

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

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
20 perform under a gestational surrogacy contract; to provide for the termination of a
21 gestational surrogacy contract and for the effects of divorce, nullity, and death on a
22 gestational surrogacy contract; to provide for the effect of a subsequent marriage of

1 potential disability, impairment, genetic variation, or any other health condition or
 2 a discrimination based on gender, or for the purposes of the reduction of multiple
 3 fetuses. Any such provision in a contract executed in the state of Louisiana or any
 4 other state shall be absolutely null and unenforceable in the state of Louisiana as
 5 contrary to public policy.

6 §2720.1. Parties to a gestational surrogacy contract

7 A gestational mother shall, at the time the gestational surrogacy contract is
 8 executed:

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

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

12 §2720.2. Contractual requirements

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

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

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

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

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

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

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

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

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

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

10 §2720.3. Proceeding to approve surrogacy contract

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

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

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

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

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

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

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

6 §2720.4. Institution of records check

7 A. Upon the initiation of the summary proceeding, the court shall do all of
8 the following:

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

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

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

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

4 C. The sheriff or the office of state police, Louisiana Bureau of Criminal
5 Identification and Information, the Department of Children and Family Services, and
6 the judicial administrator's office of the Louisiana Supreme Court shall accord
7 priority to these orders and shall provide a certificate to the court indicating all
8 information discovered, or that no information has been found.

9 §2720.5. Order Preceding Embryo Transfer

10 A. Within sixty days of the initiation of a proceeding to approve a gestational
11 surrogacy contract, the court shall set the matter for hearing, and after the hearing
12 may issue an order, known as the Order Preceding Embryo Transfer, approving the
13 gestational surrogacy contract and declaring that the intended parents shall be
14 recognized as the legal parents of a child born pursuant to the gestational surrogacy
15 contract.

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

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

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

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

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

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

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

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

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

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

15 §2720.6. Multiple embryo transfer attempts

16 If there are multiple attempts at in utero embryo transfer, the gestational
 17 surrogacy contract and the Order Preceding Embryo Transfer shall continue in full
 18 force and effect in accordance with the parties' agreement until terminated under R.S.
 19 9:2720.9 or 2720.11, or until a live birth occurs pursuant to the gestational surrogacy
 20 contract.

21 §2720.7. Confidentiality

22 All proceedings governed by this Chapter shall be heard by the judge in
 23 chambers or in a closed hearing, and no one shall be admitted to the hearings except
 24 the parties in interest, their attorneys, and officers of the court. The court, in its
 25 discretion, may grant the request of a petitioner to permit others to be present at the
 26 hearing. The court records of these proceedings and the identities of the parties to
 27 a gestational surrogacy contract shall be sealed and are subject to disclosure, release,
 28 or inspection only upon application to the court and in conformity with the
 29 applicable requirements of confidentiality applicable to adoptions in the Children's
 30 Code.

1 §2720.8. Continuing and exclusive jurisdiction

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

6 §2720.9. Termination of contract by notice

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

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

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

20 §2720.10. Remedies

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

25 §2720.11. Termination of contract and effects of divorce, nullity, death

26 A judgment of divorce or judicial declaration of nullity of a marriage between
27 the intended parents, entered before in utero embryo transfer, terminates the
28 gestational surrogacy contract. Upon the filing of a motion notifying the court of the
29 judgment of divorce or declaration of nullity, the court shall issue an order vacating
30 the Order Preceding Embryo Transfer. If an intended parent dies before in utero

1 embryo transfer, the deceased individual is not a parent of the resulting child unless
2 the child was born within three years of the death of the decedent and the deceased
3 agreed in writing that if the in utero embryo transfer were to occur after death, the
4 deceased individual would be a parent of the child and that the child would have all
5 rights, including the capacity to inherit from the decedent.

6 §2720.12. Effect of subsequent marriage

7 After the issuance of an Order Preceding Embryo Transfer, subsequent
8 marriage of the gestational mother does not affect the validity of a gestational
9 surrogacy contract. The consent of the spouse is not required, and he is not a
10 presumed father of the resulting child, notwithstanding any legal presumption to the
11 contrary.

12 §2720.13. Post-Birth Order

13 A. Upon birth of a child to a gestational mother within three hundred days
14 after in utero embryo transfer, the intended parents or their successors, the
15 gestational mother, or her spouse shall file a motion requesting issuance of a
16 Post-Birth Order. The motion shall be accompanied by a certified copy of the child's
17 original birth certificate and an affidavit executed by the intended parents containing
18 an accounting of fees and charges paid or agreed to be paid by or on behalf of the
19 intended parents in connection with the gestational surrogacy contract.

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

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

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

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

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

3 (a) Full name of child.

4 * * *

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

9 * * *

10 (h)

11 * * *

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

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

22 (j) 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 biological parents ~~proven to be~~
25 ~~the mother and father by DNA testing~~ shall be considered the parents of the child.

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

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

29 * * *

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

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

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

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

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

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

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

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

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

4 Section 4. Part VII of Chapter 2 of Title 40 of the Louisiana Revised Statutes of
 5 1950, comprised of R.S. 40:93 through 97, is hereby enacted to read as follows:

6 PART VII. GESTATIONAL SURROGACY DATA COLLECTION

7 §93. Gestational surrogacy data collection; purpose

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

11 §94. Forms for collection of data

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

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

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

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

20 (a) In utero embryo transfer.

21 (b) Prenatal and postnatal care.

22 (c) Birth.

23 (d) Miscarriage.

24 (e) Induced abortion.

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

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

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

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

* * *

7 (26) R.S. 40:3.1, 31.14, 31.27, 39.1, 41, 73, 94, 95, 526, 528, 1007, 1098.8,
 8 1232.7, 1299.6, 1299.35.10, 1299.44, 1299.85, 1299.87, 1300.14, 1300.54,
 9 1379.1.1(D), 1379.3, 2009.8, 2009.14, 2010.5, 2017.9, 2018, 2019, 2020, 2106,
 10 2109.1, 2138, 2532, 2845.1

* * *

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

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

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____