

By: Goodman

H.B. No. 729

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the adoption of the Uniform Parentage Act regarding
3 gestational agreements; providing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 160.602, Family Code, is amended to read
6 as follows:

7 Sec. 160.602. STANDING TO MAINTAIN PROCEEDING. Subject to
8 Subchapter D and Sections 160.607 and 160.609, a proceeding to
9 adjudicate parentage may be maintained by:

10 (1) the child;

11 (2) the mother of the child;

12 (3) a man whose paternity of the child is to be
13 adjudicated;

14 (4) the support enforcement agency or another
15 government agency authorized by other law;

16 (5) an authorized adoption agency or licensed
17 child-placing agency;

18 (6) a representative authorized by law to act for an
19 individual who would otherwise be entitled to maintain a proceeding
20 but who is deceased, is incapacitated, or is a minor; ~~or~~

21 (7) a person related within the second degree by
22 consanguinity to the mother of the child, if the mother is deceased;
23 or

24 (8) a person who is an intended parent.

1 SECTION 2. Chapter 160, Family Code, is amended by adding
2 Subchapter I to read as follows:

3 SUBCHAPTER I. GESTATIONAL AGREEMENTS

4 Sec. 160.751. DEFINITION. In this subchapter, "gestational
5 mother" means a woman who gives birth to a child conceived under a
6 gestational agreement.

7 Sec. 160.752. SCOPE OF SUBCHAPTER; CHOICE OF LAW. (a)
8 Notwithstanding any other provision of this chapter or another law,
9 this subchapter authorizes an agreement between a woman and the
10 intended parents of a child in which the woman relinquishes all
11 rights as a parent of a child conceived by means of assisted
12 reproduction and that provides that the intended parents become the
13 parents of the child.

14 (b) This subchapter controls over any other law with respect
15 to a child conceived under a gestational agreement under this
16 subchapter.

17 Sec. 160.753. ESTABLISHMENT OF PARENT-CHILD RELATIONSHIP.

18 (a) Notwithstanding any other provision of this chapter or another
19 law, the mother-child relationship exists between a woman and a
20 child by an adjudication confirming the woman as a parent of the
21 child born to a gestational mother under a gestational agreement if
22 the gestational agreement is validated under this subchapter or
23 enforceable under other law, regardless of the fact that the
24 gestational mother gave birth to the child.

25 (b) The father-child relationship exists between a child
26 and a man by an adjudication confirming the man as a parent of the
27 child born to a gestational mother under a gestational agreement if

1 the gestational agreement is validated under this subchapter or
2 enforceable under other law.

3 Sec. 160.754. GESTATIONAL AGREEMENT AUTHORIZED. (a) A
4 prospective gestational mother, her husband if she is married, each
5 donor, and each intended parent may enter into a written agreement
6 providing that:

7 (1) the prospective gestational mother agrees to
8 pregnancy by means of assisted reproduction;

9 (2) the prospective gestational mother, her husband if
10 she is married, and each donor other than the intended parents, if
11 applicable, relinquish all parental rights and duties with respect
12 to a child conceived through assisted reproduction;

13 (3) the intended parents will be the parents of the
14 child; and

15 (4) the gestational mother and each intended parent
16 agree to exchange throughout the period covered by the agreement
17 all relevant information regarding the health of the gestational
18 mother and each intended parent.

19 (b) The intended parents must be married to each other. Each
20 intended parent must be a party to the gestational agreement.

21 (c) The gestational agreement must require that the eggs
22 used in the assisted reproduction procedure be retrieved from an
23 intended parent or a donor. The gestational mother's eggs may not
24 be used in the assisted reproduction procedure.

25 (d) The gestational agreement must state that the physician
26 who will perform the assisted reproduction procedure as provided by
27 the agreement has informed the parties to the agreement of:

1 (1) the rate of successful conceptions and births
2 attributable to the procedure, including the most recent published
3 outcome statistics of the procedure at the facility at which it will
4 be performed;

5 (2) the potential for and risks associated with the
6 implantation of multiple embryos and consequent multiple births
7 resulting from the procedure;

8 (3) the nature of and expenses related to the
9 procedure;

10 (4) the health risks associated with, as applicable,
11 fertility drugs used in the procedure, egg retrieval procedures,
12 and egg or embryo transfer procedures; and

13 (5) reasonably foreseeable psychological effects
14 resulting from the procedure.

15 (e) The parties to a gestational agreement must enter into
16 the agreement before the 14th day preceding the date the transfer of
17 eggs, sperm, or embryos to the gestational mother occurs for the
18 purpose of conception or implantation.

19 (f) A gestational agreement does not apply to the birth of a
20 child conceived by means of sexual intercourse.

21 (g) A gestational agreement may not:

22 (1) provide for payment of consideration, but may
23 provide for payment of all reasonable medical, counseling, and life
24 insurance expenses for the gestational mother; or

25 (2) limit the right of the gestational mother to make
26 decisions to safeguard her health or the health of an embryo.

27 Sec. 160.755. PETITION TO VALIDATE GESTATIONAL AGREEMENT.

1 (a) The intended parents and the prospective gestational mother
2 under a gestational agreement may commence a proceeding to validate
3 the agreement.

4 (b) A person may maintain a proceeding to validate a
5 gestational agreement only if:

6 (1) the prospective gestational mother or the intended
7 parents have resided in this state for the 90 days preceding the
8 date the proceeding is commenced;

9 (2) the prospective gestational mother's husband, if
10 she is married, is joined as a party to the proceeding; and

11 (3) a copy of the gestational agreement is attached to
12 the petition.

13 Sec. 160.756. HEARING TO VALIDATE GESTATIONAL AGREEMENT.

14 (a) A gestational agreement must be validated as provided by this
15 section.

16 (b) The court may validate a gestational agreement as
17 provided by Subsection (c) only if the court finds that:

18 (1) the parties have submitted to the jurisdiction of
19 the court under the jurisdictional standards of this chapter;

20 (2) the medical evidence provided shows that the
21 intended mother is unable to carry a pregnancy to term and give
22 birth to the child or is unable to carry the pregnancy to term and
23 give birth to the child without unreasonable risk to her physical or
24 mental health or to the health of the unborn child;

25 (3) unless waived by the court, an agency or other
26 person has conducted a home study of the intended parents and has
27 determined that the intended parents meet the standards of fitness

1 applicable to adoptive parents;

2 (4) each party to the agreement has voluntarily
3 entered into and understands the terms of the agreement;

4 (5) the prospective gestational mother has had at
5 least one previous pregnancy and delivery and carrying another
6 pregnancy to term and giving birth to another child would not pose
7 an unreasonable risk to the child's health or the physical or mental
8 health of the prospective gestational mother;

9 (6) the parties have adequately provided for which
10 party is responsible for all reasonable health care expenses
11 associated with the pregnancy, including providing for who is
12 responsible for those expenses if the agreement is terminated; and

13 (7) the amount paid for the gestational mother's
14 expenses authorized by Section 160.754(g) is reasonable.

15 (c) If the court finds that the requirements of Subsection
16 (b) are satisfied, the court may render an order validating the
17 gestational agreement and declaring that the intended parents will
18 be the parents of a child born under the agreement.

19 (d) The court may validate the gestational agreement at the
20 court's discretion. The court's determination of whether to
21 validate the agreement is subject to review only for abuse of
22 discretion.

23 Sec. 160.757. INSPECTION OF RECORDS. The proceedings,
24 records, and identities of the parties to a gestational agreement
25 under this subchapter are subject to inspection under the same
26 standards of confidentiality that apply to an adoption under the
27 laws of this state.

1 Sec. 160.758. CONTINUING, EXCLUSIVE JURISDICTION. Subject
2 to Section 152.201, a court that conducts a proceeding under this
3 subchapter has continuing, exclusive jurisdiction of all matters
4 arising out of the gestational agreement until the date a child born
5 to the gestational mother during the period covered by the
6 agreement reaches 180 days of age.

7 Sec. 160.759. TERMINATION OF GESTATIONAL AGREEMENT. (a)
8 Before a prospective gestational mother becomes pregnant by means
9 of assisted reproduction, the prospective gestational mother, her
10 husband if she is married, or either intended parent may terminate a
11 gestational agreement validated under Section 160.756 by giving
12 written notice of the termination to each other party to the
13 agreement.

14 (b) A person who terminates a gestational agreement under
15 Subsection (a) shall file notice of the termination with the court.
16 A person having the duty to notify the court who does not notify the
17 court of the termination of the agreement is subject to appropriate
18 sanctions.

19 (c) On receipt of the notice of termination, the court shall
20 vacate the order rendered under Section 160.756 validating the
21 gestational agreement.

22 (d) A prospective gestational mother and her husband, if she
23 is married, may not be liable to an intended parent for terminating
24 a gestational agreement if the termination is in accordance with
25 this section.

26 Sec. 160.760. PARENTAGE UNDER VALIDATED GESTATIONAL
27 AGREEMENT. (a) On the birth of a child to a gestational mother

1 under a validated gestational agreement, the intended parents shall
2 file a notice of the birth with the court not later than the 300th
3 day after the date assisted reproduction occurred.

4 (b) After receiving notice of the birth, the court shall
5 render an order that:

6 (1) confirms that the intended parents are the child's
7 parents;

8 (2) confirms that any payments made by the intended
9 parents to the gestational mother were reasonable expenses
10 authorized by Section 160.754(g);

11 (3) requires the gestational mother to surrender the
12 child to the intended parents, if necessary; and

13 (4) requires the bureau of vital statistics to issue a
14 birth certificate naming the intended parents as the child's
15 parents.

16 (c) If a person alleges that a child born to a gestational
17 mother did not result from assisted reproduction, the court shall
18 order that scientifically accepted parentage testing be conducted
19 to determine the child's parentage.

20 Sec. 160.761. EFFECT OF GESTATIONAL MOTHER'S MARRIAGE AFTER
21 VALIDATION OF AGREEMENT. If a gestational mother is married after
22 the court renders an order validating a gestational agreement under
23 this subchapter:

24 (1) the validity of the gestational agreement is not
25 affected;

26 (2) the gestational mother's husband is not required
27 to consent to the agreement; and

1 (3) the gestational mother's husband is not a presumed
2 father of the child born under the terms of the agreement.

3 Sec. 160.762. EFFECT OF GESTATIONAL AGREEMENT THAT IS NOT
4 VALIDATED. (a) A gestational agreement that is not validated as
5 provided by this subchapter is unenforceable, regardless of whether
6 the agreement is in a record.

7 (b) The parent-child relationship of a child born under a
8 gestational agreement that is not validated as provided by this
9 subchapter is determined as otherwise provided by this chapter.

10 (c) A party to a gestational agreement that is not validated
11 as provided by this subchapter who is an intended parent under the
12 agreement may be held liable for the support of a child born under
13 the agreement, even if the agreement is otherwise unenforceable.

14 (d) The court may assess filing fees, reasonable attorney's
15 fees, fees for genetic testing, other costs, and necessary travel
16 and other reasonable expenses incurred in a proceeding under this
17 section. Attorney's fees awarded by the court may be paid directly
18 to the attorney. An attorney who is awarded attorney's fees may
19 enforce the order in the attorney's own name.

20 Sec. 160.763. HEALTH CARE FACILITY REPORTING REQUIREMENT.

21 (a) The Texas Department of Health by rule shall develop and
22 implement a confidential reporting system that requires each health
23 care facility in this state at which assisted reproduction
24 procedures are performed under gestational agreements to report
25 statistics related to those procedures.

26 (b) In developing the reporting system, the department
27 shall require each health care facility described by Subsection (a)

1 to annually report:

2 (1) the number of assisted reproduction procedures
3 under a gestational agreement performed at the facility during the
4 preceding year; and

5 (2) the number and current status of embryos created
6 through assisted reproduction procedures described by Subdivision
7 (1) that were not transferred for implantation.

8 Sec. 160.764. PAYMENT OF CONSIDERATION; OFFENSE. (a) A
9 person commits an offense if the person knowingly or intentionally
10 pays or promises to pay consideration to a prospective gestational
11 mother with the intent to influence the prospective gestational
12 mother's decision to enter into a gestational agreement.

13 (b) An offense under this section is a Class A misdemeanor.

14 (c) For purposes of this section, consideration does not
15 include a payment for a gestational mother's expenses authorized
16 under Section 160.754(g).

17 Sec. 160.765. ADVERTISING; OFFENSE. (a) In this section,
18 "advertise" means to solicit or induce through print or electronic
19 media, including through radio, television, direct mail, or the
20 Internet.

21 (b) A person commits an offense if the person advertises
22 that the person will act as a gestational mother or assist another
23 person in locating a person to act as a gestational mother.

24 (c) An offense under this section is a Class A misdemeanor.

25 SECTION 3. Section 160.103(d), Family Code, is repealed.

26 SECTION 4. Not later than December 1, 2003, the Texas
27 Department of Health shall implement the reporting system required

1 by Section 160.763, Family Code, as added by this Act.

2 SECTION 5. (a) This Act takes effect September 1, 2003.

3 (b) The change in law made by this Act applies to a motion or
4 other request for relief made in a parentage or paternity
5 proceeding that is commenced on or after the effective date of this
6 Act. A motion or other request for relief made in a parentage or
7 paternity proceeding commenced before the effective date of this
8 Act is governed by the law in effect at the time the proceeding was
9 commenced, and the former law is continued in effect for that
10 purpose.