
DIGEST

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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.