

Regular Session, 2014

HOUSE BILL NO. 187

BY REPRESENTATIVES LOPINTO, ADAMS, ARNOLD, BADON, BERTHELOT, WESLEY BISHOP, BROADWATER, BROSSETT, DOVE, GAROFALO, HUNTER, JAMES, KLECKLEY, MORENO, SCHEXNAYDER, TALBOT, AND WOODRUFF AND SENATOR GARY SMITH

CHILDREN: Provides for surrogacy regulation in Louisiana

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, to be comprised of R.S. 9:2718 through

5 2720.15, R.S. 14:286(E), and Part VII of Chapter 2 of Title 40 of the Louisiana

6 Revised Statutes of 1950, to be comprised of R.S. 40:93 through 97, and to repeal

7 R.S. 9:2713, relative to surrogacy; to provide for amendments to birth certificates;

8 to provide for definitions relative to surrogacy contracts; to provide for genetic

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

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

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

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

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

14 an order preceding embryo transfer relative to a gestational surrogacy contract; to

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

16 provide for confidentiality of the proceedings relative to a gestational surrogacy

17 contract; to provide for continuing and exclusive jurisdiction to the proceedings

18 relative to a gestational surrogacy contract; to provide for the termination of a

19 gestational surrogacy contract by notice; to provide for remedies for the failure to

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

9 Be it enacted by the Legislature of Louisiana:

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

13 CHAPTER 1-C. SURROGACY CONTRACTS

14 PART I. DEFINITIONS

15 §2718. Definition of terms

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

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

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

26 (3) "Genetic surrogacy" means the process by which a woman attempts to
27 carry and give birth to a child using her own gametes and either the gametes of a
28 person who intends to parent the child or donor gametes, when there is an agreement
29 to relinquish the custody of and all rights and obligations to the child.

1 (4) "Gestational surrogacy" means the process by which a woman attempts
2 to carry and give birth to a child born as a result of in utero transfer of a human
3 embryo who has no genetic contribution from the gestational mother.

4 (5) "Gestational mother" means a woman who agrees to engage in a
5 gestational surrogacy.

6 (6) "In utero embryo transfer" means the medical procedure whereby the
7 genetic mother's egg is fertilized with the sperm of the genetic father, with the
8 resulting embryo transferred into the uterus of the gestational mother.

9 (7) "Intended parents" means a man and a woman who are married to each
10 other in accordance with Louisiana law who contribute their gametes and who enter
11 into an enforceable gestational surrogacy contract, as defined in this Chapter, with
12 a gestational mother pursuant to which they will be the legal parents of the child
13 resulting from that assisted reproduction.

14 PART II. GENETIC SURROGACY

15 §2719. Contract for genetic surrogacy; nullity

16 A contract for genetic surrogacy shall be absolutely null.

17 PART III. GESTATIONAL SURROGACY

18 §2720. Enforceability of gestational surrogacy contract

19 A. In accordance with the requirements of this Part, an agreement to be
20 known as a gestational surrogacy contract is enforceable only if it is in writing and
21 signed by the gestational mother, her spouse if she is married, and both of the
22 intended parents.

23 B. A gestational surrogacy contract is enforceable only if approved by a
24 court in advance of in utero embryo transfer, and is in accordance with all of the
25 requirements of this Part.

26 C. No person shall enter into a gestational surrogacy contract for
27 compensation as defined in R.S. 9:2718 or that is not in compliance with all of the
28 requirements of this Part. Any such contract executed in the state of Louisiana or

1 any other state shall be absolutely null and unenforceable in the state of Louisiana
2 as contrary to public policy.

3 D. No person shall enter into a gestational surrogacy contract that requires
4 the gestational mother to consent to terminate a pregnancy resulting from in utero
5 embryo transfer for any reason, including a prenatal diagnosis of an actual or
6 potential disability, impairment, genetic variation, or any other health condition or
7 a discrimination based on gender, or for the purposes of the reduction of multiple
8 fetuses. Any such provision in a contract executed in the state of Louisiana or any
9 other state shall be absolutely null and unenforceable in the state of Louisiana as
10 contrary to public policy.

11 §2720.1. Parties to a gestational surrogacy contract

12 A gestational mother shall, at the time the gestational surrogacy contract is
13 executed:

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

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

17 §2720.2. Contractual requirements

18 A. In an enforceable gestational surrogacy contract, the gestational mother
19 shall do all of the following:

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

22 (2) Agree to reasonable medical evaluation and treatment during the term of
23 the pregnancy, to adhere to reasonable medical instructions about prenatal health,
24 and to execute medical records releases under R.S. 40:1299.96 in favor of the
25 intended parents.

26 (3) Certify that prior to executing the gestational surrogacy contract she has
27 undergone at least two counseling sessions, separated by at least thirty days, with a
28 licensed clinical social worker, licensed psychologist, medical psychologist, licensed
29 psychiatrist, or licensed counselor, to discuss the proposed surrogacy.

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

4 B. In an enforceable gestational surrogacy contract, the intended parents
5 shall be a man and woman who are married to each other in accordance with
6 Louisiana law and shall certify in writing that they do all of the following:

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

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

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

14 C. The gestational surrogacy contract shall include a preliminary estimate
15 of anticipated expenses and their allocation in accordance with R.S. 9:2720.5.
16 §2720.3. Proceeding to approve surrogacy contract

17 A. Prior to in utero embryo transfer, the intended parents or the gestational
18 mother and her husband, if she is married, may initiate a summary proceeding in the
19 court exercising jurisdiction over the adoption of minors where the intended parents
20 or the gestational mother reside, seeking to have the court approve a gestational
21 surrogacy contract.

22 B. A proceeding to approve a gestational surrogacy contract shall be
23 maintained only if all of the following occur:

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

26 (2) The intended parents, the gestational mother, and her spouse, if she is
27 married, are all parties to the proceeding.

28 (3) A copy of the proposed gestational surrogacy contract is attached to the
29 motion.

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

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

12 §2720.4. Institution of records check

13 A. Upon the initiation of the summary proceeding, the court shall do all of
14 the following:

15 (1) Order and be entitled to the criminal history record and identification files
16 of the Louisiana Bureau of Criminal Identification and Information on each of the
17 intended parents and the gestational mother and her spouse, if she is married, as a
18 means of performing background checks on those individuals. The bureau shall,
19 upon request and after receipt of fingerprint cards and other identifying information
20 from the court, make available to the court information contained in the bureau's
21 criminal history record and identification files, which pertains to each of the intended
22 parents and the gestational mother and her spouse, if she is married. In addition, in
23 order to determine an applicant's suitability, the fingerprints shall be forwarded by
24 the bureau to the Federal Bureau of Investigation for a national criminal history
25 record check. The bureau shall charge a processing fee as provided in R.S.
26 15:587(B)(1).

27 (2) Order that the Department of Children and Family Services conduct a
28 records check for validated complaints of child abuse or neglect in this or any other

1 state in which either of the intended parents and the gestational mother and her
2 spouse, if she is married, has been domiciled since becoming a major.

3 (3) Order that the Judicial Administrator's Office of the Louisiana Supreme
4 Court conduct a records check for court orders entered into the Louisiana Protective
5 Order Registry involving each of the intended parents and the gestational mother and
6 her spouse, if she is married.

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

10 C. The sheriff or the office of state police, Louisiana Bureau of Criminal
11 Identification and Information, the Department of Children and Family Services, and
12 the Judicial Administrator's Office of the Louisiana Supreme Court shall accord
13 priority to these orders and shall provide a certificate to the court indicating all
14 information discovered, or that no information has been found.

15 §2720.5. Order Preceding Embryo Transfer

16 A. Within sixty days of the initiation of a proceeding to approve a gestational
17 surrogacy contract, the court shall set the matter for hearing, and after the hearing
18 may issue an order, known as the Order Preceding Embryo Transfer, approving the
19 gestational surrogacy contract and declaring that the intended parents shall be
20 recognized as the legal parents of a child born pursuant to the gestational surrogacy
21 contract.

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

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

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

4 (3) The gestational mother will receive no compensation other than:

5 (a) Actual medical expenses, including hospital, testing, nursing, midwifery,
6 pharmaceutical, travel, or other similar expenses, incurred by the gestational mother
7 for prenatal care and those medical and hospital expenses incurred incident to the
8 birth.

9 (b) Actual expenses incurred for mental health counseling services provided
10 to the gestational mother prior to the birth and up to six months after birth.

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

15 (d) Actual travel costs related to the pregnancy and delivery, court costs, and
16 attorney fees incurred by the gestational mother.

17 (e) Payment of a judicially sanctioned settlement or judgment rendered in
18 favor of the gestational mother or her heirs as a result of her death, loss of
19 reproductive organs or capability, or any other health complication caused by the in
20 utero embryo transfer, pregnancy or resulting childbirth, miscarriage, or termination
21 of pregnancy.

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

23 §2720.6. Multiple embryo transfer attempts

24 If there are multiple attempts at in utero embryo transfer, the gestational
25 surrogacy contract and the Order Preceding Embryo Transfer shall continue in full
26 force and effect in accordance with the parties' agreement until terminated under R.S.
27 9:2720.9 or 2720.11, or until a live birth occurs pursuant to the gestational surrogacy
28 contract.

1 §2720.7. Confidentiality

2 All proceedings governed by this Chapter shall be heard by the judge in
3 chambers or in a closed hearing, and no one shall be admitted to the hearings except
4 the parties in interest, their attorneys, and officers of the court. The court, in its
5 discretion, may grant the request of a petitioner to permit others to be present at the
6 hearing. The court records of these proceedings and the identities of the parties to
7 a gestational surrogacy contract shall be sealed and are subject to disclosure, release,
8 or inspection only upon application to the court and in conformity with the
9 applicable requirements of confidentiality applicable to adoptions in the Children's
10 Code.

11 §2720.8. Continuing and exclusive jurisdiction

12 Subject to the jurisdictional requirements of the Uniform Child Custody
13 Jurisdiction and Enforcement Act, the court having jurisdiction over the proceeding
14 to approve a gestational surrogacy contract pursuant to this Part shall have exclusive,
15 continuing jurisdiction of all matters arising out of the gestational surrogacy contract.

16 §2720.9. Termination of contract by notice

17 A. Before each in utero embryo transfer, the gestational mother or either of
18 the intended parents may terminate the gestational surrogacy contract by filing a
19 motion with the court giving notice of termination and serving all other parties with
20 the motion. Upon filing of the motion, the court shall issue an order vacating the
21 Order Preceding Embryo Transfer.

22 B. Neither a gestational mother nor her spouse, if she is married, is liable to
23 the intended parents for terminating a gestational surrogacy contract pursuant to this
24 Section.

25 C. Absent timely notice of termination by an intended parent or the
26 gestational mother, no court shall terminate an enforceable gestational surrogacy
27 contract after issuance of a valid Order Preceding Embryo Transfer except for good
28 cause shown after a hearing. No court shall terminate a gestational surrogacy
29 contract after a successful in utero embryo transfer.

1 §2720.10. Remedies

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

6 §2720.11. Termination of contract and effects of divorce, nullity, death

7 A judgment of divorce or judicial declaration of nullity of a marriage between
8 the intended parents, entered before in utero embryo transfer, terminates the
9 gestational surrogacy contract. Upon the filing of a motion notifying the court of the
10 judgment of divorce or declaration of nullity, the court shall issue an order vacating
11 the Order Preceding Embryo Transfer. If an intended parent dies before in utero
12 embryo transfer, the deceased individual is not a parent of the resulting child unless
13 the child was born within three years of the death of the decedent and the deceased
14 agreed in writing that if the in utero embryo transfer were to occur after death, the
15 deceased individual would be a parent of the child and that the child would have all
16 rights, including the capacity to inherit from the decedent.

17 §2720.12. Effect of subsequent marriage

18 After the issuance of an Order Preceding Embryo Transfer, subsequent
19 marriage of the gestational mother does not affect the validity of a gestational
20 surrogacy contract. The consent of the spouse is not required, and he is not a
21 presumed father of the resulting child, notwithstanding any legal presumption to the
22 contrary.

23 §2720.13. Post-Birth Order

24 A. Upon birth of a child to a gestational mother within three hundred days
25 after in utero embryo transfer, the intended parents or their successors, the
26 gestational mother, or her spouse shall file a motion requesting issuance of a
27 Post-Birth Order. The motion shall be accompanied by a certified copy of the child's
28 original birth certificate and an affidavit executed by the intended parents containing

1 an accounting of fees and charges paid or agreed to be paid by or on behalf of the
2 intended parents in connection with the gestational surrogacy contract.

3 B. If neither the intended parents, their successors, the gestational mother,
4 or her spouse file the motion described in Subsection A of this Section, the
5 Department of Children and Family Services may file a motion notifying the court
6 that a child has been born to the gestational mother within three hundred days after
7 in utero embryo transfer, and the court shall set the motion for hearing.

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

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

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

14 (3) Directing that a new birth certificate be created and that the intended
15 parents be listed on the birth certificate as the parents of the child pursuant to R.S.
16 40:32 et seq., and that the original birth certificate be sealed and subject to release
17 or inspection only upon application to the court for good cause shown.

18 §2720.14. DNA testing

19 If the child is alleged not to be the child of the intended parents, supported
20 by a sworn affidavit alleging specific facts which either tend to prove or deny
21 filiation, the court shall order genetic testing to determine the parentage of the child.
22 If the court finds after a contradictory hearing that the child is the genetic child of the
23 gestational mother, the court shall issue an order recognizing her as a legal parent of
24 the child. If any party refuses to submit to such tests, the court may resolve the
25 question of filiation against such party or enforce its order if the rights of others and
26 the interests of justice so require.

1 §2720.15. Finality; time limitations

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

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

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

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

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

14 §34. Vital records forms

15 * * *

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

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

20 (a) Full name of child.

21 * * *

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

26 * * *

27 (h)

28 * * *

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

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

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

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

17 §286. Sale of minor children; penalties

18 * * *

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

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

26 (a) Payment of actual medical expenses, including hospital, testing, nursing,
27 midwifery, pharmaceutical, travel, or other similar expenses, incurred by the
28 gestational mother for prenatal care and those medical and hospital expenses
29 incurred incident to birth.

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

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

8 (d) Payment of actual travel costs related to the pregnancy and delivery,
9 court costs, and attorney fees incurred by the gestational mother.

10 (3) It shall be unlawful for any person to enter into, induce, arrange, procure,
11 knowingly advertise for, or otherwise assist in an agreement for genetic surrogacy,
12 with or without compensation, whether written or unwritten. For purposes of this
13 Section, "genetic surrogacy" and "compensation" shall have the same meaning as
14 defined in R.S. 9:2718.

15 (4) It shall be unlawful for any person to give or offer payment of money,
16 objects, services, or anything of monetary value to induce any woman, whether or
17 not she is party to an enforceable or unenforceable agreement for genetic surrogacy
18 or gestational surrogacy contract, to consent to an abortion as defined in R.S.
19 40:1299.35.1.

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

23 Section 4. Part VII of Chapter 2 of Title 40 of the Louisiana Revised Statutes of
24 1950, comprised of R.S. 40:93 through 97, is hereby enacted to read as follows:

25 PART VII. GESTATIONAL SURROGACY DATA COLLECTION

26 §93. Gestational surrogacy data collection; purpose

27 The purpose of this Part shall be the compilation of relevant maternal life and
28 health factors and data concerning gestational surrogacy to the extent that it is
29 authorized by law.

1 §94. Forms for collection of data

2 The state registrar shall prescribe forms for the collection of information and
3 statistics with respect to enforceable gestational surrogacy contracts. Such forms
4 shall require but not be limited to the following information:

5 (1) The age, marital status, and state and parish of domicile of the gestational
6 mother.

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

8 (3) The full name and address of the physician or physicians performing or
9 attending to the following phases of the gestational surrogacy:

10 (a) In utero embryo transfer.

11 (b) Prenatal and postnatal care.

12 (c) Birth.

13 (d) Miscarriage.

14 (e) Induced abortion.

15 (4) The age, marital status, and state and parish of domicile of the intended
16 mother and father.

17 (5) The medical reason necessitating the gestational surrogacy.

18 (6) The medical procedures employed in the birth, miscarriage, or
19 termination of pregnancy for medical emergency as defined by R.S. 40:1299.35.12.

20 (7) The length and weight of the child born as a result of gestational
21 surrogacy.

22 (8) The length and weight of an unborn child miscarried after the initiation
23 of a gestational surrogacy.

24 (9) Other significant conditions or health complications of the unborn child
25 and mother.

26 (10) The results of pathological examinations of any unborn child who died
27 as a result of pregnancy complications or termination incidental to a gestational
28 surrogacy.

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

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

7 §96. Failure to complete form; penalty

8 The Department of Health and Hospitals shall promulgate by rule the penalty
9 for the failure to complete the forms as provided in R.S. 40:95.

10 §97. Confidentiality

11 The vital statistics records required by this Part and the identities of the
12 parties to a gestational surrogacy contract shall be confidential and shall not be
13 subject to disclosure, release, or inspection except upon application to a competent
14 court and in conformity with the applicable requirements of confidentiality
15 applicable to adoptions in the Children's Code. The reporting of the data for public
16 health purposes shall redact any identifying information and any public report shall
17 indicate patient numbers as assigned pursuant to rules promulgated by the
18 Department of 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, 94, 95, 526, 528, 1007, 1098.8,
29 1232.7, 1299.6, 1299.35.10, 1299.44, 1299.85, 1299.87, 1300.14, 1300.54,

1 1379.1.1(D), 1379.3, 2009.8, 2009.14, 2010.5, 2017.9, 2018, 2019, 2020, 2106,
2 2109.1, 2138, 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.

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)]

Lopinto

HB No. 187

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

Present law provides that a contract for surrogate motherhood shall be absolutely null and shall be void and unenforceable as contrary to public policy. Present law provides that "Contract for surrogate motherhood" means 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 (R.S. 9:2718) defines the following terms: "compensation", "gamete", "genetic surrogacy", "gestational surrogacy", "gestational mother", "in utero embryo transfer", and "intended parents".

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

Proposed law (R.S. 9:2720) provides that a gestational surrogacy contract is only enforceable if approved by a court before in utero implantation. Further prohibits a gestational surrogacy contract for compensation and prohibits a gestational surrogacy contract that requires the gestational mother 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 mother 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 surrogacy contract is executed.

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

- (1) Agree to become pregnant by in utero implantation, using the gametes of the intended parents, and give birth to the resulting child.
- (2) Agree to 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 surrogate is married, her spouse must also relinquish all rights.

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

- (1) Acknowledge that the gestational mother 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.

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 surrogacy contract to seek court approval of a gestational surrogacy contract before in utero implantation by initiating a summary proceeding in the court exercising jurisdiction over adoptions where the intended parents or gestational mother reside.

Proposed law (R.S. 9:2720.4) requires the court to order background checks on each of the intended parents, the gestational mother, 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 surrogacy contract, and requires the court to issue an Order Preceding Embryo Transfer approving the gestational surrogacy contract upon finding all of the following:

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

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

Proposed law (R.S. 9:2720.9) allows the intended parents or the gestational mother to terminate a gestational surrogacy contract before in utero implantation by filing notice of termination with the court and serving all parties. Further provides that neither a gestational mother, nor her spouse, is liable to the intended parents for terminating a gestational surrogacy contract. Also prohibits the court from terminating a gestational surrogacy contract after issuing a valid 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 surrogacy 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 mother has no effect on the validity of a gestational surrogacy contract.

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

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

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

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

Proposed law (R.S. 9:2720.15) restricts 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 surrogate birth parent. Further limits a surrogate birth parent to one who "is related by blood or affinity to a biological parent".

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

Present law (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 surrogacy contracts under R.S. 9:2718, et seq., or any act by a person assisting in a genetic surrogacy 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 surrogacy. 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 surrogacy contracts, including information pertaining to complications of pregnancy, miscarriages, or terminations. Provides procedures for the collection of data, penalties for failure to comply, and confidentiality of the data collected.

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

Proposed law repeals present law.

Effective Aug. 1, 2014.

(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. 40:93-97; Repeals R.S. 9:2713)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Added a definition for "compensation".
2. Changed terminology in proposed law from "gestational carrier" to "gestational mother".
3. Prohibited a gestational mother from being older than 35 years of age.
4. Defined "intended parents" as a man and woman who are married in accordance with Louisiana law.
5. Prohibited gestational surrogacy contracts for compensation and declared such a contract as absolutely null and unenforceable as against public policy.
6. Prohibited provisions of a gestational surrogacy contract from requiring a gestational mother to consent to terminating a pregnancy if prenatal testing reveals an actual or potential disability, for reducing multiple fetuses, or for discrimination based on gender.
7. Changed all "reasonable" expenses as compensation the gestational mother is allowed to receive to "actual" expenses and allowed gestational mother to receive compensation for her actual lost wages due to prescribed bed rest. Further

authorized payment of a judicial recovery to the gestational mother or her heirs due to the death of the gestational mother or her loss of reproductive organs or capability due to the in utero embryo transfer, pregnancy or resulting childbirth, miscarriage, or termination.

8. Prohibited any person from entering into, inducing, arranging, procuring, knowingly advertising for, or otherwise assisting in a gestational surrogacy contract when the action is not in compliance with R.S. 9:2718, et seq. Provided for exceptions for certain persons making payment on behalf of the parties to a gestational surrogacy contract for the certain services and prohibited application to those contracts entered into before the effective date of this Act.
9. Created a database collection system for information relative to gestational surrogacy contracts, including information pertaining to complications of pregnancy, miscarriages, or terminations. Provided procedures for the collection of data, penalties for failure to comply, and confidentiality of the data collected.
10. Made numerous technical amendments to conform with the substantive changes.

House Floor Amendments to the engrossed bill.

1. Added prohibition of any person from entering into, inducing, arranging, procuring, knowingly advertising for, or otherwise assisting in a genetic surrogacy contract for compensation as defined in R.S. 9:2718, et seq.
2. Added prohibition of any person giving or offering a payment of money or something of value to induce a woman to consent to an abortion, whether she is a party to an enforceable or unenforceable agreement for genetic or gestational surrogacy.
3. Made numerous technical amendments.