

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 AND SENATORS ALLAIN, APPEL, BISHOP, BOUDREAUX, BROWN, CHABERT, CLAITOR, GATTI, LUNEAU, PEACOCK, AND TARVER

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AN ACT

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. 44:4.1(B)(26), to enact Chapter 1-C of Code Title IV of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950, comprised of R.S. 9:2718 through 2720.15, R.S. 14:286(E), and Part VII of Chapter 2 of Title 40 of the Louisiana Revised Statutes of 1950, comprised of R.S. 40:93 through 96, and to repeal R.S. 9:2713, relative to gestational carriers; to provide for amendments to birth certificates; to provide for definitions relative to gestational carrier contracts; to provide for genetic gestational carrier contracts; to provide for the enforceability of gestational carrier contracts; to provide for the parties to a gestational carrier contract; to provide for contractual requirements for a gestational carrier contract; to provide for a proceeding to approve a gestational carrier contract; to provide for the check of the criminal records of the parties to a gestational carrier contract; to provide for an order preceding embryo transfer relative to a gestational carrier contract; to provide for matters relative to multiple attempts at in utero embryo transfer; to provide for

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

13 Be it enacted by the Legislature of Louisiana:

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

17 CHAPTER 1-C. GESTATIONAL CARRIER CONTRACTS

18 PART I. LEGISLATIVE INTENT AND DEFINITIONS

19 §2718. Purpose and Intent

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

1           so that 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:

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

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

2                   §2720.2. Contractual requirements

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

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

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

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

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

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

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

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

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

28                  (3) Agree to be recognized as the legal parents of the child.

29                  (4) Have a valid will or succession plan establishing custody of the child  
30                  should both intended parents predecease the birth of the child.

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

3           §2720.3. Proceeding to approve gestational carrier contract

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

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

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

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

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

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

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

28          §2720.4. Institution of records check

29          A. Upon the initiation of the summary proceeding, the court shall do all of  
30          the following:

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

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

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

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

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

1           §2720.5. Order Preceding Embryo Transfer

2                   A. Within sixty days of the initiation of a proceeding to approve a gestational  
3                   carrier contract, the court shall set the matter for hearing, and after the hearing may  
4                   issue an order, known as the Order Preceding Embryo Transfer, approving the  
5                   gestational carrier contract and declaring that the intended parents shall be  
6                   recognized as the legal parents of a child born pursuant to the gestational carrier  
7                   contract.

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

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

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

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

18                   (a) Actual medical expenses, including hospital, testing, nursing, midwifery,  
19                   pharmaceutical, travel, or other similar expenses, incurred by the gestational carrier  
20                   for prenatal care and those medical and hospital expenses incurred incident to the  
21                   birth.

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

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

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



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

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

7           §2720.6. Multiple embryo transfer attempts

8           If there are multiple attempts at in utero embryo transfer, the gestational  
9           carrier contract and the Order Preceding Embryo Transfer shall continue in full force  
10          and effect in accordance with the parties' agreement until terminated under R.S.  
11          9:2720.9 or 2720.11, or until a live birth occurs pursuant to the gestational carrier  
12          contract.

13          §2720.7. Confidentiality

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

22          §2720.8. Continuing and exclusive jurisdiction

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

27          §2720.9. Termination of contract by notice

28          A. Before each in utero embryo transfer, the gestational carrier or either of  
29          the intended parents may terminate the gestational carrier contract by filing a motion  
30          with the court giving notice of termination and serving all other parties with the

1 motion. Upon filing of the motion, the court shall issue an order vacating the Order  
2 Preceding Embryo Transfer.

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

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

11 §2720.10. Remedies

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

16 §2720.11. Termination of contract and effects of divorce, nullity, and death

17 A judgment of divorce or judicial declaration of nullity of a marriage between  
18 the intended parents, entered before in utero embryo transfer, terminates the  
19 gestational carrier contract. Upon the filing of a motion notifying the court of the  
20 judgment of divorce or declaration of nullity, the court shall issue an order vacating  
21 the Order Preceding Embryo Transfer. If an intended parent dies before in utero  
22 embryo transfer, the deceased individual is not a parent of the resulting child unless  
23 the child was born within three years of the death of the decedent and the deceased  
24 agreed in writing that if the in utero embryo transfer were to occur after death, the  
25 deceased individual would be a parent of the child and that the child would have all  
26 rights, including the capacity to inherit from the decedent.

27 §2720.12. Effect of subsequent marriage

28 After the issuance of an Order Preceding Embryo Transfer, subsequent  
29 marriage of the gestational carrier does not affect the validity of a gestational carrier

1 contract. The consent of the spouse is not required, and he is not a presumed father  
2 of the resulting child, notwithstanding any legal presumption to the contrary.

3 §2720.13. Post-Birth Order

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

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

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

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

21 (3) Directing that a new birth certificate be created and that the intended  
22 parents be listed on the birth certificate as the parents of the child pursuant to R.S.  
23 40:32 et seq., and that the original birth certificate be sealed and subject to release  
24 or inspection only upon application to the court for good cause shown.

25 §2720.14. DNA testing

26 If the child is alleged not to be the child of the intended parents, supported  
27 by a sworn affidavit alleging specific facts which either tend to prove or deny  
28 filiation, the court shall order genetic testing to determine the parentage of the child.  
29 If the court finds after a contradictory hearing that the child is the genetic child of the  
30 gestational carrier, the court shall issue an order recognizing her as a legal parent of

1 the child. If any party refuses to submit to such tests, the court may resolve the  
2 question of filiation against such party or enforce its order if the rights of others and  
3 the interests of justice so require.

4 §2720.15. Finality; time limitations

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

8 B. An action to annul a Post-Birth Order based upon a claim of fraud or  
9 duress perpetrated by:

10 (1) Anyone other than an intended parent shall be brought within one year  
11 from the date of the signing of the final decree or mailing of the notice of the  
12 judgment when required.

13 (2) An intended parent shall be brought within two years from the date of the  
14 signing of the final decree or mailing of the notice of the judgment when required.

15 Section 2. R.S. 40:34(B)(1)(a)(viii), (h)(v), (i), and (j) are hereby amended and  
16 reenacted to read as follows:

17 §34. Vital records forms

18 \* \* \*

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

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

23 (a) Full name of child.

24 \* \* \*

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

29 \* \* \*

1 (h)

2 \* \* \*

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

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

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

17 \* \* \*

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

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

21 \* \* \*

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

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

29 (a) Payment of actual medical expenses, including hospital, testing, nursing,  
30 midwifery, pharmaceutical, travel, or other similar expenses, incurred by the

1 gestational carrier for prenatal care and those medical and hospital expenses incurred  
 2 incident to birth.

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

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

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

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

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

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

25 Section 4. Part VII of Chapter 2 of Title 40 of the Louisiana Revised Statutes of  
 26 1950, comprised of R.S. 40:93 through 96, is hereby enacted to read as follows:

1                    PART VII. GESTATIONAL CARRIER DATA COLLECTION2                    §93. Gestational carrier data collection; purpose

3                    The purpose of this Part shall be the compilation of relevant maternal life and  
4                    health factors and data concerning gestational carriers to the extent that it is  
5                    authorized by law.

6                    §94. Forms for collection of data

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

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

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

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

15                  (a) In utero embryo transfer.

16                  (b) Prenatal and postnatal care.

17                  (c) Birth.

18                  (d) Miscarriage.

19                  (e) Induced abortion.

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

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

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

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

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

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

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

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

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

10                  §96. Confidentiality

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

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

20                  §4.1. Exceptions

21    \*           \*           \*

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

27    \*           \*           \*

28                  (26) R.S. 40:3.1, 31.14, 31.27, 39.1, 41, 73, 95, 96, 526, 528, 1007, ~~1098.8,~~  
 29                  ~~1232.7, 1299.6, 1299.35.10, 1299.44, 1299.85, 1299.87, 1300.14, 1300.54,~~ 1061.21,  
 30                  1079.18, 1081.10, 1105.6, 1105.8, 1133.8, 1171.4, 1203.4, 1231.4, 1379.1.1(D),

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



1 1379.3, 2009.8, 2009.14, 2010.5, 2017.9, 2018, 2019, 2020, 2106, ~~2109.1~~, 2138,  
2 2532, 2845.1

3 \* \* \*

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

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

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

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_