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## DIGEST

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Badon

HB No. 433

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

Proposed law (R.S. 9:2718) defines the following terms: "gamete", "genetic surrogacy", "gestational surrogacy", "gestational surrogate", "in utero implantation", and "intended parents".

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

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

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

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

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

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

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

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

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

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

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

- (1) The local sheriff or the office of the state police, Louisiana Bureau of Criminal Identification and Information.
- (2) The Department of Children and Family Services.
- (3) The Judicial Administrator's Office of the Louisiana Supreme Court.

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

- (1) All requirements of proposed law regarding gestational surrogacy contracts have been satisfied and that the background checks show there is no risk of harm to the child.
- (2) Provisions have been made for all reasonable health care and legal expenses associated with the gestational surrogacy contract.
- (3) The gestational surrogate will only be compensated for reasonable medical expenses, mental health counseling expenses, reasonable living expenses during the pregnancy and not to exceed two months after the birth of the child, and reasonable travel costs.
- (4) The parties understand the contract and give free consent.

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

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

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

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

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

Proposed law (R.S. 9:2720.11) requires the court to issue an order vacating the Pre-Implantation order when a judgment of divorce or judicial declaration of nullity of a marriage between the intended parents is entered before in utero implantation. Further provides that an intended parent who dies before in utero implantation is considered a parent of a resulting child only when the child is born within three years of the death of the intended parent and the deceased agreed in writing that the deceased would be a parent of the child if the in utero implantation occurred after death.

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

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

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

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

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

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

signing if an intended parent is alleged to have perpetrated the fraud or duress.

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

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

Present law prohibits a "contract for surrogate motherhood" defined as any agreement whereby a person not married to the contributor of the sperm agrees for valuable consideration to be inseminated, to carry any resulting fetus to birth, and then to relinquish to the contributor of the sperm the custody and all rights and obligations to the child.

Proposed law repeals present law.

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