

## **BILL ANALYSIS**

C.S.H.B. 729  
By: Goodman  
Juvenile Justice & Family Issues  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Under current law, there are no provisions regulating an agreement between a gestational mother and the intended parents. Without regulation of these agreements, the legal parent-child relationships of a child of a gestational agreement may be unclear. C.S.H.B.729 sets forth provisions establishing procedures for gestational agreements.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Department of Health in SECTION 160.763, Family Code, of this bill.

### **SECTION BY SECTION ANALYSIS**

**Section 1.** Amends Section 160.602, Family Code by adding an intended parent to the list of persons who have standing to maintain a proceeding to adjudicate parentage.

**Section 2.** Amends Chapter 160, by adding Subchapter I, Gestational Agreements, Family Code, which authorizes an agreement between a woman and the intended parents of a child in which the woman relinquishes all rights as a parent of a child conceived by means of assisted reproduction. This bill further provides that the intended parents become the parents of the child. (Sections 160.752 and 160.753)

Adds Section 160.754, Family Code, which authorizes each intended parent, a prospective gestational mother and her husband, if she is married, and each donor, if applicable, to enter into a gestational agreement. This bill provides that the intended parents must be married to each other; that the gestational agreement must require that the eggs used in the assisted reproduction procedure be retrieved from an intended parent or donor and not from the gestational mother; and that the gestational agreement must state that the physician who will perform the procedure has informed the parties to the agreement of success rates, risks, and expenses.

Additionally, C.S.H.B.729 provides that the parties must enter into the agreement before the 14th day preceding the date the transfer of eggs, sperm, or embryos to the gestational mother occurs and that a gestational agreement does not apply to the birth of a child conceived by means of sexual intercourse. This bill provides that a gestational agreement may not limit the right of the gestational mother to make decisions to safeguard her health or the health of the embryo.

C.S.H.B.729 further adds Section 160.755 to provide that the intended parents and the prospective gestational mother are authorized to maintain a proceeding to validate a gestational agreement and adds Section 160.756 which establishes provisions for a proceeding to validate the agreement.

Section 160.757 is added to provide that the proceedings, records, and identities of the parties to a gestational agreement are subject to inspection under the same standards of

confidentiality that applies to an adoption. C.S.H.B.729 further provides that a court that conducts the proceeding has continuing and exclusive jurisdiction of all matters relating to the agreement until the date a child born to the gestational mother under the agreement reaches 180 days of age.

Section 160.759 provides that before a prospective gestational mother becomes pregnant by means of assisted reproduction, the prospective gestational mother, or her husband if she is married, or either of the intended parents may terminate the gestational agreement by giving written notice to each other party to the agreement. This bill further provides that notice of the termination must be filed with the court, at which time the court shall vacate the order validating the agreement. A prospective gestational mother and her husband, if she is married, may not be liable to an intended parent for terminating the agreement, provided the termination is in accordance with the procedures established under the bill.

C.S.H.B.729 additionally requires the intended parents to file a notice of the birth of a child to a gestational mother with the court not later than the 300th day after the date assisted reproduction occurred. After receiving the notice, the bill requires the court to render an order that confirms the intended parents are the child's parents, requires the gestational mother to surrender the child to the intended parents, if necessary, and requires the bureau of vital statistics to issue a birth certificate naming the intended parents as the child's parents. This bill also requires the court to order scientifically accepted parentage testing to determine the child's parentage if a person alleges that a child born to a gestational mother did not result from assisted reproduction (Sec. 160.760).

Adds Section 160.761 which provides that if a gestational mother is married after the court renders an order validating a gestational agreement, the validity of the agreement is not affected, the gestational mother's husband is not required to consent to the agreement, and the gestational mother's husband is not a presumed father of the child born under the agreement.

C.S.H.B.729 adds Section 160.752 which provides that a gestational agreement that is not validated is unenforceable and that the parent-child relationship under a non-validated agreement is determined under current parentage law. This bill further provides that an intended parent of a non-validated agreement may be held liable for the support of a child born under the agreement, even if the agreement is otherwise unenforceable, and provides that the court may assess fees and reasonable expenses incurred in a proceeding regarding a non-validated agreement.

Under Section 160.763, language is added which requires the Texas Department of Health to develop and implement a confidential reporting system that requires each health care facility in this state at which assisted reproduction procedures are performed under gestational agreements to report statistics related to those procedures.

**Section 3.** Repeals Section 160.103(d), Family Code.

**Section 4.** Requires the Texas Department of Health to implement the reporting system not later than December 1, 2003.

**Section 5.** (a) This Act takes effect September 1, 2003. (b) Savings and transition provisions.

#### **EFFECTIVE DATE**

September 1, 2003.

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

C.S.H.B.729 modifies the original by removing the provision that a gestational agreement may not provide for the payment of consideration. C.S.H.B.729 removes the provision that requires the court to find that the amount paid for the gestational mother's expenses is reasonable. C.S.H.B.729 removes the offense provisions regarding payment of consideration and advertising.