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

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## 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.