

Regular Session, 2014

SENATE BILL NO. 521

BY SENATOR WARD

CHILDREN. Provides relative to commercial surrogacy. (8/1/14)

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AN ACT

To enact R.S.40:1299.36.1, relative to commercial surrogacy; to provide for certain prohibitions, definitions, and penalties; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:1299.36.1 is hereby enacted to read as follows:

§1299.36.1 Commercial surrogacy; brokers; legislative intent; penalties

A. The legislature finds that the practice of allowing brokers of the commercial surrogacy industry to exploit women who are experiencing financial need is against public policy.

B. It shall be unlawful for a broker or any other person to offer or give money or anything of value, or to advertise for the offering or giving of money or anything of value, to any woman or to any person acting on a woman's behalf, in return for an agreement that the woman will undergo pregnancy or abortion incidental to genetic or gestational surrogacy.

C. The payment of money or anything of value for the procurement, attempted procurement, or assistance in the procurement of a party to an act of voluntary surrender of a child pursuant to a genetic or gestational surrogacy

1 contract is prohibited.

2 D. No broker, attorney or other intermediary acting on a person's behalf
3 shall make or agree to make any disbursements of money or anything of value
4 related to any genetic or gestational surrogacy contract or subsequent
5 surrender of a child to the intended parents, except for:

6 (1) Reimbursement for any hospital and medical bills incurred by the
7 genetic or gestational surrogate as a result of any medical complications
8 incident to the pregnancy, miscarriage, abortion or childbirth related to a
9 genetic or gestational surrogacy agreement, as well as for health complications
10 resulting from the drugs administered to prepare the gestational surrogate's
11 body for the in utero embryo transfer or from the surgical procedures necessary
12 for the in utero embryo transfer.

13 (2) Payment to the woman or her heirs of a judicially sanctioned
14 settlement or judgment to compensate for damages resulting from the medical
15 complications or death of the woman incidental to a genetic or gestational
16 surrogacy.

17 E. For the purposes of this Section:

18 (1) "Abortion" means the procedure defined in R.S. 40:1299.35.1.

19 (2) "Broker" means a person who solicits or negotiates a genetic or
20 gestational surrogacy agreement on behalf of an intended parent or intended
21 parents for a fee, commission or other monetary compensation to obtain the
22 services of a surrogate by payment of the surrogate's putative living expenses.

23 (3) "Gamete" means either a sperm or an egg.

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

29 (5) Gestational surrogacy" means the process by which a woman
30 undergoes the pharmaceutical and other medical processes related to an

1 **attempt to prepare her body for the in utero embryo transfer and subsequent**
 2 **birth of a child conceived using the gametes of the parent or intended parents**
 3 **and to whom the gestational surrogate has made no genetic contribution.**

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

7 **(7) "Intended parent" means a person who contributes their gamete or**
 8 **gametes to be used in assisted reproduction, and who enters into an agreement**
 9 **with a genetic or gestational surrogate pursuant to which the person or persons**
 10 **will be the legal parent or parents of the child resulting from that assisted**
 11 **reproduction.**

12 **(8) "Surrogate" means a woman who undergoes the process of genetic**
 13 **or gestational surrogacy.**

14 **F. Whoever violates the provisions of this Section shall be subject to the**
 15 **penalties provided in R.S. 14:286.**

16 **G. Nothing in this Section shall be construed to affect conduct relating**
 17 **to in vitro fertilization for the purpose of initiating a pregnancy of a woman**
 18 **using her own gametes and the gametes of her husband.**

19 **H. Nothing in this Section shall be construed to give legal recognition to**
 20 **any oral or written contract for surrogacy.**

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Julie J. Baxter.

DIGEST

Ward (SB 521)

Proposed law provides for legislative intent and penalties related to commercial surrogacy.

Proposed law provides that the legislature finds that the practice of allowing brokers of the commercial surrogacy industry to exploit women who are experiencing financial need is against public policy.

Proposed law provides that it shall be unlawful for a broker or any other person to offer or give money or anything of value, or to advertise for the offering or giving of money or anything of value, to any woman or to any person acting on a woman's behalf, in return for an agreement that the woman will undergo pregnancy or abortion incidental to genetic or gestational surrogacy.

Proposed law provides that the payment of money or anything of value for the procurement, attempted procurement, or assistance in the procurement of a party to an act of voluntary surrender of a child pursuant to a genetic or gestational surrogacy contract is prohibited.

Proposed law provides that no broker, attorney or other intermediary acting on a person's behalf shall make or agree to make any disbursements of money or anything of value related to any genetic or gestational surrogacy contract or subsequent surrender of a child to the intended parents, except for:

- (1) Reimbursement for any hospital and medical bills incurred by the genetic or gestational surrogate as a result of any medical complications incident to the pregnancy, miscarriage, abortion or childbirth related to a genetic or gestational surrogacy agreement, as well as for health complications resulting from the drugs administered to prepare the gestational surrogate's body for the in utero embryo transfer or from the surgical procedures necessary for the in utero embryo transfer.
- (2) Payment to the woman or her heirs of a judicially sanctioned settlement or judgment to compensate for damages resulting from the medical complications or death of the woman incidental to a genetic or gestational surrogacy.

Proposed law provides for the following definitions:

- (1) "Abortion" means the procedure defined in present law.
- (2) "Broker" means a person who solicits or negotiates a genetic or gestational surrogacy agreement on behalf of an intended parent or intended parents for a fee, commission or other monetary compensation to obtain the services of a surrogate.
- (3) "Gamete" means either a sperm or an egg.
- (4) "Genetic surrogacy" means 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.
- (5) "Gestational surrogacy" means the process by which a woman undergoes the pharmaceutical and other medical processes related to an attempt to prepare her body for the in utero embryo transfer and subsequent birth of a child conceived using the gametes of the parent or intended parents and to whom the gestational surrogate has made no genetic contribution.
- (6) "In utero embryo transfer" means the medical procedure whereby the genetic mother's egg is fertilized with the sperm of the genetic father, with the resulting embryo transferred into the uterus of the gestational surrogate.
- (7) "Intended parent" means a person who contributes their gamete or gametes to be used in assisted reproduction, and who enters into an agreement with a genetic or gestational surrogate pursuant to which the person or persons will be the legal parent or parents of the child resulting from that assisted reproduction.
- (8) "Surrogate" means a woman who undergoes the process of genetic or gestational surrogacy.

Proposed law provides that whoever violates the provisions of proposed law shall be subject to the penalties provided in present law.

Proposed law provides that nothing in proposed law shall be construed to affect conduct relating to in vitro fertilization for the purpose of initiating a pregnancy of a woman using her own gametes and the gametes of her husband.

Proposed law provides that nothing in proposed law shall be construed to give legal recognition to any oral or written contract for surrogacy.

Effective August 1, 2014.

(Adds R.S. 40:1299.36.1)