

## **BILL ANALYSIS**

H.B. 1998  
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State Affairs  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Some couples involve a third person to serve as a “gestational mother” to have their baby in order to build a family whether or not the couple uses their own genetic material or secures donated sperm or eggs. Current law allows married couples to enter into agreements with the gestational mother who has their baby. If a married couple makes an agreement with a gestational mother that is in compliance with the statute, the agreement is enforceable under Subchapter I, Chapter 160, Family Code. As a result, parentage is confirmed prior to implantation, so a child has guaranteed parents at birth. If a married couple engages a gestational mother without a validated agreement, there is no court order determining parentage prior to birth as a result. Post-birth litigation can arise as to parentage. During that time, there may be financial, medical and emotional issues that remain in limbo until litigation is resolved. Thus, the best practice for married couples is to follow the statute.

Currently an individual can engage a sperm or egg donor and a physician to participate in assisted reproduction using a gestational carrier. An individual who makes such an agreement without statutory approval or framework, cannot provide any assurance regarding parentage. This person must pursue post-birth legal proceedings to either establish paternity or maternity. The child may be without a financial and emotional parent for a period of time after birth. Issues often develop regarding health insurance, consent to medical procedures, and inheritance rights in the event that an intended parent dies during the contest. If the intended parent does not follow through to establish parentage, the birth mother has no recourse, even though she may be unable to care for the child, and may be forced to rely on state and federal resources.

House Bill 1998 will permit the intended parents to utilize the gestational agreement, by broadening the prerequisite for the intended parents in a gestational agreement. H.B. 1998 will amend the language of Section 160.754(b) of the Family Code to exclude language that the intended parents must be married to each other.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

House Bill 1998 amends the Family Code to provide that each intended parent must be a party to the gestational agreement. The bill removes language providing that the intended parents must be married to each other. The bill provides that the change in law applies to a gestational agreement regardless of the date the agreement was executed or the date a proceeding to validate the agreement was commenced.

### **EFFECTIVE DATE**

September 1, 2007.