

2016 Regular Session

HOUSE BILL NO. 1102

BY REPRESENTATIVES BISHOP, ADAMS, BAGNERIS, BARRAS, BERTHELOT, BOUIE, BROADWATER, CHAD BROWN, TERRY BROWN, CARMODY, CARPENTER, CONNICK, DAVIS, GISCLAIR, JIMMY HARRIS, LANCE HARRIS, HOLLIS, JAMES, NANCY LANDRY, LEGER, LOPINTO, MARCELLE, GREGORY MILLER, MORENO, JAY MORRIS, PEARSON, PRICE, PYLANT, SCHEXNAYDER, SMITH, TALBOT, AND THIBAUT

CHILDREN: Provides relative to gestational carriers

1 AN ACT

2 To amend and reenact R.S. 14:286(D), R.S. 40:34(B)(1)(a)(viii), (h)(v), (i), and (j), and R.S.

3 44:4.1(B)(26), to enact Chapter 1-C of Code Title IV of Code Book III of Title 9 of

4 the Louisiana Revised Statutes of 1950, comprised of R.S. 9:2718 through 2720.15,

5 R.S. 14:286(E), and Part VII of Chapter 2 of Title 40 of the Louisiana Revised

6 Statutes of 1950, comprised of R.S. 40:93 through 96, and to repeal R.S. 9:2713,

7 relative to gestational carriers; to provide for amendments to birth certificates; to

8 provide for definitions relative to gestational carrier contracts; to provide for genetic

9 gestational carrier contracts; to provide for the enforceability of gestational carrier

10 contracts; to provide for the parties to a gestational carrier contract; to provide for

11 contractual requirements for a gestational carrier contract; to provide for a

12 proceeding to approve a gestational carrier contract; to provide for the check of the

13 criminal records of the parties to a gestational carrier contract; to provide for an

14 order preceding embryo transfer relative to a gestational carrier contract; to provide

15 for matters relative to multiple attempts at in utero embryo transfer; to provide for

16 confidentiality of the proceedings relative to a gestational carrier contract; to

17 provide for continuing and exclusive jurisdiction to the proceedings relative to a

18 gestational carrier contract; to provide for the termination of a gestational carrier

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

10 Be it enacted by the Legislature of Louisiana:

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

14 CHAPTER 1-C. GESTATIONAL CARRIER CONTRACTS

15 PART I. LEGISLATIVE INTENT AND DEFINITIONS

16 §2718. Purpose and Intent

17 The purpose and intent of this Part is to regulate gestational surrogacy
18 agreements. The legislature has been guided by, among other things, the best
19 interest of the children who are born as a result of gestational surrogacy. The
20 legislature finds that it is desirable to assure that the intended parents of
21 every child born through the use of assisted reproductive technology be legal
22 and biological parents of the child. Accordingly, in regulating gestational
23 surrogacy agreements by means of this Part, the legislature has restricted the
24 range of enforceable gestational surrogacy agreements to those in which the
25 parties who engage the gestational surrogate not only are married to each
26 other, but also create the child using only their own gametes. These
27 compelling state interests justify provisions for filiation to be recognized by
28 a court upon proof that the child is genetically related to both parents, so that

1 the intended parents can bypass the current need to go through extended
2 proceedings to adopt their own child.

3 §2718.1. Definition of terms

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

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

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

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

18 (4) "Gestational carrier" means a woman who agrees to engage in a process
19 by which she attempts to carry and give birth to a child born as a result of an in utero
20 transfer of a human embryo to which she makes no genetic contribution.

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

24 (6) "Intended parents" means a married couple who each exclusively
25 contribute their own gametes to create their embryo and who enter into an
26 enforceable gestational carrier contract, as defined in this Chapter, with a gestational
27 carrier pursuant to which the intended parents will be the legal parents of the child
28 resulting from an in utero embryo transfer.

1 PART II. GENETIC GESTATIONAL CARRIER

2 §2719. Contract for a genetic gestational carrier; nullity

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

4 PART III. GESTATIONAL CARRIER

5 §2720. Enforceability of gestational carrier contract

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

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

13 C. No person shall enter into a gestational carrier contract for compensation
14 as defined in R.S. 9:2718.1 or that is not in compliance with all of the requirements
15 of this Part. Any such contract executed in the state of Louisiana or any other state
16 shall be absolutely null and unenforceable in the state of Louisiana as contrary to
17 public policy.

18 D. No person shall enter into a gestational carrier contract that requires the
19 gestational carrier to consent to terminate a pregnancy resulting from in utero
20 embryo transfer for any reason, including a prenatal diagnosis of an actual or
21 potential disability, impairment, genetic variation, or any other health condition or
22 a discrimination based on gender, or for the purposes of the reduction of multiple
23 fetuses. Any such provision in a contract executed in the state of Louisiana or any
24 other state shall be absolutely null and unenforceable in the state of Louisiana as
25 contrary to public policy.

26 §2720.1. Parties to a gestational carrier contract

27 A gestational carrier shall, at the time the gestational carrier contract is
28 executed:

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

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

4 §2720.2. Contractual requirements

5 A. In an enforceable gestational carrier contract, the gestational carrier shall
6 do all of the following:

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

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

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

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

20 (5) Agree to attend a minimum of one post birth counseling session within
21 six months of the birth of the child.

22 B. In an enforceable gestational carrier contract, the intended parents shall
23 certify in writing that they do all of the following:

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

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

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

2 (4) The intended parents have a valid will or succession plan establishing
3 custody of the child should both intended parents predecease the birth of the child.

4 C. The gestational carrier contract shall include a preliminary estimate of
5 anticipated expenses and their allocation in accordance with R.S. 9:2720.5.

6 §2720.3. Proceeding to approve gestational carrier contract

7 A. Prior to in utero embryo transfer, the intended parents or the gestational
8 carrier and her spouse, if she is married, may initiate a summary proceeding in the
9 court exercising jurisdiction over the adoption of minors where the intended parents
10 or the gestational carrier reside, seeking to have the court approve a gestational
11 carrier contract.

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

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

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

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

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

26 (5) For purposes of this Section, "medically necessary" means that the
27 intended mother has been diagnosed to be infertile, or to have a physical condition
28 such that a pregnancy would create serious risk of death or substantial and

1 irreversible impairment of a major bodily function beyond the risk customary to
2 pregnancy and child birth.

3 §2720.4. Institution of records check

4 A. Upon the initiation of the summary proceeding, the court shall do all of
5 the following:

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

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

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

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

1 C. The sheriff or the office of state police, Louisiana Bureau of Criminal
2 Identification and Information, the Department of Children and Family Services, in
3 accordance with the applicable rules and regulations promulgated by the department,
4 and the judicial administrator's office of the Louisiana Supreme Court shall accord
5 priority to these orders and shall provide a certificate to the court indicating all
6 information discovered, or that no information has been found.

7 §2720.5. Order Preceding Embryo Transfer

8 A. Within sixty days of the initiation of a proceeding to approve a gestational
9 carrier contract, the court shall set the matter for hearing, and after the hearing may
10 issue an order, known as the Order Preceding Embryo Transfer, approving the
11 gestational carrier contract and declaring that the intended parents shall be
12 recognized as the legal parents of a child born pursuant to the gestational carrier
13 contract.

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

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

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

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

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

28 (b) Actual expenses incurred for mental health counseling services provided
29 to the gestational carrier prior to the birth and up to six months after birth.

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

5 (d) Actual travel costs related to the pregnancy and delivery, court costs, and
6 attorney fees incurred by the gestational carrier.

7 (e) Payment of a judicially sanctioned settlement or judgment rendered in
8 favor of the gestational carrier or her heirs as a result of her death, loss of
9 reproductive organs or capability, or any other health complication caused by the in
10 utero embryo transfer, pregnancy or resulting childbirth, miscarriage, or termination
11 of pregnancy.

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

13 §2720.6. Multiple embryo transfer attempts

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

19 §2720.7. Confidentiality

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

1 §2720.8. Continuing and exclusive jurisdiction

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

6 §2720.9. Termination of contract by notice

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

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

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

20 §2720.10. Remedies

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

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

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

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

7 §2720.12. Effect of subsequent marriage

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

12 §2720.13. Post-Birth Order

13 A. Upon birth of a child to a gestational carrier within three hundred days
14 after in utero embryo transfer, the intended parents or their successors, the
15 gestational carrier, or her spouse shall file a motion requesting issuance of a
16 Post-Birth Order. The motion shall be accompanied by a certified copy of the child's
17 original birth certificate and an affidavit executed by the intended parents containing
18 an accounting of fees and charges paid or agreed to be paid by or on behalf of the
19 intended parents in connection with the gestational carrier contract. The motion shall
20 also be accompanied by verification from the physician that performed the in utero
21 embryo transfer for the intended parents into the gestational carrier that the
22 gestational carrier was not pregnant at the time of the transfer and the transfer
23 resulted in a pregnancy.

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

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

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

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

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

5 (a) Full name of child.

6 * * *

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

11 * * *

12 (h)

13 * * *

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

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

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

28 * * *

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

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

4 * * *

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

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

12 (a) Payment of actual medical expenses, including hospital, testing, nursing,
13 midwifery, pharmaceutical, travel, or other similar expenses, incurred by the
14 gestational carrier for prenatal care and those medical and hospital expenses incurred
15 incident to birth.

16 (b) Payment of actual expenses incurred for mental health counseling
17 services provided to the gestational carrier prior to the birth and up to six months
18 after birth.

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

23 (d) Payment of actual travel costs related to the pregnancy and delivery,
24 court costs, and attorney fees incurred by the gestational carrier.

25 (3) It shall be unlawful for any person to enter into, induce, arrange, procure,
26 knowingly advertise for, or otherwise assist in an agreement for genetic gestational
27 carrier, with or without compensation, whether written or unwritten. For purposes
28 of this Section, "genetic gestational carrier" and "compensation" shall have the same
29 meaning as defined in R.S. 9:2718.1.

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

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

9 Section 4. Part VII of Chapter 2 of Title 40 of the Louisiana Revised Statutes of
10 1950, comprised of R.S. 40:93 through 96, is hereby enacted to read as follows:

11 PART VII. GESTATIONAL CARRIER DATA COLLECTION

12 §93. Gestational carrier data collection; purpose

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

16 §94. Forms for collection of data

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

20 (1) The age, marital status, and state and parish of domicile of the gestational
21 carrier.

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

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

25 (a) In utero embryo transfer.

26 (b) Prenatal and postnatal care.

27 (c) Birth.

28 (d) Miscarriage.

29 (e) Induced abortion.

1 (4) The age, marital status, and state and parish of domicile of the intended
2 parents.

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

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

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

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

9 (9) Other significant conditions or health complications of the unborn child
10 and gestational carrier.

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

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

15 The physician performing the in utero embryo transfer or termination of the
16 pregnancy by birth, miscarriage, or abortion shall provide the information required
17 by the provisions of R.S. 40:94. Such completed forms shall be transmitted by the
18 physician to the vital records registry within fifteen days of the performance of the
19 medical procedures and shall be confidential.

20 §96. Confidentiality

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

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

1 §4.1. Exceptions

2 * * *

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

8 * * *

9 (26) R.S. 40:3.1, 31.14, 31.27, 39.1, 41, 73, 95, 96, 526, 528, 1007, 1098.8,
10 1232.7, 1299.6, 1299.35.10, 1299.44, 1299.85, 1299.87, 1300.14, 1300.54,
11 1379.1.1(D), 1379.3, 2009.8, 2009.14, 2010.5, 2017.9, 2018, 2019, 2020, 2106,
12 2109.1, 2138, 2532, 2845.1

13 * * *

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

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

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

DIGEST

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

HB 1102 Re-Reengrossed 2016 Regular Session Bishop

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

Present law provides that a contract for gestational carrier motherhood shall be absolutely null and shall be void and unenforceable as contrary to public policy. Present law defines a "contract for surrogate motherhood" 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 and provides that a contract for a genetic gestational carrier shall be absolutely null.

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

Proposed law (R.S. 9:2720.1) requires a gestational carrier to be at least 25 years of age, but not more than 35 years of age, and to have already given birth to at least one child at the time the gestational carrier contract is executed.

Proposed law (R.S. 9:2720.2) requires the gestational carrier to do all of the following in a gestational carrier contract:

- (1) Agree to become pregnant by in utero implantation, using the gametes of the intended parents, and give birth to the resulting child.
- (2) Agree to reasonable medical testing and instructions regarding prenatal health and to execute a medical records release in favor of the intended parents.
- (3) Certify that she has attended at least two counseling sessions, separated by at least 30 days, with a mental health professional prior to executing a gestational surrogacy contract.
- (4) Certify that she agrees to relinquish all rights of the child born as a result of the in utero implantation. If the carrier is married, her spouse must also relinquish all rights.
- (5) Agree to attend a minimum of one post birth counseling session within six months of the birth of the child.

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

- (1) Acknowledge that the gestational carrier has sole authority with respect to medical decision-making during the pregnancy.
- (2) Agree to accept custody and full parental rights of the child, regardless of any impairment of the child.
- (3) Be recognized as the legal parents of the child.
- (4) Have a valid will or succession plan establishing custody of the child if both parents should predecease the birth of the child.

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

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

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

Proposed law (R.S. 9:2720.5) requires the court to set a hearing within 60 days of the initiation of a proceeding to approve a gestational carrier contract, and requires the court to issue an Order Preceding Embryo Transfer approving the gestational carrier contract upon finding all of the following:

- (1) All requirements of proposed law regarding gestational carrier contracts have been satisfied and that the background checks show there is no risk of harm to the child or the gestational carrier.
- (2) Provisions have been made for all reasonable health care and legal expenses associated with the gestational carrier contract.
- (3) The gestational carrier will only be compensated for actual medical expenses, mental health counseling expenses, actual lost wages of the gestational carrier due to prescribed bed rest, actual travel costs, and any monetary recovery obtained because of death or loss of reproductive organs or capability to the gestational carrier because of the in utero embryo transfer and pregnancy.
- (4) The parties understand the contract and freely give consent.

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

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

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

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

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

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

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

Proposed law (R.S. 9:2720.13) requires the intended parents or the gestational carrier to file a motion requesting issuance of a Post-Birth Order upon birth of a child within 300 days of in utero implantation. Authorizes the Dept. of Children and Family Services 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.
- (4) An accompanying verification from the physician who performed the in utero embryo transfer for the intended parents into the gestational carrier that the gestational carrier was not pregnant at the time of the transfer and the transfer resulted in a pregnancy.

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

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

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

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

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

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

Proposed law further prohibits any person from offering money or anything of value to a woman to consent to an abortion, whether or not she is a party to an enforceable or unenforceable agreement for genetic or gestational carrying. Further provides for application to those contracts already entered into on the effective date of this Act.

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

(Amends R.S.14:286(D), R.S. 40:34(B)(1)(a)(viii), (h)(v), (i), and (j), and R.S. 44:4.1(B)(26); Adds R.S. 9:2718-2720.15, R.S. 14:286(E), and R.S. 40:93-96; Repeals R.S. 9:2713)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on House and Governmental Affairs to the engrossed bill:

1. Expressly provide for the confidentiality of forms completed by a physician pursuant to proposed law.
2. Make technical changes.

The House Floor Amendments to the reengrossed bill:

1. Provide for the purpose and intent of the legislation.
2. Clarify the definition of "intended parents" as a married couple who exclusively contribute their own gametes to create an embryo.
3. Provide that the intended parents must have a valid will or succession plan to establish custody if both parents predecease the birth of the child.
4. Require a gestational carrier to attend at least one post birth counseling session within six months of the birth.
5. Amend language to refer to the gestational mother as the gestational carrier throughout the bill.
6. Clarify the definition of "gestational carrier" to be the woman who agrees to the process of attempting to carry and give birth to a child as a result of an in utero transfer.
7. Add the requirement that the post birth order from the court be accompanied by a physician verification.
8. Eliminate penalties for failure to complete forms for collection of data.