
DIGEST

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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 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 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 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 give free 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. to the enumerated list of actions constituting the crime of sale of minor children. Proposed law further prohibits 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.