

## **BILL ANALYSIS**

C.S.H.B. 910  
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Judiciary & Civil Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently, only married couples are allowed to enter into agreements with a gestational mother who carries the couple's baby. An agreement entered into by a married couple and a gestational mother that is in compliance with state law is enforceable under the Family Code. As a result, parentage is confirmed prior to implantation, so a child has guaranteed parents at birth. However, there is a concern that in the event that one of the intended parents dies before the birth of the child, the gestational agreement could no longer be enforceable by the courts because there are no longer two married intended parents, possibly leaving parentage in doubt.

An individual can engage a sperm or egg donor and a physician to participate in assisted reproduction using a gestational carrier, but such an individual may be forced to pursue post-birth legal proceedings to establish parentage. Under such circumstances, there may be financial, medical, and emotional issues that remain unresolved until litigation is settled, including a situation in which an intended parent does not establish parentage, leaving the birth mother with no recourse. C.S.H.B. 910 seeks to address these issues by permitting an unmarried, individual intended parent to enter into a gestational agreement.

### **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**

C.S.H.B. 910 amends the Family Code to authorize an intended parent in a gestational agreement to be married or unmarried. The bill requires, for a gestational agreement involving a married intended parent, each spouse to be an intended parent and a party to the agreement. The bill prohibits another individual from being a party to the gestational agreement as an additional intended parent of the child if an intended parent is unmarried and removes a donor from the list of parties authorized to enter into a written gestational agreement. The bill makes conforming changes.

C.S.H.B. 910, in a provision establishing a condition under which a court is authorized to validate a gestational agreement relating to medical evidence relating to the intended mother's ability to carry a pregnancy to term and give birth, specifies that such a condition applies if there is an intended mother. The bill adds to the conditions under which a court is authorized to validate a gestational agreement the condition that the court finds, if there is an intended father who is unmarried, that the eggs used in the assisted reproduction were retrieved from the spouse of the intended father during their marriage, the intended father and the spouse from whom the eggs were retrieved were never divorced, and the spouse of the intended father was deceased at the time the agreement was made. The bill replaces the definition of "intended parents" with a definition of "intended parent" and makes conforming changes.

**EFFECTIVE DATE**

September 1, 2011.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 910 contains a provision not included in the original adding to the conditions under which a court is authorized to validate a gestational agreement the condition that the court finds that, if there is an intended father who is unmarried, the eggs used in the assisted reproduction were retrieved from the spouse of the intended father during their marriage, the intended father and the spouse from whom the eggs were retrieved were never divorced, and the spouse of the intended father was deceased at the time the agreement was made.

C.S.H.B. 910 differs from the original by establishing that the substitute's provisions apply only to a gestational agreement entered into on or after the substitute's effective date, whereas the original makes its provisions applicable to a gestational agreement regardless of the date the agreement was executed or a proceeding to validate the agreement was commenced.