

By: Watson

S.B. No. 1324

A BILL TO BE ENTITLED

AN ACT

relating to gestational agreements.

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

SECTION 1. Section 160.102(9), Family Code, is amended to read as follows:

(9) "Intended parent [~~parents~~]" means an individual [~~individuals~~] who enters [~~enter~~] into an agreement providing that the individual [~~individuals~~] will be the parent [~~parents~~] of a child born to a gestational mother by means of assisted reproduction, regardless of whether the [~~either~~] individual has a genetic relationship with the child.

SECTION 2. Section 160.752(a), Family Code, is amended to read as follows:

(a) Notwithstanding any other provision of this chapter or another law, this subchapter authorizes an agreement between a woman and the intended parent or parents of a child in which the woman relinquishes all rights as a parent of a child conceived by means of assisted reproduction and that provides that each [~~the~~] intended parent becomes [~~parents become~~] the parent [~~parents~~] of the child.

SECTION 3. Sections 160.754(a) and (b), Family Code, are amended to read as follows:

(a) A prospective gestational mother, her husband if she is married, [~~each donor~~], and each intended parent may enter into a

1 written agreement providing that:

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

4 (2) the prospective gestational mother and [~~7~~] her
5 husband if she is married [~~7~~, and each donor other than the intended
6 ~~parents, if applicable,~~] relinquish all parental rights and duties
7 with respect to a child conceived through assisted reproduction;

8 (3) each [~~the~~] intended parent [~~parents~~] will be the
9 parent [~~parents~~] of the child; and

10 (4) the gestational mother and each intended parent
11 agree to exchange throughout the period covered by the agreement
12 all relevant information regarding the health of the gestational
13 mother and each intended parent.

14 (b) Subject to the requirements of this subsection, an
15 intended parent may be married or unmarried. If an intended parent
16 is married, each spouse must be an intended parent and a party to
17 the gestational agreement. If an intended parent is unmarried,
18 another individual may not be a party to the gestational agreement
19 as an additional intended parent of the child. [~~The intended~~
20 ~~parents must be married to each other. Each intended parent must be~~
21 ~~a party to the gestational agreement.]~~

22 SECTION 4. Section 160.755, Family Code, is amended to read
23 as follows:

24 Sec. 160.755. PETITION TO VALIDATE GESTATIONAL AGREEMENT.

25 (a) The intended parent or parents and the prospective gestational
26 mother under a gestational agreement may commence a proceeding to
27 validate the agreement.

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

3 (1) the prospective gestational mother or an [~~the~~
4 intended parent has [~~parents have~~] resided in this state for the 90
5 days preceding the date the proceeding is commenced;

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

8 (3) a copy of the gestational agreement is attached to
9 the petition.

10 SECTION 5. Sections 160.756(b) and (c), Family Code, are
11 amended to read as follows:

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

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

16 (2) if there is an intended mother, the medical
17 evidence provided shows that the intended mother is unable to carry
18 a pregnancy to term and give birth to the child or is unable to carry
19 the pregnancy to term and give birth to the child without
20 unreasonable risk to her physical or mental health or to the health
21 of the unborn child;

22 (3) unless waived by the court, an agency or other
23 person has conducted a home study of the intended parent or parents
24 and has determined that the intended parent or parents meet the
25 standards of fitness applicable to adoptive parents;

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

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

6 (6) the parties have adequately provided for which
7 party is responsible for all reasonable health care expenses
8 associated with the pregnancy, including providing for who is
9 responsible for those expenses if the agreement is terminated.

10 (c) If the court finds that the requirements of Subsection
11 (b) are satisfied, the court may render an order validating the
12 gestational agreement and declaring that each ~~[the]~~ intended parent
13 ~~[parents]~~ will be the parent ~~[parents]~~ of a child born under the
14 agreement.

15 SECTION 6. Section 160.759(a), Family Code, is amended to
16 read as follows:

17 (a) Before a prospective gestational mother becomes
18 pregnant by means of assisted reproduction, the prospective
19 gestational mother, her husband if she is married, or an ~~[either]~~
20 intended parent may terminate a gestational agreement validated
21 under Section 160.756 by giving written notice of the termination
22 to each other party to the agreement.

23 SECTION 7. Sections 160.760(a), (b), and (d), Family Code,
24 are amended to read as follows:

25 (a) On the birth of a child to a gestational mother under a
26 validated gestational agreement, the intended parent or parents
27 shall file a notice of the birth with the court not later than the

1 300th day after the date assisted reproduction occurred.

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

4 (1) confirms that each ~~[the]~~ intended parent is
5 ~~[parents are]~~ the child's parent ~~[parents]~~;

6 (2) requires the gestational mother to surrender the
7 child to the intended parent or parents, if necessary; and

8 (3) requires the bureau of vital statistics to issue a
9 birth certificate naming each ~~[the]~~ intended parent ~~[parents]~~ as
10 the child's parent ~~[parents]~~.

11 (d) If the intended parent or parents fail to file the
12 notice required by Subsection (a), the gestational mother or an
13 appropriate state agency may file the notice required by that
14 subsection. On a showing that an order validating the gestational
15 agreement was rendered in accordance with Section 160.756, the
16 court shall order that each ~~[the]~~ intended parent is ~~[parents are]~~
17 the child's parent ~~[parents]~~ and is ~~[are]~~ financially responsible
18 for the child.

19 SECTION 8. The changes in law made by this Act apply to a
20 gestational agreement regardless of the date:

21 (1) the agreement was executed; or

22 (2) a proceeding to validate the agreement was
23 commenced.

24 SECTION 9. This Act takes effect September 1, 2011.