

Regular Session, 2013

SENATE BILL NO. 162

BY SENATOR GARY SMITH (On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CHILDREN. Provides for surrogacy contracts. (8/1/13)

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AN ACT

To amend and reenact R.S. 40:34(B)(1)(a)(viii), (h)(v), (i), and (j), to enact Chapter 1-C of Code Title IV, of Code Book III, of Title 9 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 9:2718 through 2720.15, and to repeal R.S. 9:2713, relative to surrogacy contracts; to provide for amendments to birth certificates; to provide for definitions relative to surrogacy contracts; to provide for genetic surrogacy contracts; to provide for the enforceability of gestational surrogacy contracts; to provide for the parties to a gestational surrogacy contract; to provide for contractual requirements for a gestational surrogacy contract; to provide for a proceeding to approve a gestational surrogacy contract; to provide for the check of the criminal records of the parties to a gestational surrogacy contract; to provide for a pre-embryo transfer order relative to a gestational surrogacy contract; to provide for matters relative to multiple attempts at in utero embryo transfer; to provide for confidentiality of the proceedings relative to a gestational surrogacy contract; to provide for continuing and exclusive jurisdiction to the proceedings relative to a gestational surrogacy contract; to provide for the termination of a gestational surrogacy contract by notice; to provide for remedies for the failure to perform under

1 a gestational surrogacy contract; to provide for the termination of a gestational
2 surrogacy contract and for the effects of divorce, nullity, and death on a gestational
3 surrogacy contract; to provide for the effect of a subsequent marriage of the
4 gestational surrogate 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; and to provide for
7 related matters.

8 Be it enacted by the Legislature of Louisiana:

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

12 **CHAPTER 1-C SURROGACY CONTRACTS**

13 **PART I. DEFINITIONS**

14 **§2718. Definition of terms**

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

18 **(1) "Gamete" means either a sperm or an egg.**

19 **(2) "Genetic surrogacy" means the process by which a woman attempts**
20 **to carry and give birth to a child using her own gametes and either the gametes**
21 **of a person who intends to parent the child or donor gametes, when there is an**
22 **agreement to relinquish the custody of and all rights and obligations to the**
23 **child.**

24 **(3) "Gestational surrogacy" means the process by which a woman**
25 **attempts to carry and give birth to a child conceived by in vitro fertilization**
26 **using the gametes of the intended parents and to which the gestational carrier**
27 **has made no genetic contribution.**

28 **(4) "Gestational carrier" means a woman who agrees to engage in a**
29 **gestational surrogacy.**

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

4 **(6) "Intended parents" means married persons who contribute their**
5 **gametes to be used in assisted reproduction, and who enter into an enforceable**
6 **gestational surrogacy contract, as defined in this Chapter, with a gestational**
7 **carrier pursuant to which they will be the legal parents of the child resulting**
8 **from that assisted reproduction.**

9 **PART II. GENETIC SURROGACY**

10 ~~§2713:~~ **2719.** Contract for surrogate motherhood **genetic surrogacy**; nullity

11 A. A contract for surrogate motherhood as defined herein **genetic surrogacy**
12 shall be absolutely null and shall be void and unenforceable as contrary to public
13 policy.

14 B. ~~"Contract for surrogate motherhood" means any agreement whereby a~~
15 ~~person not married to the contributor of the sperm agrees for valuable consideration~~
16 ~~to be inseminated, to carry any resulting fetus to birth, and then to relinquish to the~~
17 ~~contributor of the sperm the custody and all rights and obligations to the child.~~

18 Comments - 2013

19 (a) This Section continues the longstanding disapproval of contracts for
20 genetic surrogacy, which began in 1987 in the wake of the controversial "Baby M"
21 case. See In re Baby M, 537 A.2d 1227 (N.J. 1988). A surrogacy arrangement that
22 would allow a mother to agree to relinquish her biological child in advance of its
23 birth violates the public policy of this state and is, therefore, unenforceable, whether
24 the contract is gratuitous or onerous.

25
26 (b) If individuals choose to ignore the provisions of this Chapter and engage
27 in prohibited forms of surrogacy, this Chapter provides them no legal protection.
28 Parentage, custody, and other questions will be determined in accordance with the
29 general provisions of Louisiana law. See, e.g., C.C. Art. 184.

30 **PART III. GESTATIONAL SURROGACY**

31
32 **§2720. Enforceability of gestational surrogacy contract**

33 **A. In accordance with the requirements of this Part, a gestational**
34 **carrier, her spouse if she is married, and the intended parents may enter into**
35 **a written contract, known as a gestational surrogacy contract.**

1 **B. A gestational surrogacy contract is enforceable only if approved by**
 2 **a court in advance of in utero embryo transfer, as provided in this Part.**

3 Comment - 2013

4 Subsection B makes it clear that entering into a gestational surrogacy contract
 5 is a significant legal act that must be approved by a court, just as an adoption of a
 6 minor must be judicially approved. This Part provides for state involvement, through
 7 judicial oversight, of the gestational surrogacy contract before, during, and after the
 8 assisted reproduction process. The purpose of early involvement is to ensure that the
 9 parties are appropriate for a gestational surrogacy contract, that they understand the
 10 consequences of what they are undertaking, and that the best interests of a child born
 11 of the gestational surrogacy contract are considered before the arrangement is
 12 approved. Parties who enter into a gestational surrogacy contract not meeting the
 13 requirements of this Part may not have their contract judicially approved; in such
 14 cases, the law provides no rights or remedies governing their disputes.

15 **§2720.1. Parties to a gestational surrogacy contract**

16 **A gestational carrier shall, at the time the gestational surrogacy contract**
 17 **is executed:**

18 **(1) Be at least twenty-five years of age.**

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

20 **§2720.2. Contractual requirements**

21 **A. In an enforceable gestational surrogacy contract, the gestational**
 22 **carrier shall:**

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

26 **(2) Agree to submit to reasonable medical evaluation and treatment**
 27 **during the term of the pregnancy, to adhere to reasonable medical instructions**
 28 **about prenatal health, and to execute medical records releases under R.S.**
 29 **40:1299.96 in favor of the intended parents.**

30 **(3) Certify that she has undergone at least two counseling sessions,**
 31 **separated by at least thirty days, with a licensed social worker, licensed**
 32 **psychologist, medical psychologist, licensed psychiatrist, or licensed counselor,**
 33 **to discuss the proposed surrogacy.**

34 **(4) Agree, along with her spouse if she is married, to relinquish all rights**
 35 **to the child.**

1 **and duties as the parents of a child born as a result of in utero embryo transfer.**

2 **B. In an enforceable gestational surrogacy contract, the intended**
 3 **parents shall:**

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

7 **(2) Agree to accept custody of and to assume full parental rights and**
 8 **responsibilities for the child immediately upon the child's birth, regardless of**
 9 **any impairment of the child.**

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

11 **C. The parties shall agree upon a preliminary estimate of reasonable**
 12 **expenses and their allocation in accordance with R.S. 9:2720.5.**

13 Comments - 2013

14 (a) The gestational surrogacy contract regulated under this Part is a contract
 15 subject to the provisions governing Conventional Obligations or Contracts in Title
 16 IV, Book III of the Louisiana Civil Code.

17
 18 (b) The contract must provide that the intended parents will be the parents
 19 of any child born pursuant to the contract while all others involved relinquish all
 20 parental rights and duties. In accordance with Paragraph A(4), the gestational
 21 surrogate is relieved of any legal responsibility for the child.

22
 23 (c) Paragraph B(1) is not intended to modify current law regarding a
 24 pregnant woman's prenatal care. A pregnant gestational surrogate's medical rights
 25 are consistent with the rights of a pregnant woman carrying her own biological child.

26
 27 (d) In requiring the parties to estimate expenses during the contracting
 28 process and to have this agreed-upon financial arrangement approved by the court,
 29 this Chapter mirrors the financial provisions of Louisiana adoption law. Mothers
 30 who relinquish their children for adoption in this state may not financially profit
 31 from the transaction, and are limited to recovery of actual and reasonable expenses.
 32 This and subsequent provisions of this Chapter subject contracts for gestational
 33 surrogacy to the same limitations on financial remuneration. See, e.g., Ch.C. Art.
 34 1223.

35
 36 (e) This Section speaks only to what must be provided for in the gestational
 37 surrogacy contract. There are additional requirements that must be met before a court
 38 may approve a gestational surrogacy agreement. See, e.g., R.S. 9:2720.1 (detailing
 39 requirements of eligibility for the gestational surrogate) and R.S. 9:2720.3 (setting
 40 out residence and other procedural requirements).

41 **§2720.3. Proceeding to approve surrogacy contract**

42 **A. Prior to in utero embryo transfer, the intended parents or the**
 43

1 gestational carrier and her husband, if she is married, may initiate a summary
2 proceeding in the court exercising jurisdiction over the adoption of minors
3 where the intended parents or the gestational carrier reside, seeking to have the
4 court approve a gestational surrogacy contract.

5 B. A proceeding to approve a gestational surrogacy contract shall be
6 maintained only if:

7 (1) The gestational carrier and the intended parents have been domiciled
8 in this State for at least one hundred eighty days.

9 (2) The intended parents, the gestational carrier, and her spouse, if she
10 is married, are all parties to the proceeding.

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

13 Comments - 2013

14 (a) A proceeding to approve a gestational surrogacy contract must be
15 initiated in the court exercising jurisdiction over the adoption of minors because of
16 the similarity between these proceedings. Depending on the parish, the appropriate
17 court may include a family court, juvenile court, district court, or civil district court.

18 (b) To discourage forum shopping, Paragraph (B)(1) requires that the
19 proceeding be initiated in Louisiana if the intended parents and the gestational
20 surrogate have been residents for at least one hundred and eighty days.

21 **§2720.4. Institution of records check**

22 **A. Upon the initiation of the summary proceeding, the court shall:**

23 **(1) Order and be entitled to the criminal history record and**
24 **identification files of the Louisiana Bureau of Criminal Identification and**
25 **Information on each of the intended parents and the gestational carrier and her**
26 **spouse, if she is married, as a means of performing background checks on those**
27 **individuals. The bureau shall, upon request and after receipt of fingerprint**
28 **cards and other identifying information from the court, make available to the**
29 **court information contained in the bureau's criminal history record and**
30 **identification files, which pertains to each of the intended parents and the**
31 **gestational carrier and her spouse, if she is married. In addition, in order to**
32 **determine an applicant's suitability, the fingerprints shall be forwarded by the**
33

1 bureau to the Federal Bureau of Investigation for a national criminal history
2 record check. The bureau shall charge a processing fee as provided in R.S.
3 15:587(B)(1).

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

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

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

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

21 §2720.5. Pre-Embryo Transfer Order

22 A. Within sixty days of the initiation of a proceeding to approve a
23 gestational surrogacy contract, the court shall set the matter for hearing, and
24 after the hearing may issue an order, known as the Pre-Embryo Transfer
25 Order, approving the gestational surrogacy contract and declaring that the
26 intended parents shall be recognized as the legal parents of a child born
27 pursuant to the gestational surrogacy contract.

28 B. The court shall issue a Pre-Embryo Transfer Order upon finding
29 that:

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

5 (2) Provisions have been made for all reasonable health care and legal
6 expenses associated with the gestational surrogacy contract until the birth of the
7 child, including responsibility for those expenses if the contract is terminated.

8 (3) The gestational carrier will receive no compensation other than:

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

13 (b) Reasonable expenses incurred for mental health counseling services
14 provided to the gestational carrier prior to the birth and up to six months after
15 birth.

16 (c) Reasonable living expenses incurred by the gestational carrier before
17 the birth of the child and for no more than sixty days after the birth.

18 (d) Reasonable travel costs related to the pregnancy and delivery, court
19 costs, and attorney fees incurred by the gestational carrier.

20 (4) The parties understand the contract and give free consent.

21 Comments - 2013

22 (a) This pre-implantation authorization process for a gestational surrogacy
23 contract is roughly analogous to prevailing adoption procedures. Just as adoption
24 contemplates the transfer of parentage of a child from the birth parents to the
25 adoptive parents, a gestational surrogacy contract involves the transfer from the
26 gestational mother to the intended parents. This Chapter is designed to protect the
27 interests of the child to be born under the gestational surrogacy contract as well as
28 the interests of the gestational surrogate and the intended parents.
29

30 (b) This Section seeks to protect the interests of the child in several ways.
31 The major protection of the child is the authorization procedure itself. This Chapter
32 requires closely supervised gestational surrogacy arrangements to ensure the security
33 and well-being of the resulting child. Once a proceeding has been initiated,
34 Subsection A permits requires the court to approve a gestational surrogacy contract
35 only if the requirements of this Part are met. If it approves, the court must declare
36 that the intended parents will be the parents of any child born pursuant to, and during
37 the term of, the contract.

1 (c) The expense provisions of this Section largely track those applicable to
2 allowable expenses in connection with the adoption of minors, with some
3 modifications. See Ch.C. Art. 1223.
4

5 **§2720.6. Multiple embryo transfer attempts**

6 **If there are multiple attempts at in utero embryo transfer, the gestational**
7 **surrogacy contract and the Pre-Embryo Transfer Order shall continue in full**
8 **force and effect in accordance with the parties' agreement until terminated**
9 **under R.S. 9:2720.9 or 2720.11, or until a live birth occurs pursuant to the**
10 **gestational surrogacy contract.**

11 **§2720.7. Confidentiality**

12 **All proceedings governed by this Chapter shall be heard by the judge in**
13 **chambers or in a closed hearing, and no one shall be admitted to the hearings**
14 **except the parties in interest, their attorneys, and officers of the court. The**
15 **court, in its discretion, may grant the request of a petitioner to permit others to**
16 **be present at the hearing. The court records of these proceedings and the**
17 **identities of the parties to a gestational surrogacy contract shall be sealed and**
18 **are subject to disclosure, release or inspection only upon application to the**
19 **court and in conformity with the applicable requirements of confidentiality**
20 **applicable to adoptions in the Children's Code.**

21 **§2720.8. Continuing and exclusive jurisdiction**

22 **Subject to the jurisdictional requirements of Uniform Child Custody**
23 **Jurisdiction and Enforcement Act, the court having jurisdiction over the**
24 **proceeding to approve a gestational surrogacy contract pursuant to this Part**
25 **shall have exclusive, continuing jurisdiction of all matters arising out of the**
26 **gestational surrogacy contract.**

27 Comment - 2013

28 This Section is designed to minimize the possibility of parallel litigation in
29 different states and the consequent risk of kidnapping for strategic purposes.
30

31 **§2720.9. Termination of contract by notice**

32 **A. Before each in utero embryo transfer, the gestational carrier or either**
33 **of the intended parents may terminate the gestational surrogacy contract by**

1 filing a motion with the court giving notice of termination and serving all other
 2 parties with the motion. Upon filing of the motion, the court shall issue an order
 3 vacating the Pre-Embryo Transfer Order.

4 B. Neither a gestational carrier nor her spouse, if she is married, is liable
 5 to the intended parents for terminating a gestational surrogacy contract
 6 pursuant to this Section.

7 C. Absent timely notice of termination by an intended parent or the
 8 gestational carrier, no court shall terminate a gestational surrogacy contract
 9 after issuance of a valid Pre-Embryo Transfer Order except for good cause
 10 shown after a hearing. No court shall terminate a gestational surrogacy contract
 11 after a successful in utero embryo transfer.

12 Comments - 2013

13 (a) Subsection A permits a party to terminate a gestational surrogacy contract
 14 after the Pre-Implantation Order by canceling the arrangement before in utero
 15 implantation has occurred. This provides for cancellation during a time when the
 16 interests of the parties would not be unduly prejudiced by termination. The intended
 17 parents certainly have an expectation interest during this time, but the nature of this
 18 interest is little different from that which they would have while they were
 19 attempting to create a pregnancy through traditional means.

20 (b) It is certainly possible that if the gestational surrogate terminates the
 21 gestational surrogacy contract after issuance of a Pre-Implantation Order, the
 22 intended parents may have already expended substantial sums to undergo the
 23 fertilization process. Fertilization costs may not be recovered from the gestational
 24 surrogate, however, as any resulting embryos are genetically related to the intended
 25 parents, and could be used by the intended parents in future attempts at assisted
 26 reproduction.

27 (c) Once a human embryo exists, it is subject to the rules regulating human
 28 embryos in R.S. 9:121-133.

29 (d) The use of the word "each" in Subsection A indicates that the possibility
 30 of termination by notice remains before each implantation attempt, even if there are
 31 multiple attempts.
 32

33 (e) Good cause may include a finding of some change in circumstances that
 34 would have prevented the court from issuing the Pre-Implantation Order. A change
 35 in the results of criminal history, child abuse, or domestic violence registry checks
 36 after issuance of the Pre-Implantation Order, for instance, may provide good cause
 37 for termination.
 38

39 §2720.10. Remedies
 40

41 After in utero embryo transfer, a failure to perform under the
 42 gestational surrogacy contract does not give rise to the right to dissolution. The

1 **parties' rights and responsibilities are otherwise governed by the rules of the**
 2 **Titles on Obligations in General and Conventional Obligations or Contracts.**

3 Comment - 2013

4 Before each in utero implantation, the gestational surrogate or either intended
 5 parent may terminate the gestational surrogacy contract by giving the timely notice
 6 provided for in R.S. 9:2720.9. After implantation, the remedy of contractual
 7 dissolution would be inequitable. If the intended parents failed to pay the
 8 agreed-upon expenses, for instance, allowing the gestational surrogate to take
 9 advantage of extra-judicial dissolution procedures would not be an appropriate
 10 remedy given the nature of the multiple and conflicting interests involved. The
 11 damages, specific performance, and other provisions of the Title on Conventional
 12 Obligations or Contracts, however, do apply to gestational surrogacy contracts.

13 **§2720.11. Termination of contract and effects of divorce, nullity, death**
 14

15 **A judgment of divorce or judicial declaration of nullity of a marriage**
 16 **between the intended parents, entered before in utero embryo transfer,**
 17 **terminates the gestational surrogacy contract. Upon the filing of a motion**
 18 **notifying the court of the judgment of divorce or declaration of nullity, the court**
 19 **shall issue an order vacating the Pre-Embryo Transfer Order. If an intended**
 20 **parent dies before in utero embryo transfer, the deceased individual is not a**
 21 **parent of the resulting child unless the child was born within three years of the**
 22 **death of the decedent and the deceased agreed in writing that if the in utero**
 23 **embryo transfer were to occur after death, the deceased individual would be a**
 24 **parent of the child and that the child would have all rights, including the**
 25 **capacity to inherit from the decedent.**

26 Comments - 2013

27 (a) This Section provides an effect for divorce or declaration of nullity only
 28 before in utero implantation. A judgment of divorce or judicial declaration of nullity
 29 of a marriage between the intended parents, entered after in utero implantation, does
 30 not terminate the gestational surrogacy contract. Custody of the resulting child
 31 would be determined by reference to the child custody provisions of Louisiana Civil
 32 Code Book I, Title V, Chapter 2, Section 3. Likewise, if an intended parent dies
 33 after in utero implantation, the tutorship provisions of the Louisiana Civil Code,
 34 found in Book I, Title VIII, would apply to provide for rules governing the person
 35 and property of the resulting minor child.

36
 37 (b) This Section tracks the policy and language of R.S. 9:391.1, which
 38 regulates children conceived after the death of a parent using the decedent's gametes.

39 **§2720.12. Effect of subsequent marriage**
 40

41 **After the issuance of a Pre-Embryo Transfer Order, subsequent**

1 **marriage of the gestational carrier does not affect the validity of a gestational**
2 **surrogacy contract. The consent of the spouse is not required, and he is not a**
3 **presumed father of the resulting child, notwithstanding any legal presumption**
4 **to the contrary.**

5 Comment - 2013

6 If, after the original court order approves the gestational surrogacy contract,
7 the gestational surrogate marries, the contract continues to be valid and the consent
8 of her new spouse is not required. The new spouse is not a party to the original action
9 and should not be the presumed legal father of the resulting child. Under this Part,
10 the intended parents are the child's legal parents. The spouse of the gestational
11 surrogate will not hold the status of a legal parent unless he is the genetic father or
12 adopts the child.
13

14 **§2720.13. Post-Birth Order**

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

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

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

30 **(1) Confirming that the intended parents are the legal parents of the**
31 **child and are financially responsible for the child.**

32 **(2) If necessary, ordering that the child be surrendered to the intended**
33 **parents.**

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

6 §2720.14. DNA testing

7 If the child is alleged not to be the child of the intended parents,
8 supported by a sworn affidavit alleging specific facts which either tend to prove
9 or deny filiation, the court shall order genetic testing to determine the parentage
10 of the child. If the court finds after a contradictory hearing that the child is the
11 genetic child of the carrier, the court shall issue an order recognizing her as a
12 legal parent of the child. If any party refuses to submit to such tests, the court
13 may resolve the question of filiation against such party or enforce its order if the
14 rights of others and the interests of justice so require.

15 Comments - 2013

16 (a) Such an allegation may be raised in a number of different proceedings,
17 including a filiation, disavowal, or contestation action. See, e.g., C.C. Arts. 187,
18 191, 197, 198. The prescriptive or peremptive period applicable to such an action
19 will be determined by the applicable Civil Code Article for the particular form of
20 action instituted.

21 (b) DNA testing for paternity determinations is authorized and regulated by
22 R.S. 9:396.

23 §2720.15. Finality; time limitations
24

25 A. A party to the gestational surrogacy contract may bring an action to
26 annul a Post-Birth Order. However, except as otherwise provided in this Part,
27 no action to annul a Post-Birth Order may be brought except on the grounds of
28 fraud or duress.
29

30 B. An action to annul a Post-Birth Order based upon a claim of fraud
31 or duress:

32 (1) Perpetrated by anyone other than an intended parent shall be
33 brought within one year from the date of the signing of the final decree or
34 mailing of the notice of the judgment when required.

1 **(2) Perpetrated by an intended parent shall be brought within two years**
2 **from the date of the signing of the final decree or mailing of the notice of the**
3 **judgment when required.**

4 Comment - 2013

5 The narrow grounds and relatively short window for nullifying a Post-Birth
6 Order here are drawn, with some modifications, from Louisiana's grounds for
7 annulling a final decree of adoption. There, as here, the parties' arrangement has
8 been subject to substantial judicial scrutiny, and all parties involved have a special
9 need for finality.

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

12 §34. Vital records forms

13 * * *

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

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

18 (a) Full name of child.

19 * * *

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

24 * * *

25 (h)

26 * * *

27 (v) In the case of a child born of a surrogate birth parent ~~who is related by~~
28 ~~blood or affinity to a biological parent,~~ **as a result of an enforceable gestational**
29 **surrogacy contract, as defined in R.S. 9:2720,** the full name of the biological
30 parent **father** ~~who is proven to be the father by DNA testing~~ shall be listed as the
31 father.
32

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

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

11 Section 3. R.S. 9:2713 is hereby repealed.

12 Section 4. If and when this Act is finally passed by the legislature and enacted into
 13 law, the Louisiana State Law Institute is hereby authorized and directed to review the
 14 comments included with the enacted legislation and to correct such comments as it may
 15 deem necessary to accurately reflect the sections as enacted or amended by this Act.

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

DIGEST

Gary Smith (SB 162)

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 retains present law in part. Proposed law provides that a contract for genetic surrogacy shall be absolutely null. Proposed law provides that "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.

Proposed law provides for the enforcement of gestational surrogacy contracts. Proposed law provides that "gestational surrogacy" means the process by which a woman attempts to carry and give birth to a child by means of in vitro fertilization using the gametes of the intended parents and to which the gestational surrogate has made no genetic contribution.

Proposed law provides contractual requirements for an enforceable gestational surrogacy contract.

Proposed law provides for a proceeding to approve a gestational surrogacy contract.

Proposed law provides for a records check of the parties to a gestational surrogacy contract.

Proposed law provides for a judicial "Pre-Embryo Transfer" prior to an in utero embryo transfer.

Proposed law provides for situations when multiple attempts at in utero embryo transfer are necessary.

Proposed law provides for the confidentiality of the proceedings to the hearings relative to a gestational surrogacy contract.

Proposed law provides for the continuing and exclusive jurisdiction of a court for matters relative to a gestational surrogacy contract.

Proposed law provides for the termination of a gestational surrogacy contract by notice.

Proposed law provides for remedies for the failure to perform under a gestational surrogacy contract.

Proposed law provides for the termination of a gestational surrogacy contract and for the effects of divorce, nullity, and death on a gestational surrogacy contract.

Proposed law provides for the effect of a subsequent marriage of the gestational carrier on a gestational surrogacy contract.

Proposed law provides for a post-birth order.

Proposed law provides for DNA testing when the child is alleged not to be the child of the intended parents.

Proposed law provides for time limitations and finality.

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. Present law provides that the surrogate birth parent "is related by blood or affinity to a biological parent".

Proposed law also 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. Proposed law eliminates the provision that provides that the surrogate birth parent "is related by blood or affinity to a biological parent". Proposed law provides that the child is born of a surrogate birth parent "as a result of an enforceable gestational surrogacy contract, as defined in R.S. 9:2720".

Proposed law repeals present law R.S. 9:2713 that provides for a contract for surrogate motherhood.

Effective August 1, 2013.

(Amends R.S. 40:34(B)(1)(a)(viii), (h)(v), (i), and (j); adds R.S. 9:2718 – 2720.15; repeals R.S. 9:2713)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill

1. Added certain procedural requirements relative to criminal background

checks and fingerprint cards on each of the intended parents and the gestational carrier and her spouse.

2. Changed from the term "implantation" to the term "embryo transfer".
3. Changed from the term "surrogate" to the term "carrier".
4. Changed reference in the definition of a gestational surrogacy from giving birth to a child "by means of in vitro fertilization" to giving birth to a child "conceived by in vitro fertilization"
5. Removed the requirement that, for a gestational surrogate to be paid for reasonable living expenses for up to sixty days after the birth, she must, on written advice of a physician, be unable to work or otherwise support herself for medical reasons due to complications associated with the pregnancy or birth of the child.
6. Deletes current law noting that "the name of the surrogate birth parent is not required" on a birth certificate.
7. Adds a section authorizing and directing the Louisiana State Law Institute to review the comments included with the enacted legislation and to correct such comments as it may deem necessary to accurately reflect the sections as enacted or amended by the Act.