

---

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

---

## CONFERENCE COMMITTEE REPORT DIGEST

Senate Bill No. 162 by Senator Gary Smith

### **Keyword and summary of the bill as proposed by the Conference Committee**

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

#### **Report adopts House amendments to:**

1. Provide that a social worker from whom the gestational carrier may be evaluated in complying with proposed law be a licensed clinical social worker.
2. Add requirement that an independent board certified physician in obstetrics and gynecology or in reproductive endocrinology, not affiliated with a surrogacy agency, deem the use of a gestational carrier medically necessary to assist in reproduction.

#### **Report rejects House amendments which would have:**

1. Added provision that referenced Article XII, Section 15 of the Louisiana Constitution of 1974 as it relates to the definition of married persons
2. Added provision that proposed law is to be null, void, and given no effect if the U.S. Supreme Court determines that the Defense of Marriage provision in the Louisiana state constitution or that the federal Defense of Marriage Act, defining marriage as the union between one man and one woman, is unconstitutional.

### **Digest of the bill as proposed by the Conference Committee**

Proposed law defines certain terms relative to surrogacy contracts. Defines "intended parents" to mean a married couple consisting of a man and a woman who contribute their gametes to be used in assisted reproduction, and who enter into an enforceable gestational surrogacy contract with a gestational carrier pursuant to which they will be the legal parents of the child resulting from that assisted reproduction.

Present law provides that a contract for surrogate motherhood shall be absolutely null and shall be void and unenforceable as contrary to public policy. Defines a "contract for surrogate motherhood" to be 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 removes a contract for "surrogate motherhood" from the prohibition and provides that a contract for "genetic surrogacy" is absolutely null. Defines "genetic surrogacy" to mean 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. Defines "gestational surrogacy" to mean 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 requirements for an enforceable gestational surrogacy contract and provides for court approval of the contract. in advance of in utero embryo transfer. Requires that the gestational carrier comply with the following:

- (1) Agree to become pregnant by means of in utero embryo transfer, using the gametes of the intended parents, and to give birth to the resulting child.
- (2) Agree to submit to reasonable medical evaluation and treatment during the term of the pregnancy, to adhere to reasonable medical instructions about prenatal health, and to execute medical records releases in favor of the intended parents.
- (3) Certify that she has undergone at least two counseling sessions, separated by at least thirty days, with a licensed clinical social worker, licensed psychologist, medical psychologist, licensed psychiatrist, or licensed counselor, to discuss the proposed surrogacy.
- (4) Agree, along with her spouse if she is married, to relinquish all rights and duties as the parents of a child born as a result of in utero embryo transfer.

Proposed law provides that the surrogacy contract require that the intended parents comply with the following items:

- (1) Acknowledge that the gestational carrier has sole authority with respect to medical decision-making during the term of the pregnancy consistent with the rights of a pregnant woman carrying her own biological child.
- (2) Agree to accept custody of and to assume full parental rights and responsibilities for the child immediately upon the child's birth, regardless of any impairment of the child.
- (3) Be recognized as the legal parents of the child.

Proposed law requires that a proceeding to approve a gestational surrogacy contract be maintained only if the following requirements are met:

- (1) The gestational carrier and the intended parents have been domiciled in this state for at least 180 days.
- (2) The intended parents, the gestational carrier, and her spouse, if she is married, are all parties to the proceeding.
- (3) A copy of the proposed gestational surrogacy contract is attached to the motion seeking court approval of the contract.
- (4) An independent board certified physician in obstetrics and gynecology or in reproductive endocrinology, not affiliated with a surrogacy agency, deems the use of a gestational carrier medically necessary to assist in reproduction.

Proposed law provides that upon initiation of a summary proceeding to approve a gestational surrogacy contract, requires court to order a records check as to the intended parents and the gestational carrier involving the following:

- (1) A criminal history check from the La. Bureau of Criminal Identification and Information.
- (2) A check by the Department of Children and Family Services for any complaints of child abuse or neglect in this or any other state.
- (3) A check by the Judicial Administrator's Office of the La. Supreme Court as to any orders entered into the La. Protective Orders Registry.

Proposed law requires a court to hold a hearing within 60 days of initiation of a proceeding to approve a gestational surrogacy contract and authorizes the court to order "Pre-Embryo Transfer Order" approving the contract and declaring that the intended parents be recognized as the legal parents of a child born pursuant to the contract upon a finding of the following:

- (1) The required records check is completed and there is no risk of harm to the child.
- (2) Provision has been made for all reasonable health care and legal expenses association with the contract until the birth of the child including provisions for responsibility if the contract is terminated.
- (3) The gestational carrier is to receive no compensation other than for the following:
  - (a) Reasonable medical expenses for prenatal care and those medical and hospital expenses incurred incident to the birth.
  - (b) Reasonable expenses incurred for mental health counseling services to the carrier prior to the

birth and up to six months after the birth.

(c) Reasonable living expenses of the carrier before the birth and for no more than 60 days after the birth.

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

(e) That the parties understand the contract and give free consent to it.

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

Proposed law requires that all court proceedings be heard by the judge in chambers or in a closed hearing and for confidentially of the proceedings.

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 before each in utero embryo transfer by either party by filing a motion with the court and giving notice of termination to all other parties. Prohibits the court, absent timely notice of termination, from terminating a gestational surrogacy contract after issuance of the Pre-Embryo Transfer Order except for good cause shown at a hearing. Prohibits court termination of the contract after a successful in utero embryo transfer.

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 issuance of a post-birth order upon birth of the child within 300 days after in utero embryo transfer confirming the legal parents of the child, their financial responsibility, and directing issuance of a new birth certificate with the intended parents listed on the birth certificate as the parents of the child and that the original birth certificate be sealed and subject to release or inspection only upon application to the court for good cause shown.

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 to annul a post-birth order and for its 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. Eliminates the provision that the surrogate birth parent "is related by blood or affinity to a biological parent" and allows use of the biological parent's surname. when the birth is "a result of an enforceable gestational surrogacy contract".

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).