial review of any Louisiana Department of
16 Health administrative action in accordance with the Louisiana Administrative
17 Procedure Act in a court of appeal exercising appellate jurisdiction over the
18 Louisiana Department of Health regulatory determination that is not itself a civil
19 matter within Article V, Section 16(A) of the Constitution of Louisiana. A judicial
20 parentage order supersedes any Louisiana Department of Health compliance
21 certificate or Administrative Pre-Parentage Certification as to the legal parentage of
22 any child born from the arrangement.

23 §2720.12. The Louisiana Department of Health Administrative Compliance
24 Certificate

25 A. The Louisiana Department of Health Administrative compliance
26 certificate is an administrative determination that a gestational carrier agreement
27 submitted through a licensed gestational carrier agency is in the statutory form
28 required by this Chapter and that the agency has documented satisfaction of the
29 requirements of R.S. 9:2720 through 9:2720.6. The certificate is a regulatory

1 compliance determination within the Louisiana Department of Health's licensing and
2 oversight authority and is not a civil matter within Article V, Section 16(A) of the
3 Constitution of Louisiana.

4 B. A licensed gestational carrier agency may, after execution of the
5 agreement and at least fifteen days before the commencement of any embryo transfer
6 procedure, submit to the Louisiana Department of Health through the registered
7 portal established pursuant to R.S. 40:101 et seq.:

8 (1) A copy of the fully executed agency-coordinated gestational carrier
9 agreement, with all exhibits and certifications attached.

10 (2) The agency's written compliance verification and the background-check
11 findings required by R.S. 9:2720.5.

12 (3) The counseling certifications required by this Chapter.

13 (4) Documentation of independent legal counsel for all parties.

14 (5) The two signed physician opinions establishing medical necessity, if
15 applicable under R.S. 9:2720.3.

16 (6) Confirmation that the parents-agency enrollment agreement required by
17 and the carrier-agency engagement agreement required by R.S. 9:2720.2 have been
18 executed and are on file with the agency.

19 C. The Louisiana Department of Health shall review the submitted materials
20 and within thirty calendar days of receipt of a complete submission:

21 (1) Issue a compliance certificate if the materials demonstrate compliance
22 with R.S. 9:2720 through 9:2720.6 and the agreement is in the required statutory
23 form.

24 (2) Issue a deficiency notice identifying with specificity each requirement
25 not satisfied and providing fifteen days to cure.

26 (3) Deny the compliance certificate with a written statement of reasons. An
27 agreement is deemed "complete" for purposes of this Section when the Louisiana
28 Department of Health has received all items listed in Subsection B of this Section.

1 The Louisiana Department of Health's failure to act within thirty days of a complete
2 submission shall be deemed a denial reviewable under R.S. 49:964.

3 D. A compliance certificate does all of the following:

4 (1) Constitutes the administrative determination that the agreement satisfies
5 the statutory form and documentation requirements of this Chapter for purposes of
6 the presumption of validity under R.S. 9:2720.11.

7 (2) Together with the Administrative Pre-Parentage Certification issued
8 simultaneously under R.S. 9:2720.16, establishes sufficient administrative authority
9 for vital-records staff to list the intended parent or intended parents on the birth
10 certificate of a child born from the arrangement under R.S. 9:2720.22 absent a
11 contrary court order.

12 (3) Is registered in the Louisiana Department of Health Gestational Carrier
13 Registry set forth in R.S. 40:101 et seq, and is available to the Louisiana Department
14 of Health, the parties, the parties' legal counsel, treating healthcare providers, and the
15 vital records registrar.

16 (4) Does not constitute a parentage order, does not adjudicate legal
17 parentage, and does not preclude any party from seeking a judicial parentage
18 determination under R.S. 9:2720.15.

19 E. The Louisiana Department of Health may revoke or suspend a compliance
20 certificate upon a finding, following notice and opportunity to be heard under R.S.
21 49:950 et seq., that the submission contained material misrepresentation, a
22 disqualifying condition was concealed, or the agreement contains a provision
23 absolutely null under R.S. 9:2720.9. Revocation or suspension does not affect the
24 enforceability of the underlying agreement as between the parties if pregnancy has
25 already resulted from an embryo transfer subject to R.S. 9:2720.11. Any party or
26 aggrieved person may challenge a revocation, suspension, or denial by petition for
27 judicial review to the appropriate court of appeal under R.S. 49:964, exercising
28 appellate jurisdiction over the Louisiana Department of Health's regulatory
29 determination.

1 F. Parties who do not use a licensed gestational carrier agency shall not use
2 the administrative track under this Section and shall obtain judicial confirmation
3 pursuant to R.S. 9:2720.11 to establish the presumption of validity. Nothing in this
4 Section requires any party to use a licensed gestational carrier agency, and no
5 agreement is rendered unenforceable solely because it was not submitted for a
6 compliance certificate. Such agreements remain subject to R.S. 9:2720.1 and to
7 judicial determination of compliance.

8 §2720.13. Compensation

9 A. Compensation to a gestational carrier is lawful and enforceable under this
10 Chapter. The legislature finds that fair and transparent compensation recognizes the
11 significant physical, emotional, and time commitments undertaken by a gestational
12 carrier and is consistent with the public policy of this state. All compensation and
13 all categories of reimbursement shall be separately identified and itemized in the
14 gestational carrier agreement and deposited into an escrow account maintained by
15 a licensed attorney or independent escrow agent prior to commencement of any
16 medical procedure, and disbursed only in accordance with the schedule established
17 in the agreement and the requirements of R.S. 40:106.

18 B.(1) Payment of base compensation shall not be conditioned upon, reduced
19 by reason of, or forfeited as a consequence of any of the following:

20 (a) Live birth or any specific pregnancy outcome.

21 (b) The health, appearance, genetic characteristics, or number of children
22 born.

23 (c) The gestational carrier's agreement or refusal to undergo selective
24 reduction or termination of a pregnancy.

25 (d) Surrender or relinquishment of the child to the intended parent or
26 intended parents.

27 (2) Any provision of a gestational carrier agreement that conditions, reduces,
28 or withholds base compensation on any of the foregoing grounds is void and
29 unenforceable.

1 C. In the ordinary course of a compliant gestational carrier arrangement,
 2 compensation shall be disbursed to the gestational carrier before birth in accordance
 3 with the agreed payment schedule. Amounts not yet disbursed at the time of birth
 4 shall be disbursed promptly following delivery in accordance with the agreement.
 5 The gestational carrier shall not be required to await the outcome of any parentage
 6 proceeding before receiving disbursements to which she is entitled under the
 7 payment schedule.

8 D. The gestational carrier shall not be required to pay any medical bills
 9 arising from the pregnancy, delivery, or postpartum care out of her own funds. All
 10 costs shall be covered through the health insurance obtained pursuant to R.S.
 11 9:2720.8 and R.S. 40:114 through direct payment by the intended parent or intended
 12 parents or through escrow disbursement as specified in the agreement.

13 §2720.14. Compensation schedule; benchmarks; required payment

14 A. The legislature recognizes that based on national market data for similarly
 15 situated states fair gestational carrier compensation in this state falls within the
 16 following benchmark ranges which shall serve as guidance to parties and courts in
 17 evaluating the reasonableness of agreed compensation:

18 (1) For a gestational carrier who has not previously served as a gestational
 19 carrier, the benchmark range for total compensation is fifty-five thousand dollars to
 20 ninety thousand dollars inclusive of base pay and all allowances, bonuses, and
 21 supplemental payments described in Subsection B of this Section but exclusive of
 22 reimbursement of actual expenses.

23 (2) For a gestational carrier who has previously completed at least one
 24 gestational carrier arrangement, the benchmark range for total compensation is
 25 sixty-five thousand dollars to one hundred ten thousand dollars reflecting the
 26 demonstrated experience, reliability, and reduced risk associated with a carrier who
 27 has successfully completed a prior arrangement.

28 B. These benchmarks do not establish a minimum or maximum
 29 compensation required by law. Parties may negotiate compensation outside these

1 ranges. However, compensation materially below the lower benchmark shall be
2 considered a factor in evaluating whether the agreement was entered into freely and
3 without coercion for purposes of any enforcement proceeding under this Chapter.

4 C. This Chapter applies exclusively to gestational carrier arrangements in
5 which the gestational carrier has no genetic relationship to the child. In a gestational
6 surrogacy, the embryo is created from the egg of the intended mother or a donor,
7 fertilized with the sperm of the intended father or a donor, and transferred to the
8 gestational carrier. The gestational carrier's own egg shall not be used in any
9 arrangement regulated under this Chapter. Traditional surrogacy arrangements in
10 which the surrogate's own egg is fertilized are not governed by this Chapter and are
11 subject to such other law as may be applicable.

12 PART IV - PARENTAGE

13 §2720.15. Establishment of parentage

14 A. Upon the birth of a child pursuant to a compliant gestational carrier
15 agreement the intended parent or intended parents are the legal parents, the
16 gestational carrier is not a legal parent, and the gestational carrier's spouse is not a
17 legal parent. Parentage established pursuant to this Chapter shall be recognized by
18 all state agencies and courts of this state.

19 §2720.16. The Louisiana Department of Health Administrative Pre-Parentage 20 Certification; Vital-Records Authority

21 A. The legislature finds that the administrative licensing and certification
22 model established for sensitive reproductive-health facilities under R.S. 40:101 et
23 seq. provides constitutional authority for the Louisiana Department of Health to issue
24 regulatory certifications that have operative legal effect without constituting
25 adjudications of the civil rights of the parties. The Louisiana Department of Health
26 is authorized to issue an Administrative Pre-Parentage Certification as part of the
27 compliance certificate process under R.S. 9:2720.12 and R.S. 40:101 et seq. An
28 Administrative Pre-Parentage Certification is an administrative regulatory
29 certification and not a judicial parentage order. The Administrative Pre-Parentage

1 Certification does not adjudicate the civil right of parentage and does not require or
2 supplant the district court's original jurisdiction over parentage as a civil matter
3 pursuant to Article V, Section 16(A) of the Constitution of Louisiana.

4 B.(1) An Administrative Pre-Parentage Certification shall be issued by the
5 Louisiana Department of Health as a component of or simultaneously with the
6 Louisiana Department of Health compliance certificate pursuant to R.S. 9:2720.12
7 upon the Louisiana Department of Health's determination that the submission
8 satisfies all requirements of that Section. The Administrative Pre-Parentage
9 Certification shall identify all of the following:

- 10 (a) The arrangement by its registry number.
11 (b) The name of the intended parent or intended parents.
12 (c) The name of the gestational carrier.
13 (d) The name and license number of the licensed gestational carrier agency,
14 if any.
15 (e) The name of the expected birthing facility, if known.

16 (2) The Administrative Pre-Parentage Certification shall be transmitted
17 electronically to the parties and their legal counsel, the licensed gestational carrier
18 agency of record, the expected birthing facility's vital-records registrar.

19 C. A valid, unrevoked Administrative Pre-Parentage Certification,
20 transmitted to the Louisiana Vital Records Registry and to the birthing facility's
21 vital-records registrar pursuant to Subsection B of this Section, constitutes
22 administrative authority for the vital-records registrar to record the intended parent
23 or intended parents as the legal parent or parents on the birth certificate of any child
24 born from the covered arrangement, absent a contrary court order. The
25 Administrative Pre-Parentage Certification serves the same vital-records function as
26 an order from the court registry under R.S. 40:34 et seq., without constituting a
27 judicial determination of parentage. The gestational carrier and, if married, her
28 spouse shall each execute a relinquishment affidavit in the form prescribed by the
29 Louisiana Department of Health under R.S. 9:2720.8; the agency shall transmit the

1 executed affidavits to the vital-records registrar concurrently with or before birth
2 notification under R.S. 9:2720.22.

3 D. An Administrative Pre-Parentage Certification is an administrative
4 regulatory certification issued by the Louisiana Department of Health in its licensing
5 and standards-setting capacity. It does not adjudicate legal parentage, does not
6 constitute a parentage order, and does not divest any party of the right to seek a
7 judicial parentage determination in a district court of competent jurisdiction. If a
8 district court subsequently enters a parentage order or an order invalidating or
9 reforming the agreement, the court order controls and the Louisiana Vital Records
10 Registry shall amend the birth certificate within fifteen business days of receiving
11 a certified copy of the order. An Administrative Pre-Parentage Certification may be
12 revoked or suspended by the Louisiana Department of Health on the grounds and
13 following the procedures of R.S. 9:2720.12. Revocation does not retroactively
14 affect a birth certificate already issued under Subsection C of this Section unless a
15 contrary court order is also obtained.

16 E. When no licensed gestational carrier agency is involved, the parties may
17 submit the executed gestational carrier agreement and all required documentation
18 directly to the Louisiana Department of Health through the portal to obtain an
19 Administrative Pre-Parentage Certification. The Louisiana Department of Health
20 shall review the submission on the same timeline and under the same standards as
21 an agency submission under R.S. 9:2720.12. All provisions of this Section apply
22 equally to non-agency arrangements.

23 §2720.17. Best interests of the child

24 In all proceedings under this Chapter, the best interests of the child shall be
25 the paramount consideration. A child's status as born through a gestational carrier
26 arrangement shall not constitute grounds for any adverse determination regarding the
27 child's welfare, adoption eligibility, or any other matter governed by the laws of this
28 state.

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PART V - JUDICIAL PROCEEDINGS

§2720.18. Jurisdiction; venue; confidentiality

A. The courts have subject matter jurisdiction over all proceedings under this Chapter. Venue is proper in the parish where an intended parent or intended parents resides, where the gestational carrier resides, or where the child will be born.

B. All petitions, affidavits, records, and proceedings under this Chapter shall be sealed by the court and not open to public inspection except upon order of the court for good cause shown.

§2720.19. Dispute resolution; attorney fees

A. Disputes arising under a gestational carrier agreement may be submitted to mediation if provided in the agreement, except in cases involving allegations of fraud, coercion, or duress, or immediate risk to health or safety.

B. In any proceeding under this Chapter in which a court finds that a party acted in bad faith, the court may award attorney fees, expert witness fees, and court costs to the prevailing party.

PART VI - CONFLICTS OF LAW

§2720.20. Conflicts

A. All gestational carrier agreements involving a Louisiana-domiciled gestational carrier, a Louisiana-domiciled intended parent, an embryo transfer performed in this state, or a child expected to be born in this state are governed exclusively by state law as set forth in this Chapter, without regard to any choice-of-law clause in the agreement purporting to apply the law of another state or country. Any such clause is void as against public policy.

B. No agreement, agency instrument, or party stipulation may waive, circumvent, or diminish the protections of this Chapter by designating the law of another jurisdiction. State courts shall apply this Chapter to any covered arrangement regardless of where the agreement was executed, where the parties are domiciled, or what law the parties have purported to select.

1 C. When a gestational carrier agreement is executed entirely outside of this
2 state and has no nexus to this state as described in Subsection A of this Section, a
3 court of competent jurisdiction in this state may, in its discretion, apply this Chapter
4 or recognize the agreement under principles of comity, provided the agreement does
5 not violate the mandatory carrier-protection provisions of R.S. 9:2720.8, R.S.
6 9:2720.9, or R.S. 9:2720.13.

7 PART VII - PROHIBITED ACTS AND PENALTIES

8 §2720.21. Prohibited Acts

9 A. No person shall:

10 (1) Knowingly induce a woman to enter into a gestational carrier agreement
11 through fraud, misrepresentation, or undue influence.

12 (2) Pay or receive compensation conditioned upon relinquishment of
13 parentage rights or the outcome of the pregnancy in any manner inconsistent with
14 this Chapter.

15 (3) Advertise gestational carrier services in a manner that is false or
16 materially misleading.

17 B. Any person found in violation of Subsection A of this Section resulting
18 in harm to a gestational carrier or a child gives rise to a civil cause of action for
19 compensatory and punitive damages and injunctive relief. Intentional violation of
20 Paragraphs (A)(1) or (A)(2) of this Section constitutes a misdemeanor punishable by
21 a fine not exceeding ten thousand dollars or imprisonment not exceeding one year,
22 or both.

23 PART VIII - ADMINISTRATIVE AND EFFECTIVE DATE PROVISIONS

24 §2720.22. Vital Records Registry Duties

25 A. The Louisiana Vital Records Registry shall: (1) establish procedures for
26 processing parentage orders under this Chapter; (2) issue birth certificates consistent
27 with parentage orders within fifteen (15) business days of receipt of a certified order;
28 and (3) maintain records related to parentage orders in a manner that protects the
29 confidentiality of the parties.

1 B. The Louisiana Vital Records Registry and the vital-records registrar at
2 any birthing facility in this state shall accept a valid Administrative Pre-Parentage
3 Certification issued in accordance with R.S. 9:2720.16 as administrative authority
4 to record the intended parent or intended parents as parent or parents on the birth
5 certificate of any child born from the covered arrangement, subject to the following
6 conditions:

7 (1) The Administrative Pre-Parentage Certification identifies the parties to
8 the arrangement and the licensed gestational carrier agency, if any, by name and the
9 Louisiana license number.

10 (2) No contrary court order has been presented to the vital-records registrar.

11 (3) The gestational carrier and, if married, her spouse, have each executed
12 a relinquishment affidavit in the form required by R.S. 9:2720.8(B)(4), which the
13 agency or, in a non-agency arrangement, the parties' counsel shall transmit to the
14 registrar concurrently with or before birth notification. Recordation of intended
15 parents on the birth certificate under this Subsection is an administrative
16 vital-records function; it does not constitute, and shall not be treated as, a judicial
17 parentage order or adjudication of legal parentage. If a district court subsequently
18 enters a parentage order or an order invalidating the agreement, the Registry shall
19 amend the birth certificate within fifteen business days of receiving a certified copy
20 of the court order.

21 C. The Louisiana Vital Records Registry shall report to the Louisiana
22 Department of Health, on a quarterly basis, data on all births registered under this
23 Section, including the number of birth certificates issued pursuant to a court
24 parentage order under Subsection A of this Section and the number issued pursuant
25 to a compliance certificate provided for in Subsection B of this Section, in
26 furtherance of the data-collection obligations under Title 40.

27 §2720.23. Construction and severability

28 This Chapter shall be liberally construed to promote its underlying purposes.

29 The provisions of this Chapter are severable. If any provision, or its application to

1 any person or circumstance, is held unconstitutional or otherwise invalid, such
 2 holding shall not affect the validity of the remaining provisions. Nothing in this
 3 Chapter shall be construed to require any individual, religious organization,
 4 healthcare provider, or entity to facilitate or participate in a gestational carrier
 5 arrangement contrary to sincerely held religious beliefs or conscience.

6 Section 2. R.S. 40:97 and Chapter 2-B of Title 40 of the Louisiana Revised Statutes
 7 of 1950, to be comprised of R.S. 40:101 through 127, are hereby enacted to read as follows:

8 §97. Criminal penalties

9 A. The following acts and omissions constitute criminal offenses pursuant
 10 to this Chapter, creating a targeted criminal enforcement path distinct from and in
 11 addition to the application of this state's broader felony provisions of R.S. 14:286 to
 12 intermediary conduct:

13 (1) Unlicensed Operation - Misdemeanor. Any person who operates as a
 14 gestational carrier agency, provides facilitating services, or advertises gestational
 15 carrier matching or coordination services in this state without a valid license,
 16 knowing that a license is required, commits a misdemeanor, punishable by: (a) a fine
 17 of not more than five thousand dollars (\$5,000) per violation; or (b) imprisonment
 18 for not more than six (6) months; or (c) both such fine and imprisonment. Each day
 19 of unlicensed operation constitutes a separate violation.

20 (2) Unlicensed Operation - Felony. Any person who operates as a
 21 gestational carrier agency without a valid license and, in the course of such
 22 unlicensed operation, knowingly engages in fraud, misrepresentation, or deception
 23 that results in actual economic harm to a gestational carrier or intended parent,
 24 commits a felony, punishable by: (a) a fine of not more than twenty-five thousand
 25 dollars (\$25,000); or (b) imprisonment, with or without hard labor, for not more than
 26 five (5) years; or (c) both.

27 (3) Misappropriation of Escrowed Funds - Felony. Any person who
 28 knowingly misappropriates, converts, diverts, or fails to deposit client funds required
 29 to be held in escrow under this Chapter commits a felony, punishable by: (a) a fine

1 of not more than fifty thousand dollars (\$50,000) or three times the amount
2 misappropriated, whichever is greater; or (b) imprisonment, with or without hard
3 labor, for not more than ten (10) years; or (c) both. This offense is separate from and
4 may be charged in addition to theft under R.S. 14:67 or fraud under other applicable
5 statutes.

6 B. The criminal penalties in this Section are intended to provide a graduated,
7 targeted enforcement pathway for gestational carrier agency violations, and shall be
8 construed as supplementing - not replacing - any other criminal statute applicable to
9 the described conduct. Nothing in this Section shall be construed to prevent
10 prosecution under R.S. 14:286 or any other applicable criminal statute where the
11 elements of that statute are satisfied.

12 C. Criminal prosecutions pursuant to this Section shall be initiated by the
13 district attorney of the parish in which the offense occurred, or by the attorney
14 general exercising concurrent jurisdiction.

15 * * *

16 CHAPTER 2-B. LOUISIANA FAMILY BUILDING AND MATERNAL HEALTH

17 PROTECTION ACT FUNCTIONS

18 §101. Short Title

19 This Chapter shall be known and may be cited as Part B of the "Louisiana
20 Family Building and Maternal Health Protection Act" (the "FBMHA") and, together
21 with Chapter 1-C of Code Title IV of Code Book III of Title 9, R.S. 9:2718 through
22 2720.23, constitutes the complete FBMHA. This Chapter may also be cited
23 separately as the "Louisiana Gestational Carrier Agency Licensing and Consumer
24 Protection Act."

25 §102. Legislative findings and purpose

26 A. The legislature finds that:

27 (1) Intermediary entities, agencies, programs, brokers, and facilitators, play
28 an increasing role in connecting intended parents with gestational carriers and in

1 coordinating the medical, legal, and logistical aspects of gestational carrier
2 arrangements.

3 (2) Unregulated intermediaries pose substantial risks of financial
4 exploitation, conflicts of interest, inadequate screening of parties, and coercive
5 recruitment practices targeting economically vulnerable women.

6 (3) California and New York have demonstrated that
7 consumer-protection-style regulation of gestational carrier agencies is feasible,
8 administrable, and protective of all participants without unduly restricting access to
9 assisted reproduction services.

10 (4) A dedicated regulatory framework for gestational carrier agencies shall
11 operate independently from the contract-eligibility rules of Chapter 1-C of Code
12 Title IV of Code Book III of Title 9, R.S. 9:2718 through 2720.23, so that agency
13 oversight remains effective regardless of any future legislative modifications to the
14 scope of enforceable gestational carrier agreements or compensation rules.

15 (5) The regulation of gestational carrier agencies under this Chapter is
16 designed to be consistent with Louisiana's Human Embryo Statutes, R.S. 9:121-133,
17 which define an in vitro fertilized human ovum as a juridical person with specified
18 rights and protections. As the Fourth Circuit made clear in Loeb v. Vergara, 313 So.
19 3d 346 (La. App. 4th Cir. 2021), courts will not rewrite the embryo-protective
20 scheme; legislative action is the proper mechanism for reform. Agency regulation
21 under this Chapter is accordingly framed as a consumer-protection and
22 professional-licensing measure, not as an endorsement of the commodification of
23 embryos or children. The licensing, escrow, disclosure, and conflict-of-interest
24 standards of this Chapter serve to ensure transparency and protect participants, in a
25 manner consistent with the protective purposes of state statutes relative to human
26 embryos.

27 (6) This state's existing data-collection infrastructure provided for in R.S.
28 40:94 which requires the state registrar to collect and report data on gestational
29 carrier contracts, including carrier and intended-parent characteristics, treating

1 physicians, medical procedures, and outcomes provides an established and
2 operational foundation upon which this Chapter's expanded reporting requirements
3 are built. The agency-level reporting obligations of this Chapter are designed to
4 modernize and extend the framework of R.S. 40:94 to cover compensated
5 arrangements, agency involvement, financial flows, and adverse outcomes, in a
6 manner that supports legislative oversight and enables evidence-based refinement of
7 the regulatory scheme over time.

8 (7) The legislature has broad constitutional authority to assign licensing,
9 quasi-judicial, and enforcement functions to executive agencies in matters that were
10 not historically adjudicated by district courts as "civil matters" under Article V,
11 Section 16(A) of the Constitution of Louisiana. The legislature may delegate
12 rulemaking authority and procedural detail to agencies so long as regulations remain
13 within the scope of the statutory authorization. Agency contract-award and
14 discretionary executive decisions are subject to APA review but courts may not order
15 the agency to act on particular terms. The legislature finds that gestational carrier
16 agency licensing, standards-setting, escrow oversight, and enforcement under this
17 Chapter are regulatory and executive functions, not civil matters historically
18 adjudicated by district courts, and that the assignment of those functions to the
19 Louisiana Department of Health is constitutionally permissible. District courts
20 retain original jurisdiction over parentage determinations, enforcement of gestational
21 carrier agreements, and all civil disputes between parties, consistent with Article V,
22 Section 16(A) of the Constitution of Louisiana.

23 (8) The Louisiana Department of Health already exercises, through its Health
24 Standards Section, precisely the type of licensing, inspection, standards-setting, and
25 data-compliance authority contemplated by this Chapter. The creation of a
26 "gestational carrier agency" licensing category within the Louisiana Department of
27 Health is therefore an incremental extension of existing institutional authority, not
28 a novel grant of power.

29 B. The purpose of this Chapter is to all of the following:

1 (1) Define and scope "gestational carrier agency" as a covered entity
2 whenever it recruits, matches, coordinates, markets, or collects fees in connection
3 with gestational carrier arrangements involving state residents or medical procedures
4 performed in this state.

5 (2) Require licensure of gestational carrier agencies and vest the Louisiana
6 Department of Health with audit, disciplinary, and enforcement authority.

7 (3) Mandate escrow and financial controls modeled on California and New
8 York.

9 (4) Separate agency regulation from Louisiana's eligibility limits for
10 enforceable contracts to ensure that the Louisiana Family Building and Maternal
11 Health Protection Act functions even if this state later broadens contract eligibility
12 or compensation rules.

13 §103. Definitions

14 A. As used in this Chapter, the following terms have the meanings ascribed
15 to them in this Section:

16 (1) "Agency" means any gestational carrier agency as defined in this Section.

17 (2) "Advertising" means any written, oral, digital, or broadcast
18 communication, including websites, social media, print, email, and radio or
19 television, used to recruit gestational carriers, solicit intended parents, or promote the
20 facilitating services of a gestational carrier agency, regardless of whether
21 compensation is sought.

22 (3) "Applicant" means a person or entity that has applied for a license under
23 this Chapter but has not yet been issued a license.

24 (4) "Client funds" means all funds received by a licensee from or on behalf
25 of any party to a covered arrangement, including gestational carrier compensation,
26 expense reimbursements, insurance premium reserves, medical expense reserves,
27 legal fee advances, and any other financial consideration collected, held, or managed
28 by the licensee in connection with a covered arrangement. Client funds do not
29 include fees earned and retained by the licensee as compensation for its own

1 facilitating services, provided such fees are separately identified and not commingled
2 with client funds.

3 (5) "Complaint" means a written statement submitted to the Department by
4 any person alleging a violation of this Chapter by a licensee, applicant, or unlicensed
5 entity.

6 (6) "Covered arrangement" means any gestational carrier arrangement in
7 which any of the following are true:

8 (a) The gestational carrier is a state resident.

9 (b) The intended parent or intended parents are state residents.

10 (c) The embryo transfer or pregnancy is initiated or carried to term in this
11 state, regardless of where any agreement was executed or where any party resides.

12 (7) "Department" means the Louisiana Department of Health.

13 (8) "Gestational carrier agency" or "agency" means any partnership,
14 corporation, limited liability company, nonprofit organization, professional
15 association, or other legal entity that provides or offers to provide facilitating
16 services in connection with a covered arrangement for compensation or the
17 expectation of compensation, whether or not the entity is domiciled in this state. A
18 natural person acting solely as an individual, and not through or on behalf of a
19 partnership, corporation, limited liability company, or other legal entity, is not a
20 gestational carrier agency and is not required to obtain a license pursuant to this
21 Chapter solely by reason of such individual activity.

22 (9) "Gestational carrier contract" means a gestational carrier agreement as
23 defined in R.S. 9:2720, and also includes any agreement between a gestational
24 carrier and intended parents that does not fully comply with the requirements of R.S.
25 9:2718 through 2720.23 but that is nonetheless facilitated by a licensee within the
26 scope of this Chapter.

27 (10) "Independent escrow agent" means a person or entity that is all of the
28 following:

1 (a) Not a party to, or an affiliate, owner, officer, employee, or contractor of,
2 the agency or any party to the covered arrangement.

3 (b) Either a Louisiana-licensed attorney maintaining a client trust account
4 or a licensed escrow company, trust company, or federally insured financial
5 institution authorized to provide escrow services.

6 (c) Administers escrow accounts in accordance with the requirements of this
7 Chapter.

8 (11) "Intended parent(s)" has the same meaning as in R.S. 9:2720.

9 (12) "Licensee" means a gestational carrier agency that holds a valid license
10 in accordance with this Chapter.

11 (13) "Matching" means the introduction, referral, or connection of a
12 gestational carrier with one or more intended parents, or vice versa, for the purpose
13 of entering into a gestational carrier contract.

14 (14) "Program" means a structured set of facilitating services offered by a
15 hospital, fertility clinic, university, nonprofit, or other entity that is not primarily
16 organized as a gestational carrier agency but that regularly performs facilitating
17 services in connection with covered arrangements. A program is subject to this
18 Chapter to the same extent as an agency.

19 (15) "Registry" means the public registry of licensed gestational carrier
20 agencies maintained by the Louisiana Department of Health in accordance this
21 Chapter.

22 (16) "Secretary" means the secretary of the Louisiana Department of Health
23 or the secretary's designee.

24 (17) "Surrogacy program" means a program as defined in this Subsection.

25 B. Terms defined in R.S. 9:2720 and not otherwise defined in this Chapter
26 shall have the same meaning as in that section when used in this Chapter. In the
27 event of a conflict between a definition in R.S. 9:2720 and a definition in this
28 Chapter, the definition in this Chapter shall control for purposes of the Louisiana
29 Family Building and Maternal Health Protection Act functions.

1 §104. Gestational carrier matching or coordinating services; licensure

2 A. No person shall operate, offer, or advertise gestational carrier matching
3 or coordination services in this state, or to resident clients in this state, without first
4 obtaining and maintaining a valid license issued by the department in accordance
5 with this Chapter. This prohibition applies without regard to whether the person is
6 domiciled, organized, or physically located in this state.

7 B. Coverage is triggered whenever the person does any of the following:

8 (1) Solicits or recruits a state resident to serve as a gestational carrier.

9 (2) Contracts with or provides matching or coordination services to intended
10 parents domiciled in Louisiana.

11 (3) Coordinates an embryo transfer performed in this state or coordinates or
12 facilitates a birth occurring in this state.

13 (4) Receives fees, deposits, or other consideration from resident clients of
14 this state in connection with a covered arrangement.

15 C. Each branch office or separate location from which an agency provides
16 facilitating services shall be separately licensed, unless the department, by rule,
17 provides otherwise.

18 D. A license issued in accordance with this Chapter is non-transferable. A
19 change of ownership, controlling interest, or legal structure of a licensee constitutes
20 a change of ownership requiring prior written approval of the department and, at the
21 department's discretion, submission of a new license application.

22 E. A person is not required to obtain a license in accordance with this
23 Chapter if he is any of the following:

24 (1) A licensed attorney acting solely as legal counsel to a party and not
25 performing matching, recruitment, or financial management services.

26 (2) A licensed healthcare provider performing only medical procedures.

27 (3) A licensed mental health professional performing only psychological
28 evaluations or counseling.

1 (4) A donor, gestational carrier, or intended parent acting on their own behalf
2 without providing facilitating services to others for compensation.

3 (5) A natural person acting solely as an individual and not through or on
4 behalf of any partnership, corporation, limited liability company, or other legal
5 entity, as defined by this Chapter. Nothing in this Subsection limits the application
6 of R.S. 9:2720.21 or any other provision of law to conduct by a natural person that
7 constitutes fraud, coercion, or misrepresentation in connection with a covered
8 arrangement.

9 F. Operation without a required license is a violation of this Chapter and
10 subjects the unlicensed person or entity to the penalties set provided for in this
11 Chapter. The existence of an unlicensed arrangement does not in itself void or
12 render unenforceable a gestational carrier agreement otherwise compliant with R.S.
13 9:2718 through 2720.23.

14 §105. Application for license

15 A. An application for a license under this Chapter shall be submitted to the
16 department on a form prescribed by the secretary and shall demonstrate compliance
17 with the all of the following minimum requirements:

18 (1) The applicant shall:

19 (a) Be duly organized and in good standing under the laws of the state of its
20 organization.

21 (b) If not organized in accordance with the laws of this state, be registered
22 to do business in this state as a foreign entity.

23 (c) Provide a certificate of good standing from the applicable jurisdiction
24 issued within ninety days of the application date.

25 (2) Each owner, officer, director, partner, and manager with a controlling
26 interest of five percent or more shall submit to a criminal background check
27 conducted through the Louisiana State Police and, where applicable, through a
28 federal criminal database. A felony conviction within the preceding ten years, a
29 conviction at any time for a crime involving fraud, misrepresentation, theft, or

1 financial dishonesty, a conviction at any time for a sexual offense or crime against
2 a child, or a prior revocation or surrender of a license to operate a gestational carrier
3 agency, adoption agency, fertility clinic, or similar entity in this state or any other
4 jurisdiction shall disqualify a principal from participation as a licensee.

5 (3) The applicant shall submit written policies and procedures that address,
6 at a minimum, all of the following:

7 (a) Screening criteria and protocols for gestational carriers and intended
8 parents.

9 (b) Disclosure obligations to all parties.

10 (c) Complaint handling and internal dispute resolution procedures; (d) record
11 retention and confidentiality.

12 (d) Protocols for referral to independent legal counsel and mental health
13 professionals.

14 (4) The applicant shall provide written documentation demonstrating that it
15 has established, or will establish prior to receiving any client funds, an escrow
16 arrangement complying with the provisions of this Chapter. This shall include
17 identification of the independent escrow agent and a description of the proposed
18 escrow account structure.

19 (5) The applicant shall provide either of the following:

20 (a) Proof of a surety bond executed by a surety company authorized to do
21 business in this state, in a principal amount of not less than two hundred fifty
22 thousand dollars, conditioned on faithful compliance with this Chapter and proper
23 management of client funds.

24 (b) In lieu of a bond, a deposit of cash, certificates of deposit, or government
25 securities in the required amount with the department. In addition, each licensee
26 shall maintain professional liability insurance covering claims arising from
27 facilitating services, in a minimum amount established by rule. Cancellation of
28 required coverage is grounds for immediate license suspension.

1 (6) The applicant shall designate a qualified person responsible for
2 day-to-day operations who has completed at least twenty hours of training in
3 gestational carrier law, reproductive medicine, psychological considerations in
4 third-party reproduction, and escrow management, as prescribed by rule and has not
5 been convicted of a disqualifying offense provided for in Subsection A of this
6 Section.

7 (7) Payment of an initial license fee established by rule of the department,
8 not to exceed two thousand five hundred dollars.

9 B. The department shall complete review of a completed application within
10 ninety days of receipt. Incomplete applications shall be returned with written notice
11 of deficiencies within thirty days. The department may conduct background checks
12 of any principal through the Louisiana State Police or equivalent federal agency as
13 a condition of licensure.

14 §106. Escrow

15 A. For each covered arrangement in which a licensee collects, receives, or
16 manages client funds, the licensee shall cause all client funds to be deposited into an
17 escrow account administered by an independent escrow agent prior to the
18 commencement of any medical procedure. The escrow account shall be all of the
19 following:

20 (1) Held in the name of the independent escrow agent, or in the name of the
21 licensee "as escrow agent for" the relevant parties with unique arrangement
22 identification.

23 (2) A segregated, interest-bearing account, separate from any operating
24 account, general account, or other funds of the licensee.

25 (3) Not subject to any lien, levy, attachment, or encumbrance by any creditor
26 of the licensee.

27 (4) Insured by the Federal Deposit Insurance Corporation or equivalent
28 federal insurance program up to applicable limits.

1 B. A licensee may not serve as its own escrow agent. All client funds shall
2 be held by an independent escrow agent as defined in this Chapter. The use of an
3 independent escrow agent does not relieve the licensee of ultimate responsibility for
4 compliance with this Chapter.

5 C. A licensee shall direct the intended parent or intended parents to deposit
6 into the escrow account, prior to commencement of any embryo transfer procedure,
7 the full estimated amounts for all of the following:

8 (1) Gestational carrier compensation.

9 (2) Gestational carrier expense reimbursements

10 (3) A medical expense reserve in an amount established by rule of the
11 department, based on anticipated maternity-related costs not covered by insurance.

12 D. An escrow accounts maintained under this Chapter shall be separate from
13 any operating accounts of the licensee. Agency fees and operating expenses of the
14 licensee shall not be disbursed from the client escrow account. Agency fees shall be
15 held separately and disbursed only in accordance with the parents-agency enrollment
16 agreement required by R.S. 9:2720.

17 E. Disbursements from the escrow account shall be made:

18 (1) In accordance with the disbursement schedule set forth in the gestational
19 carrier contract and the escrow agreement.

20 (2) Upon joint written authorization of the parties or upon order of a court
21 of competent jurisdiction, except for disbursements that are automatic under the
22 agreed schedule.

23 (3) To the gestational carrier personally, or to third-party providers for
24 services rendered directly on her behalf, as specified in the agreement.

25 F. In the event the covered arrangement is terminated prior to pregnancy, any
26 unexpended client funds shall be returned within fifteen business days, less only
27 amounts properly earned and documented. In the event of a disbursement dispute,
28 the licensee shall interplead the disputed funds with the district court. The licensee
29 shall not unilaterally disburse disputed funds.

1 §107. Escrow recordkeeping and reporting

2 A. A licensee shall maintain complete and accurate records of all client
3 escrow accounts, including all of the following:

4 (1) Bank statements for each account for the duration of the arrangement and
5 for not less than ten years thereafter.

6 (2) A disbursement ledger identifying the date, amount, recipient, and
7 purpose of every disbursement.

8 (3) All escrow agreements and amendments.

9 (4) All correspondence with the independent escrow agent.

10 B. Each licensee shall file an annual financial report with the department
11 within ninety days after the close of the licensee's fiscal year, including all of the
12 following:

13 (1) A statement of all escrow accounts with opening balances, total deposits,
14 disbursements, and closing balances.

15 (2) A certified audit or review by an independent CPA licensed in this state
16 if aggregate client funds under management exceeded five hundred thousand dollars
17 during the reporting year.

18 (3) A statement of the number of covered arrangements initiated, active,
19 completed, and terminated during the reporting year.

20 (4) Disclosure of any civil judgments, regulatory actions, or criminal
21 proceedings involving the licensee or any principal.

22 §108. Mandatory disclosure packet

23 A. Before collecting any fee, deposit, or other consideration from any party
24 to a covered arrangement, a licensee shall deliver to each party a mandatory written
25 disclosure packet. The disclosure packet shall be in plain language and shall include
26 all of the following:

27 (1)(a) A complete itemized schedule of all fees, charges, and costs to be
28 assessed by the licensee, separately identifying all of the following:

29 (i) Agency fees.

- 1 (ii) Third-party service fees anticipated to be incurred.
- 2 (iii) Estimated gestational carrier compensation and expense
3 reimbursements.
- 4 (iv) Escrow administration fees.
- 5 (b) The disclosure shall include the licensee's complete refund policy, stating
6 the specific circumstances under which any fee will be refunded and within what
7 timeframe.
- 8 (2) A full identification of all of the following:
- 9 (a) All entities affiliated with or under common ownership or control with
10 the licensee.
- 11 (b) All attorneys, healthcare providers, mental health professionals,
12 insurance agents, and other service providers to whom the licensee customarily refers
13 clients.
- 14 (c) The nature and amount of any referral fee, commission, revenue-sharing
15 arrangement, or other financial relationship between the licensee and any such
16 referral recipient.
- 17 (3) A plain-language summary of all of the following:
- 18 (a) Louisiana's contract enforceability constraints and requirements under
19 R.S. 9:2718 through 2720.23, including the eligibility requirements for an
20 enforceable gestational carrier agreement.
- 21 (b) Criminal prohibitions applicable to gestational carrier arrangements
22 including R.S. 14:286 and the provisions of this Chapter.
- 23 (c) A statement that the licensee's compliance with this Chapter does not
24 guarantee that a gestational carrier contract will be enforceable in accordance with
25 Title 9.
- 26 (4) A description of all of the following:
- 27 (a) The identity, address, and contact information of the independent escrow
28 agent who will hold client funds.
- 29 (b) The disbursement rules and schedule applicable to the arrangement.

1 (c) The gestational carrier's right to receive monthly escrow accountings.

2 (d) How to contact the department with concerns about fund handling.

3 (5) A description of all of the following:

4 (a) The licensee's internal complaint handling process and the timeframe for
5 responding to complaints.

6 (b) The procedure for filing a complaint with the department.

7 (c) The private right of action available to parties provided for in this
8 Chapter.

9 (d) The mediation and arbitration provisions, if any, in the parents-agency
10 enrollment agreement or the carrier-agency engagement agreement.

11 B. The disclosure packet shall be provided to each party at least five business
12 days before the licensee collects any fee or executes any services contract. Each
13 party shall sign a written acknowledgment of receipt of the disclosure packet, which
14 acknowledgment the licensee shall retain for not less than ten years.

15 C. The department shall publish a model disclosure packet form, which a
16 licensees may use or adapt provided the substance of each required element is
17 preserved.

18 §109. Advertising Standards and Prohibited Advertising

19 A. All advertising by a licensee shall do all of the following:

20 (1) Accurately identify the legal name of the licensee and its Louisiana
21 license number.

22 (2) Not contain materially false or misleading statements regarding the
23 agency's services, fees, outcomes, success rates, or regulatory status.

24 (3) Not exploit the economic vulnerability or emotional circumstances of
25 prospective gestational carriers or intended parents.

26 (4) Not use testimonials or endorsements without the written consent of the
27 person whose testimonial or likeness is used.

1 B. A licensee shall not advertise that it is licensed, certified, or approved by
2 the this state in any manner beyond stating its license number, unless the department
3 has issued a specific designation authorizing such representation.

4 C. A licensee shall not engage in advertising that is primarily directed at
5 recruiting gestational carriers from populations receiving means-tested public
6 assistance, unless the licensee first verifies that each prospective gestational carrier
7 meets the eligibility requirements of R.S. 9:2720.1 and that appropriate independent
8 healthcare coverage will be provided.

9 D. The department may by rule establish additional advertising standards
10 consistent with the purposes of this Chapter.

11 §110. Prohibited Practices - General

12 A. A licensee shall not engage in any of the following acts or omissions in
13 connection with a covered arrangement:

14 (1) Including, presenting, negotiating, recommending, or knowingly
15 facilitating execution of any provision in a gestational carrier contract that requires,
16 compels, incentivizes, conditions compensation upon, or imposes any penalty on a
17 gestational carrier for refusing to terminate a pregnancy, for any reason, including
18 prenatal diagnosis of disability, genetic variation, chromosomal condition, fetal
19 health condition, sex selection, or fetal reduction in a multiple-gestation pregnancy.
20 Any such contract provision is absolutely null and unenforceable under R.S.
21 9:2720.9, and a licensee's presentation or facilitation of such a provision is an
22 independent ground for license suspension or revocation. This prohibition applies
23 regardless of whether the intended parent or intended parents request the provision
24 and regardless of whether the gestational carrier initially assents.

25 (2) Threatening, penalizing, reducing compensation of, withholding escrow
26 disbursements from, or taking any other adverse action against a gestational carrier
27 by reason of her refusal to terminate a pregnancy, whether or not a contractual
28 provision purporting to authorize such action existed in the gestational carrier
29 contract.

1 (3) Recruiting, soliciting, or marketing gestational carrier services using
2 materially false or misleading statements, or exploiting economic hardship or
3 vulnerability of prospective gestational carriers or intended parents.

4 (4) Commingling client funds or escrow funds with the licensee's operating
5 funds, general accounts, or any other funds.

6 (5) Charging fees to a gestational carrier as a condition of her enrollment or
7 participation in a covered arrangement without full written disclosure approved in
8 advance by the gestational carrier and her independent counsel.

9 (6) Retaliating against a gestational carrier or intended parent who files a
10 complaint with the Department or who exercises any right in accordance with this
11 Chapter or R.S. 9:2718 through 2720.23

12 (7) Misrepresenting the licensee's qualifications, experience, affiliations,
13 regulatory status, or success rates.

14 B. A violation of Paragraph (A)(1) or (A)(2) of this Section is an
15 independent ground for license revocation without the requirement of a corrective
16 action plan or prior lesser sanction, and shall be reported by the department to the
17 attorney general for consideration of criminal referral in accordance with R.S.
18 40:2199.24 or other applicable law.

19 §111. Mandatory screening and documentation

20 A. Prior to completing any matching of a gestational carrier with intended
21 parents, a licensee shall document all of the following:

22 (1) The gestational carrier has completed a medical evaluation by a licensed
23 healthcare provider experienced in reproductive medicine and has received written
24 clearance to proceed with the arrangement, as required by R.S. 9:2720.1. The
25 licensee shall obtain and retain a copy of the signed written clearance letter
26 confirming that the licensed healthcare provider reviewed a complete medical history
27 in all categories specified in R.S. 9:2720.1 and found the gestational carrier
28 medically suitable to carry a pregnancy. The licensee shall not retain the gestational
29 carrier's full medical records; retention of the clearance letter is sufficient to satisfy

1 this requirement. The licensee shall further document that the gestational carrier
2 meets the age requirements of R.S. 9:2720.1, including written confirmation that she
3 is at least twenty-four and not more than forty years of age at the time of matching,
4 consistent with the statutory age range and the age range recommended by the
5 American Society for Reproductive Medicine.

6 (2) The gestational carrier has executed the agreement and the agreement
7 includes the mandatory counseling obligation required by R.S. 9:2720.2, et seq.
8 Prior to authorizing or coordinating any embryo transfer procedure, the licensee shall
9 confirm and document that the gestational carrier has completed at least two
10 counseling sessions with a licensed mental health professional as specified in R.S.
11 9:2720.2, each separated by not less than thirty calendar days. The licensee shall
12 retain a copy of the written report and the gestational carrier's signed certification
13 required by R.S. 9:2720.2.

14 (3) The intended parent or intended parents have executed the agreement and
15 the agreement includes the mandatory counseling obligation required by R.S.
16 9:2720.2. Prior to authorizing or coordinating any embryo transfer procedure, the
17 licensee shall confirm and document that each intended parent has completed at least
18 two counseling sessions with a licensed mental health professional as specified in
19 R.S. 9:2720.2, each separated by not less than thirty calendar days. The sessions shall
20 include informed-consent counseling on the health and psychological risks of
21 gestational carrier arrangements, the gestational carrier's absolute right to refuse
22 termination in accordance with R.S. 9:2720.9, and the emotional dimensions of
23 third-party reproduction. The licensee shall retain a copy of the written report and
24 each intended parent's signed certification required by R.S. 9:2720.2.

25 B. A licensee shall not proceed with a match or referral where any medical
26 or psychological screening has identified a disqualifying condition, unless that
27 condition is disclosed in writing to all parties and each party provides informed
28 written consent to proceed.

1 C. A licensee shall retain all screening and counseling documentation for not
2 less than ten years from the date of the last service provided in connection with the
3 relevant arrangement. Records shall be subject to audit by the department in
4 accordance with this Chapter.

5 D.(1) Prior to completing any match, a licensee shall verify and document
6 compliance with the financial eligibility requirements of R.S. 9:2720.7, as
7 applicable. The licensee shall do all of the following:

8 (a) Collect and review the income documentation specified in R.S. 9:2720.7
9 from each intended parent or, in the case of joint intended parents, from both.

10 (b) Confirm in a written pre-match checklist that the applicable threshold is
11 satisfied, or that a waiver has been obtained in accordance with R.S. 9:2720.7).

12 (c) Retain all income documentation and the pre-match checklist in the
13 arrangement file for not less than ten years.

14 (2) A licensee may not proceed to match any intended parent who fails to
15 satisfy the applicable income threshold and has not obtained a waiver. Failure to
16 verify income documentation before a match is an independent ground for
17 administrative sanctions in accordance with this Chapter.

18 E. If a licensee facilitates a familial carrier arrangement as described in R.S.
19 9:2720.1, the licensee shall, prior to completing a match and in addition to all other
20 requirements of this Section, do all of the following:

21 (1) Confirm in writing that the gestational carrier's licensed mental health
22 professional has conducted the additional third counseling session required by R.S.
23 9:2720.1 and that the written coercion-screening finding required by R.S. 9:2720.1
24 has been completed and contains no unresolved indicators of coercion.

25 (2) Obtain and retain the carrier's attorney's written familial-arrangement
26 advice required by R.S. 9:2720.1.

27 (3) Prepare and have the gestational carrier separately sign the
28 familial-arrangement disclosure required by R.S. 9:2720.1.

1 (4) Include a "Familial Carrier" designation flag in the arrangement's file in
2 the Louisiana Department of Health Gestational Carrier Registry, so that the
3 arrangement is included in departments annual data reporting on familial
4 arrangements. A licensee that proceeds to match in a familial arrangement without
5 satisfying all requirements of this Subsection shall be subject to mandatory
6 disciplinary action in the form of a corrective action plan and civil liability as
7 provided for in this Chapter.

8 §112. Independent Counsel Requirement

9 A. Before any gestational carrier contract is executed, the licensee shall
10 ensure that all of the following has occurred:

11 (1) The gestational carrier has retained independent legal counsel of her own
12 choosing to advise her regarding the terms and legal consequences of the gestational
13 carrier contract.

14 (2) The intended parent or intended parents have retained separate
15 independent legal counsel to advise them regarding the terms and legal consequences
16 of the gestational carrier contract.

17 B. "Independent" counsel for each party means an attorney who meets all of
18 the following qualifications:

19 (1) Retained by and owes a duty of loyalty exclusively to that party.

20 (2) Selected by, is not compensated by, and has no financial relationship
21 with the opposing party or the licensee.

22 (3) Not represented, and does not currently represent, any other party to the
23 arrangement in a conflicted capacity.

24 C. The legal fees of the gestational carrier's independent counsel shall be
25 paid by the intended parent or intended parents as a direct payment or from escrow,
26 and not conditioned upon the carrier's choice of attorney. A licensee shall not
27 require or recommend a specific attorney to a gestational carrier unless the licensee
28 discloses in writing any financial relationship between the licensee and the
29 recommended attorney.

1 §113. Conflict-of-interest safeguards

2 A. A licensee shall not be owned, controlled, or managed, in whole or in
3 material part, by an attorney who represents any party to a covered arrangement
4 facilitated by the licensee, whether as an owner, officer, director, partner, manager,
5 or employee.

6 B. A licensee shall not pay, offer to pay, or receive referral fees,
7 commissions, revenue-sharing payments, or any other thing of value to or from any
8 attorney who represents a party to a covered arrangement facilitated by the licensee
9 or any licensed healthcare provider or mental health professional to whom the
10 licensee refers clients in connection with a covered arrangement.

11 C. A licensee shall not simultaneously represent the interests of both the
12 gestational carrier and the intended parents in the negotiation of any gestational
13 carrier contract, whether directly or through affiliated entities or persons.

14 D. Any financial relationship between the licensee and any attorney,
15 healthcare provider, or mental health professional involved in a covered arrangement
16 shall be fully disclosed in the mandatory disclosure packet provided for in this
17 Chapter. Failure to disclose such a relationship is an independent ground for
18 disciplinary action.

19 §114. Insurance Verification Requirements

20 A. Before a gestational carrier contract is executed, a licensee shall verify
21 and document, in writing and in a form retained for not less than ten years, that the
22 gestational carrier will have health insurance coverage for the pregnancy, delivery,
23 and postpartum period, obtained through one or more of the following means:

24 (1) The gestational carrier's existing health insurance policy, verified by a
25 review of the policy or a written confirmation from the insurer that the policy covers
26 gestational carrier pregnancies and that no exclusion, limitation, or surcharge applies.

27 (2) A new or supplemental health insurance policy obtained by the intended
28 parent or intended parents specifically for the gestational carrier's pregnancy and
29 delivery and for a period of not less than twelve months postpartum.

1 B. The verification documentation shall include all of the following:

2 (1) The name of the insurer, the policy number, and the identity of the
3 policyholder.

4 (2) Written confirmation from the insurer, or a legal opinion from
5 independent counsel, confirming all of the following:

6 (a) Gestational carrier pregnancies are covered under the policy.

7 (b) The insurer has been informed of the gestational carrier arrangement or,
8 if the policy does not require such disclosure, that non-disclosure does not constitute
9 a basis for denial of coverage.

10 (c) The policy does not contain an exclusion, limitation, or
11 coordination-of-benefits clause that would result in denial of coverage for maternity
12 care arising from a gestational carrier arrangement.

13 (3) A description of any coverage limitations, including annual or lifetime
14 benefit limits, copayment or deductible obligations, and any notice requirements
15 under the policy.

16 C. The gestational carrier contract shall expressly disclose to the gestational
17 carrier all of the following:

18 (1) The name, policy number, and insurer for each applicable health
19 insurance policy.

20 (2) Any coverage limitations identified in Paragraph (A)(3) of this Section.

21 (3) Any notice requirements that must be satisfied to trigger coverage.

22 (4) The allocation of financial responsibility between the parties for any
23 medical costs not covered by insurance.

24 D. If, at any time during the gestational carrier arrangement, health insurance
25 coverage lapses, is cancelled, or is determined to be inadequate, the licensee shall
26 promptly notify all parties in writing and shall ensure that replacement coverage is
27 obtained before any further medical procedure is performed. Failure to maintain
28 adequate coverage is grounds for disciplinary action against the licensee.

1 §115. Recordkeeping requirements

2 A. A licensee shall maintain records for each covered arrangement for a
3 minimum of ten years from the date of the last service provided in connection with
4 that arrangement. The records shall include all of the following:

5 (1) All executed client services contracts and gestational carrier contracts.

6 (2) The mandatory disclosure packet and each party's signed
7 acknowledgment of receipt.

8 (3) All screening and counseling documentation required by this Chapter.

9 (4) All documentation of independent legal counsel compliance required by
10 this Chapter.

11 (5) All insurance verification documentation required by this Chapter.

12 (6) All escrow account records required by this Chapter.

13 (7) All advertising materials used or disseminated by the licensee during the
14 license term.

15 (8) All complaints received and the licensee's written response and
16 resolution.

17 (9) All correspondence with the department.

18 B. Records shall be maintained in a format that is organized, legible, and
19 reproducible, and shall be made available to the department for inspection or audit
20 within ten business days of a written request, or such shorter period as the
21 department may specify in an emergency.

22 §116. Confidentiality protections

23 A. All records maintained by a licensee in connection with a covered
24 arrangement shall be treated as confidential. A licensee shall not disclose the
25 identity, personal information, medical information, or financial information of any
26 gestational carrier, intended parent, or child to any person not a party to the
27 arrangement or their legal representatives, except in any of the following:

28 (1) Disclosure is required by applicable law.

1 (2) Disclosure is necessary for the performance of the facilitating services
2 with the written consent of the relevant party.

3 (3) Disclosure is required due to a court order.

4 (4) Disclosure to the department in connection with an audit, inspection, or
5 investigation.

6 B. A licensee shall implement reasonable administrative, physical, and
7 technical safeguards to protect the confidentiality and security of all records
8 maintained under this Chapter, consistent with applicable state and federal law
9 including the Health Insurance Portability and Accountability Act (HIPAA) where
10 applicable.

11 §117. Audit authority

12 A. The department shall have authority to do all of the following:

13 (1) Conduct routine announced audits and inspections of each licensee at
14 least once every two years.

15 (2) Conduct unannounced for-cause audits and inspections upon receipt of
16 a complaint or upon reasonable suspicion of a violation.

17 (3) Require a licensee to produce, within ten business days of a written
18 request, any records required by this Chapter.

19 (4) Interview employees, contractors, gestational carriers, and intended
20 parents in connection with an investigation.

21 (5) Retain independent certified public accountants or other experts to assist
22 in financial audits, at the cost of the licensee if a material violation is found.

23 B. Licensees shall cooperate fully with audits and inspections. Interference
24 with, obstruction of, or failure to cooperate with an audit or inspection is an
25 independent ground for disciplinary action.

26 C. The department may share audit findings and investigation records with
27 law enforcement agencies, other state licensing boards, and regulatory authorities of
28 other states pursuant to information-sharing agreements, subject to applicable
29 confidentiality protections.

1 §118. Complaint procedure

2 A. Any person may file a written complaint with the department alleging a
3 violation of this Chapter. Complaints shall be filed on a form prescribed by the
4 department. The department shall complete all of the following:

5 (1) Acknowledge receipt within ten business days.

6 (2) Conduct a preliminary review within forty-five days to determine
7 whether further investigation is warranted.

8 (3) Notify the complainant of the outcome of the preliminary review.

9 B. Complaints filed in good faith shall be confidential until the department
10 takes final disciplinary action, at which point the department's final order shall be a
11 public record. The identity of a complainant who is a gestational carrier shall be
12 protected from public disclosure to the maximum extent permitted by law.

13 §119. Public registry

14 A. The department shall maintain a publicly accessible registry of all
15 licensed gestational carrier agencies, available on the department's website and
16 updated not less than monthly. The registry shall include all of the following:

17 (1) Legal name and trade names.

18 (2) Principal office address and all licensed locations.

19 (3) License number and license status.

20 (4) Date of initial licensure and most recent renewal.

21 (5) Summary of any final disciplinary actions taken within the preceding five
22 years.

23 B. The registry shall also include a searchable list of entities or persons
24 against whom the department has issued a cease-and-desist order or final finding of
25 unlicensed operation under this Chapter within the preceding five years.

26 §120. Administrative sanctions

27 A. After notice and opportunity to be heard in accordance with the Louisiana
28 Administrative Procedure Act, R.S. 49:950 et seq., the department may take any one
29 or more of the administrative sanctions against a licensee or applicant, in a graduated

1 manner proportionate to the severity and frequency of the violation. The department
2 may take any of the following actions:

3 (1) Denial of an initial or renewal license application.

4 (2) Issuance of a written reprimand or letter of concern, which shall be a
5 public record.

6 (3) Issuance of a corrective action plan requiring specific remediation within
7 a defined timeframe.

8 (4) Imposition of conditions, restrictions, or probationary requirements on
9 a license.

10 (5) Suspension of a license for a definite period not to exceed two (2) years.

11 (6) Revocation of a license.

12 B. Grounds for administrative sanction include, but are not limited to, any
13 of the following:

14 (1) Violation of any provision of this Chapter or any rule adopted thereunder.

15 (2) Fraud, misrepresentation, or deceit in obtaining a license or in the
16 provision of facilitating services.

17 (3) Misappropriation or commingling of client funds or escrow funds.

18 (4) Conviction of a disqualifying offense by the licensee or any principal.

19 (5) Aiding or abetting an unlicensed person or entity in the provision of
20 facilitating services.

21 (6) Failure to maintain required insurance, fidelity coverage, or surety bond.

22 (7) Making a materially false or misleading statement to the department.

23 (8) Repeated or willful violation of any prohibited practice.

24 C. The department may seek emergency suspension of a license without
25 prior notice and hearing where it finds that continued operation poses an imminent
26 risk of harm to a gestational carrier, intended parent, child, or the public, subject to
27 a post-suspension hearing within fifteen days.

1 §121. Civil administrative penalties

2 A. In addition to or in lieu of other administrative sanctions, the department
3 may assess civil administrative penalties as follows:

4 (1) Not more than two thousand five hundred dollars per violation per day
5 for a first violation.

6 (2) Not more than ten thousand dollars per violation per day for a second
7 violation of the same provision within five years.

8 (3) Not more than twenty-five thousand dollars per violation per day for a
9 third or subsequent violation of the same provision within five years.

10 (4) For misappropriation of client funds or escrow funds not more than three
11 times the amount misappropriated, or one hundred thousand dollars, whichever is
12 greater, per occurrence.

13 (5) Not more than five thousand dollars per day for each day of unlicensed
14 operation for operation without a required license.

15 B. In determining the amount of any penalty, the department shall consider
16 all of the following:

17 (1) The gravity of the violation and the harm caused.

18 (2) The number of persons affected.

19 (3) The good faith of the violator.

20 (4) The history of prior violations.

21 (5) The ability of the violator to pay.

22 C. Civil penalties assessed under this Section shall be deposited into the
23 Gestational Carrier Consumer Protection Fund.

24 §122. Restitution

25 A. In any disciplinary proceeding or civil action under this Chapter in which
26 a violation is established, the department or a court of competent jurisdiction may
27 order the violating party to pay restitution to any gestational carrier, intended parent,
28 or other person who suffered actual economic harm as a result of the violation.

29 B. Restitution may include all of the following:

1 (1) Return of all client funds misappropriated or improperly disbursed.

2 (2) Reimbursement of fees paid to the licensee for services not rendered.

3 (3) Reimbursement of costs incurred by the aggrieved party to mitigate the
4 effects of the violation.

5 (4) Any other actual economic loss directly caused by the violation.

6 C. An order of restitution is in addition to, and not in lieu of, any civil
7 penalty, administrative sanction, or private right of action available under this
8 Chapter.

9 §123. Gestational Carrier Consumer Protection Fund

10 A. There is hereby created in the state treasury, as a special fund, the
11 Gestational Carrier Consumer Protection Fund, hereinafter referred to in this Section
12 as the "fund". The fund shall consist of any monies appropriated by the legislature
13 and any civil penalties, or license fees collected in accordance with this Chapter.
14 Monies appropriated or transferred to the fund shall be deposited by the state
15 treasurer after compliance with the provisions of Article VII, Section 9(B) of the
16 Constitution of Louisiana. Monies in the fund shall be invested by the treasurer in
17 the same manner as the state general fund monies. Interest earned on monies in the
18 fund shall be credited to the fund. All unexpended and unencumbered monies and
19 earnings remaining in the fund at the end of the fiscal year shall remain in the fund.

20 B. The monies in the fund shall be administered by the Louisiana
21 Department of Health and shall be used exclusively to fund all of the following:

22 (1) Administration and enforcement of this Chapter.

23 (2) Consumer education and outreach related to the services provided for
24 by this Chapter.

25 (3) Restitution to gestational carriers or intended parents harmed by
26 violations of this Chapter.

27 (4) Development and maintenance of the public registry.

1 C. The Department of Transportation and Development shall develop
2 regulations and guidelines for the distribution and allocation of any monies
3 appropriated to the department pursuant to this Section.

4 §124. Private right of action

5 A. Any gestational carrier or intended parent who suffers actual harm as a
6 result of one or more of the following violations has a private right of action against
7 the violating party in any court of competent jurisdiction:

8 (1) Misrepresentation - any material false statement, concealment, or
9 omission of fact by a licensee or unlicensed entity in connection with the solicitation,
10 advertisement, or provision of facilitating services, including misrepresentation in
11 the mandatory disclosure packet required by this Chapter.

12 (2) Escrow Violations - any failure to establish, fund, maintain, or properly
13 disburse an escrow account in compliance with the provisions of this Chapter,
14 including misappropriation, commingling, or unauthorized disbursement of client
15 funds.

16 (3) Unlicensed Operation - the provision of facilitating services without a
17 valid license required by this Chapter, where the plaintiff engaged the unlicensed
18 entity in reliance on a representation, express or implied, that the entity was licensed
19 or qualified to provide such services.

20 B. Standing to bring a private action under this Section is limited to a
21 gestational carrier who is or was a party to a covered arrangement facilitated by the
22 defendant and intended parent or parents who are or were parties to a covered
23 arrangement facilitated by the defendant.

24 C. A licensee's compliance with a corrective action plan or payment of a
25 civil penalty in a department disciplinary proceeding shall not bar a private action
26 in accordance with this Section based on the same conduct and shall not constitute
27 an admission of liability for purposes of the private action.

1 §125. Damages, attorney's fees, and remedies

2 A. In a private action under this Chapter, the prevailing plaintiff may recover
3 all of the following:

4 (1) Actual damages, including all client funds misappropriated or improperly
5 withheld.

6 (2) Consequential damages proximately caused by the violation.

7 (3) Reasonable attorney's fees and litigation costs, consistent with
8 consumer-protection policy and the remedial purpose of this Chapter.

9 (4) Punitive damages in an amount not to exceed three times the actual
10 damages awarded, where the trier of fact finds that the violation was willful, wanton,
11 knowing, or fraudulent.

12 B. The court may also award injunctive or declaratory relief, including an
13 order requiring the defendant to do all of the following:

14 (1) Return all improperly held client funds.

15 (2) Cease providing facilitating services without a license.

16 (3) Comply with the escrow and disclosure requirements of this Chapter.

17 C. A prevailing defendant may recover reasonable attorney's fees and costs
18 upon a specific finding by the court that the plaintiff's action was frivolous, without
19 merit, or brought in bad faith.

20 D. The private right of action under this Chapter is cumulative of, and not
21 in lieu of, any other remedy available at law or in equity, including remedies under
22 the Unfair Trade Practices and Consumer Protection Law, R.S. 51:1401 et seq.
23 Filing a complaint with the department is not a prerequisite to bringing a private
24 action in accordance with this Section.

25 E. An action brought in accordance with this Section shall be filed within
26 three years from the date the plaintiff knew or reasonably should have known of the
27 violation giving rise to the claim.

1 §126. Louisiana Department of Health Compliance Certification; Louisiana
2 Department Health Gestational Carrier Registry; data reporting

3 A. Purpose. This Section establishes the Title 40 procedural framework for
4 the Louisiana Department of Health Administrative compliance certificate also
5 known as the "compliance certificate" authorized under R.S. 9:2725.1 and the
6 Louisiana Department of Health Gestational Carrier Registry.

7 B.(1) As a condition of licensure and renewal under this Chapter, every
8 licensee shall do all of the following:

9 (a) Register with the Louisiana Department of Health compliance submission
10 portal.

11 (b) Submit all agreements for which the licensee seeks a compliance
12 certificate through the portal in the manner and format prescribed by the department.

13 (c) Maintain portal access and ensure the accuracy of the licensee's
14 registration information at all times during the license period.

15 (d) Notify the department within five business days of any material change
16 in the licensee's designated qualified person, surety bond, escrow arrangement, or
17 insurance coverage.

18 (2) The portal shall be accessible by secure login and shall generate a unique
19 arrangement identification number for each submission. The department shall
20 maintain the portal so as to ensure availability during normal business hours and
21 shall provide written notice to all licensees of any planned maintenance downtime
22 exceeding twenty-four hours.

23 C.(1) A submission for a compliance certificate shall include all of the
24 following:

25 (a) A copy of the fully executed agency-coordinated gestational carrier
26 agreement with all exhibits, including the two counseling certifications for the
27 gestational carrier required by R.S. 9:2720.2, and the counseling certifications for the
28 intended parents required by R.S. 9:2720.2.

1 (b) The licensee's signed written compliance verification and the affirmative
2 background-check findings required by R.S. 9:2720.5, including the findings of the
3 four required checks for all parties.

4 (c) Documentation of independent legal representation for the gestational
5 carrier and for the intended parents, including the name and bar number of each
6 attorney and a certification that no attorney conflict exists.

7 (d) If applicable, the two signed physician opinions establishing medical
8 necessity under R.S. 9:2720.3.

9 (e) evidence of current life and complications insurance coverage for the
10 gestational carrier satisfying the requirements of this Chapter, and evidence of
11 current medical insurance coverage for the gestational carrier as required by the
12 agreement.

13 (f) Escrow account documentation demonstrating that all compensation and
14 expense amounts determinable in advance of the embryo transfer have been
15 pre-funded in accordance with this Section.

16 (g) Confirmation that the parents-agency enrollment agreement required by
17 R.S. 9:2720 and the carrier-agency engagement agreement required by R.S. 9:2720
18 have been executed and are retained in the arrangement file.

19 (h) Any additional documents required by rule.

20 (2) All documents shall be submitted as machine-readable PDF attachments.
21 The department shall acknowledge receipt electronically within one business day and
22 shall notify the licensee of any missing items within five business days of receipt.

23 D.(1) The department review required by this Section is limited to all of
24 following:

25 (a) Verifying that all required documents are present and facially complete.

26 (b) Confirming that the agreement is in the statutory form prescribed by R.S.
27 9:2720.8 and contains no provision that is absolutely null in accordance with R.S.
28 9:2720.9.

29 (c) Confirming that the background-check findings satisfy R.S. 9:2720.5.

1 (d) Confirming that counseling certifications satisfy R.S. 9:2720.2.

2 (e) Confirming that escrow pre-funding and insurance documentation satisfy
3 the requirements of this Chapter.

4 (2) The department's review does not extend to the merits of any medical
5 judgment, the adequacy of any compensation term, or any factual dispute between
6 the parties. Within thirty calendar days of a complete submission if the submission
7 demonstrates compliance, the department shall issue the compliance certificate,
8 signed by the secretary or designee, and register it in the Gestational Carrier
9 Registry. If the submission is deficient, the department shall issue a written
10 deficiency notice identifying each deficiency with specificity and providing fifteen
11 days to cure, after which the thirty-day clock resets upon receipt of a cured
12 submission. If compliance cannot be confirmed after cure, the department shall deny
13 the compliance certificate with a written statement of reasons. The department's
14 failure to act within thirty days of a complete submission or a cured submission shall
15 be deemed a denial reviewable in accordance with R.S. 49:964.

16 E. Effect and Accessibility of Compliance Certificate. A compliance
17 certificate issued in accordance with this Section:

18 (1) Constitutes the administrative determination that the submitted
19 agreement satisfies the statutory form and documentation requirements of R.S.
20 9:2718 through 9:2723 for purposes of the presumption of validity under R.S.
21 9:2720.11.

22 (2) Constitutes, together with the Administrative Pre-Parentage Certification
23 issued simultaneously under R.S. 9:2720.16, administrative authority for
24 vital-records staff at any birthing facility in this state and for the Louisiana Vital
25 Records Registry to list the intended parent or intended parents as parent or parents
26 on the birth certificate under R.S. 9:2720.22, absent a contrary court order.

27 (3) Is registered in the Gestational Carrier Registry and is electronically
28 accessible to the licensee, the parties and their legal counsel, treating healthcare

1 providers, and the vital-records registrar at the named birthing facility, through the
2 portal.

3 (4) Does not constitute a parentage order, does not adjudicate legal
4 parentage, and does not preclude any party from seeking a judicial parentage
5 determination or any other judicial relief under R.S. 9:2720.11 and R.S. 9:2720.15.

6 (5) Is subject to revocation or suspension by the department on the grounds
7 and following the procedures set forth in R.S. 9:2720.12.

8 F.(1) The department shall establish and maintain the Louisiana Gestational
9 Carrier Registry as a secure electronic database within existing health standards
10 section infrastructure. The registry shall do all of the following:

11 (a) Assign a unique arrangement identification number to each submitted
12 arrangement.

13 (b) Record the date, status, and unique number of each compliance certificate
14 issued, denied, suspended, or revoked, and each deficiency notice issued.

15 (c) Record the name and license number of the submitting agency and the
16 names of the parties in a restricted-access, HIPAA-compliant field.

17 (d) Permit the vital-records registrar at any birthing facility in this state to
18 electronically verify the current status of a compliance certificate in real time.

19 (e) Be updated within one business day of any change in a certificate's status.

20 (f) Generate the standardized data reports required by this Section.

21 (2) Registry records shall be maintained for the period specified in R.S.
22 40:116 and shall be subject to the confidentiality protections of R.S. 40:217. The
23 department shall coordinate with the Louisiana Vital Records Registry to ensure that
24 the two systems can communicate electronically and that vital-records staff have
25 access to the Registry's certificate-verification function.

26 G.(1) The department shall collect and compile standardized data from all
27 submitted arrangements and from the vital records registry in accordance with R.S.
28 9:2730.22 and shall publish an annual public report that includes, at minimum, all
29 of the following:

Proposed law (R.S. 9:2720) defines (1) "assisted reproduction", (2) "compensation", (3) "donor", (4) "embryo", (5) "gamete", (6) "gestational carrier", (7) "gestational carrier agreement", (8) "gestational carrier's spouse", (9) "intended parent", (10) "licensed healthcare provider", (11) "licensed mental health professional", (12) "parentage order", (13) "reasonable expenses", (14) "gestational carrier agency", (15) "parents-agency enrollment agreement", (16) "carrier-agency engagement agreement", and (17) "agency-coordinated gestational carrier agreement".

Proposed law (R.S. 9:2720.1) establishes the requirements in order to be a gestational carrier.

Proposed law (R.S. 9:2720.1(C)) provides for circumstances in which a gestational carrier is a family member of an intended parent or intended parents.

Proposed law (R.S. 9:2720.2) requires all parties to the gestational carrier agreement attend mandatory counseling by a qualified licensed mental health professional at least two times a minimum of 30 days apart and requires certain discussions of the gestational carrier relationship and rights attributed to each party. At least one of those sessions is required to be conducted without the other parties. The counseling sessions are mandatory to effectuate the gestational carrier agreement.

Proposed law requires a written report by the licensed mental health professional and authorizes the LDH to promulgate forms regarding certifications that the required counseling occurred.

Proposed law (R.S. 9:2720.3) provides for the terms of the gestational carrier agreement and includes the required parties to the agreement.

Proposed law also includes a definition of "medically necessary".

Proposed law (R.S. 9:2720.4) establishes certain licensing requirements for a gestational carrier agency and provides for the validity of agreements made with a nonlicensed gestational carrier agency.

Proposed law (9:2720.5) requires that a licensed gestational carrier agency conduct extensive background and safety checks of the gestational carrier, the gestational carrier's spouse, and the intended parent or intended parents which includes a search through criminal records. The provision also provides for continuous checks in certain circumstances.

Proposed law also provides for a cause of action if the licensed gestational carrier agency does not properly perform the required background and safety checks.

Proposed law (9:2720.6) provides for a three contract structure which includes a (1) Parent-Agency Enrollment Agreement, (2) Carrier-Agency Engagement Agreement, and (3) Agency-Coordinated Gestational Carrier Agreement. The provision also provides for instances of conflicts among the agreements, screening standards, escrow obligations, fee disclosures, and conflicts of interests.

Proposed law provides for a direct cause of action against the agency and also provides for the advertising requirements for licensed gestational carriers.

Proposed law (R.S. 9:2720.7) establishes the requirements for an intended parent or intended parents which includes an examination of the financial capacity and relationship status.

Proposed law (R.S. 9:2720.8) provides for the form of the gestational carrier agreement.

Proposed law (R.S. 9:2720.9) prohibits termination of a pregnancy related to the gestational carrier agreement and renders any provision permitting any termination of the pregnancy absolutely null.

Proposed law (R.S. 9:2720.10) provides for the execution of the gestational carrier agreement.

Proposed law (R.S. 9:2720.11) provides for the enforceability of the gestational carrier agreement.

Proposed law (R.S. 9:2720.12) provides for the La. Administrative compliance certificate.

Proposed law (R.S. 9:2720.13 and 2720.14) provides for compensation for the gestational carrier which includes the following:

- (1) Payment of base compensation shall not be conditioned upon, reduced by reason of, or forfeited as a consequence of any of the following:
 - (a) Live birth or any specific pregnancy outcome.
 - (b) The health, appearance, genetic characteristics, or number of children born.
 - (c) The gestational carrier's agreement or refusal to undergo selective reduction or termination of a pregnancy.
 - (d) Surrender or relinquishment of the child to the intended parent or intended parents.
- (2) Compensation shall be disbursed to the gestational carrier before birth in accordance with the agreed payment schedule.
- (3) The gestational carrier shall not be required to pay any medical bills arising from the pregnancy, delivery, or postpartum care out of her own funds.
- (4) All costs shall be covered through the health insurance obtained through direct payment by the intended parent or intended parents or through escrow disbursement as specified in the agreement.
- (5) For a gestational carrier who has not previously served as a gestational carrier, the benchmark range for total compensation is \$50,000 to \$90,000 inclusive of base pay and all allowances, bonuses, and supplemental payments.
- (6) For a gestational carrier who has previously completed at least one gestational carrier arrangement, the benchmark range for total compensation is \$65,000 to \$110,000 reflecting the demonstrated experience, reliability, and reduced risk associated with a carrier who has successfully completed a prior arrangement.
- (7) Parties may negotiate compensation outside these ranges. However, compensation materially below the lower benchmark shall be considered a factor in evaluating whether the agreement was entered into freely and without coercion for purposes of any enforcement provision.

Proposed law (R.S. 9:2720.15) establishes parentage of the child born of the gestational carrier.

Proposed law (R.S. 9:2720.16) provides for the LDH Administrative Pre-parentage Certification and Vital Records Authority.

Proposed law (R.S. 9:2720.17) provides that in all proceedings under proposed law, the best interests of the child shall be the paramount consideration. A child's status as born through a gestational carrier arrangement shall not constitute grounds for any adverse determination regarding the child's welfare, adoption eligibility, or any other matter governed by the laws of this state.

Proposed law (R.S. 9:2720.18 and 2720.19) provides for judicial proceedings and dispute resolutions and authorizes the award of attorney fees.

Proposed law (R.S. 9:2720.20) provides that the provisions of proposed law will govern over if there is a conflict in certain circumstances.

Proposed law (R.S. 9:2720.21) provides that no person shall:

- (1) Knowingly induce a woman to enter into a gestational carrier agreement through fraud, misrepresentation, or undue influence.
- (2) Pay or receive compensation conditioned upon relinquishment of parentage rights or the outcome of the pregnancy in any manner inconsistent with this Chapter.
- (3) Advertise gestational carrier services in a manner that is false or materially misleading.

Proposed law provides that any person found in violation of proposed law resulting in harm to a gestational carrier or a child gives rise to a civil cause of action for compensatory and punitive damages and injunctive relief and establishes that intentional violations constitutes a misdemeanor punishable by a fine not exceeding \$10,000 or imprisonment not exceeding one year, or both.

Proposed law (R.S. 9:2720.22) establishes requirements for the La. Vital Records Registry.

Proposed law (R.S. 9:2720.23) provides for construction and severability.

Proposed law provides an effective date of Aug. 1, 2026.

Title 40

Proposed law provides that the LDH shall license gestational carrier agencies in this state, regardless of physical location.

Proposed law provides exemptions from licensure for attorneys, healthcare providers, mental health professionals, and individuals acting solely on their own behalf.

Proposed law establishes detailed application requirements, including organizational status, background checks, policies, escrow arrangements, bonding or financial security, training, and fees.

Proposed law mandates use of independent escrow accounts for all client funds, prohibits commingling, and requires pre-funding of anticipated expenses before medical procedures.

Proposed law sets escrow administration rules, including disbursement procedures, dispute handling, and return of unused funds.

Proposed law requires comprehensive escrow recordkeeping and annual financial reporting, including audits for higher-volume agencies.

Proposed law requires a mandatory disclosure packet to all parties detailing fees, relationships, legal risks, escrow terms, and complaint processes prior to contracting.

Proposed law establishes advertising standards prohibiting misleading statements, exploitation, and improper representations of licensure.

Proposed law prohibits coercive or unethical practices, including conditioning compensation on pregnancy termination decisions, retaliation, misrepresentation, and financial misconduct.

Proposed law mandates medical, psychological, and financial screening of all parties prior to matching, with documentation and retention requirements.

Proposed law requires independent legal counsel for both gestational carriers and intended parents and prohibits conflicts of interest.

Proposed law establishes conflict-of-interest restrictions, including bans on referral fees and dual representation.

Proposed law requires verification and maintenance of adequate health insurance coverage for gestational carriers.

Proposed law imposes extensive recordkeeping and confidentiality requirements, including HIPAA-compliant protections.

Proposed law grants LDH audit and inspection authority, including routine and for-cause reviews.

Proposed law creates a formal complaint process with timelines and confidentiality protections.

Proposed law requires LDH to maintain a public registry of licensed agencies and enforcement actions.

Proposed law authorizes administrative sanctions, including denial, suspension, revocation, and corrective actions for violations.

Proposed law establishes civil penalties scaled by severity and frequency of violations, including enhanced penalties for misuse of funds and unlicensed activity.

Proposed law authorizes restitution to harmed parties for economic losses resulting from violations.

Proposed law creates criminal offenses for unlicensed operation, fraud, and misappropriation of escrow funds, with misdemeanor and felony penalties.

Proposed law establishes a Gestational Carrier Consumer Protection Fund to support enforcement, education, registry maintenance, and restitution.

Proposed law provides a private right of action for gestational carriers and intended parents harmed by violations, including recovery of damages and attorney's fees.

Proposed law authorizes courts to award damages, punitive damages, and injunctive relief, and sets a three-year prescriptive period.

Proposed law creates a compliance certification process and centralized registry system for tracking gestational carrier arrangements and ensuring statutory compliance.

Proposed law requires data collection and annual public reporting on gestational carrier arrangements, outcomes, and agency compliance.

(Amends R.S. 9:2718-2720.15 and R.S. 44:4.1(B)(27); Adds R.S. 9:2720.16-2720.23 and R.S. 40:97 and 101-127)