The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Ashley E. Menou.

DIGEST 2018 Regular Session

Gary Smith

<u>Present law</u> provides the purpose and intent of <u>present law</u> is to regulate gestational surrogacy agreements and to assure that the intended parents of every child born through the use of assisted reproductive technology be legal and biological parents of the child.

<u>Proposed law</u> changes "gestational surrogacy agreements" to "gestational surrogacy contracts" and otherwise retains <u>present law</u>.

<u>Present law</u> defines "compensation", as it relates to gestational surrogacy contracts, as payment of money, objects, services, or anything else having value. Further provides that reimbursement of certain expenses to the gestational carrier or payment for goods or services incurred by the intended parents as a result of the pregnancy and that would not have been incurred but for the pregnancy shall not be considered compensation.

<u>Proposed law retains present law definition of "compensation"</u>, as it relates to gestational surrogacy contracts, as payment of money, objects, services, or anything else having value. Further provides the following payments to the gestational carrier shall not be prohibited compensation:

- (1) Actual medical expenses related to prenatal care and expenses incident to the birth.
- (2) Actual expenses incurred for mental health counseling prior to the birth and for up to six months after birth.
- (3) Certain lost wages.

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- (4) Travel costs related to the pregnancy, delivery, court costs, and attorney fees.
- (5) Judicially sanctioned settlement or judgement rendered as a result of the gestational carrier's death, loss of reproductive organs or capability, or other health related health complication.

<u>Present law</u> defines "genetic gestational carrier" as the process by which a woman attempts to carry and give birth to a child using her own gametes and either the gametes of a person who intends to parent the child or donor gametes, when there is an agreement to relinquish the custody of and all rights and obligations to the child.

<u>Proposed law</u> changes the definition of "genetic gestational carrier" to a woman who attempts to carry and give birth to a child using her own gametes and either the gametes of a person who intends to parent the child or donor gametes, when there is a contract to relinquish the custody of and all rights and obligations to the child.

<u>Present law</u> provides that no person shall enter into a gestational carrier contract for compensation or that is not in compliance with applicable provisions of <u>present law</u> and any such contract shall be absolutely null and unenforceable as contrary to public policy.

<u>Present law</u> provides that no person shall enter into a gestational carrier contract that requires the carrier to consent to terminate a pregnancy and any such provision shall be absolutely null and unenforceable as contrary to public policy.

Proposed law retains present law.

<u>Present law</u> requires a gestational carrier to certify that prior to executing the gestational carrier contract she has undergone at least two counseling sessions with certain mental health professionals, including a licensed counselor.

<u>Proposed law</u> changes "licensed counselor" to "licensed professional counselor" and otherwise retains present law.

<u>Present law</u> requires that the intended parents in an enforceable gestational carrier contract have a valid will or succession plan establishing custody for the child in the event both intended parents predecease the birth of the child.

<u>Proposed law</u> requires that the intended parents in an enforceable gestational carrier contract have a testament or authentic act naming a tutor for the child should both intended parents die before the birth of the child.

<u>Present law</u> provides that prior to in utero embryo transfer, the intended parents or the gestational carrier and her spouse may initiate a summary proceeding to have a court approve the gestational carrier contract.

<u>Proposed law</u> requires that the summary proceeding to approve the gestational carrier contract be initiated prior to the in utero embryo transfer by either the intended parents or gestational carrier and her spouse and otherwise retains present law.

<u>Present law</u> provides that a proceeding to approve a gestational carrier contract shall be maintained only if all of the following occur:

- (1) The gestational carrier and each of the intended parents have been domiciled in this state for at least 180 days.
- (2) The intended parents, the gestational carrier, and her spouse if she is married, are all parties to the proceeding.
- (3) A copy of the proposed gestational carrier contract is attached to the motion.
- (4) An independent physician who has treated the intended mother submits an affidavit

certifying that in utero embryo transfer is medically necessary. <u>Present law</u> further provides that "medically necessary" means that the intended mother is infertile or that pregnancy creates too great a health risk for the intended mother.

<u>Proposed law</u> removes the requirement that the intended mother must be certified infertile in order to enter into a gestational carrier contract. Further provides that a gestational carrier contract shall be approved by the court if all of the following occur:

- (1) The gestational carrier and each of the intended parents have been domiciled in this state for at least 180 days.
- (2) The intended parents, the gestational carrier, and her spouse if she is married, are all parties to the proceeding.
- (3) A copy of the proposed gestational carrier contract is attached to the motion.

<u>Present law</u> provides that the biological parents of a child born of a surrogate birth parent as a result of an enforceable gestational carrier contract shall be considered the parents of the child.

Proposed law retains present law.

<u>Present law</u> provides that a child born of a surrogate birth parent as a result of an enforceable gestational carrier contract shall have the surname of the biological parents.

Proposed law retains present law.

<u>Present law</u> provides that the full name of the biological father shall be listed on the birth certificate of a child born of a surrogate birth parent as a result of an enforceable gestational carrier contract.

Proposed law retains present law.

<u>Present law</u> provides that the maiden name of the biological mother shall be listed as the mother on the birth certificate of a child born of a surrogate birth parent as a result of an enforceable gestational carrier contract.

<u>Present law</u> provides that in the case of a child born of a surrogate birth parent who is related by blood or affinity to a biological parent, the biological parents, proven to be so by DNA testing, shall be considered the parents of the child.

Proposed law deletes present law.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 9:2718, 2718.1(1) and (3), 2720(C) and (D), 2720.2(A)(3) and (B)(intro para) and (B)(4), 2720.3(A) and (B)(intro para), R.S. 40:34.1(B), 34.2(2)(d), 34.5(C), and 34.6; repeals R.S. 9:2720.3(B)(4) and (5) and R.S. 40:46.10)