

BILL ANALYSIS

C.S.H.B. 1704
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Juvenile Justice & Family Issues
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Gestational agreements are believed to provide a fair, enforceable option for married couples to have a child through a third party. Interested parties assert that in Texas, gestational agreements are not required to be validated, making it difficult or impossible to establish a parent-child relationship or otherwise enforce a contract that is not validated before the embryo transfer. The parties explain that additional complications arise when a couple who has entered into a gestational agreement files for divorce, as the parent-child relationship may not have been established. C.S.H.B. 1704 seeks to clarify these issues.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 1704 amends the Family Code to require the petition in a suit for dissolution of marriage to include, among other information, whether a party to the marriage is pregnant or whether the parties to the marriage have entered into a gestational agreement establishing a parent-child relationship between the parties and the child to be born under the agreement. The bill expands the list of persons authorized to file an original suit affecting the parent-child relationship to include a person who is an intended parent of a child under a gestational agreement that substantially complies with the relevant statutory requirements, regardless of whether the child has been born.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1704 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 6.406(a), Family Code, is amended.

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

(b) This subchapter controls over any other law with respect to a child conceived under a gestational agreement under this subchapter or other law, including the law of a foreign country.

SECTION 3. Section 160.753, Family Code, is amended to read as follows:

Sec. 160.753. ESTABLISHMENT OF PARENT-CHILD RELATIONSHIP. (a) Notwithstanding any other provision of this chapter or another law, the mother-child relationship exists between a woman and a child ~~[by an adjudication confirming the woman as a parent of the child]~~ born to a gestational mother under a gestational agreement ~~[if the gestational agreement is validated]~~ under this subchapter or enforceable under other law, including the law of a foreign country, regardless of the fact that the gestational mother gave birth to the child, unless:

(1) the agreement is terminated before the gestational mother becomes pregnant; or
(2) a court renders an order denying the existence of the mother-child relationship between the woman and the child.

(b) The father-child relationship exists between a man and a child ~~[and a man by an adjudication confirming the man as a parent of the child]~~ born to a gestational mother under a gestational agreement ~~[if the gestational agreement is validated]~~ under this subchapter or enforceable under other law, including the law of a foreign country, unless:

(1) the agreement is terminated before the gestational mother becomes pregnant; or
(2) a court renders an order denying the existence of the father-child relationship between the man and the child.

SECTION 4. Section 160.754, Family Code, is amended by adding Subsection (h) to read as follows:

(h) This section does not affect the validity of

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

No equivalent provision.

No equivalent provision.

No equivalent provision.

a gestational agreement entered into under the laws of a foreign country.

SECTION 5. Section 160.755, Family Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) Except as provided by Subsection (c), a [A] person may maintain a proceeding to validate a gestational agreement only if:

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

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

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

(c) A proceeding to validate a gestational agreement entered into under the law of a foreign country may be maintained without satisfying Subsection (b)(2) if the law of the foreign country does not require the joinder of the gestational mother's husband.

No equivalent provision.

SECTION 6. Section 160.756, Family Code, is amended by amending Subsections (a) and (c) and adding Subsection (e) to read as follows:

(a) A gestational agreement may ~~must~~ be validated as provided by this section.

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

(e) Notwithstanding Subsection (b), (c), or (d), the court shall validate a gestational agreement entered into under the laws of a foreign country if the agreement complies with the requirements of those laws.

No equivalent provision.

SECTION 7. Section 160.757, Family Code, is amended to read as follows:

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

No equivalent provision.

SECTION 8. The heading to Section 160.760, Family Code, is amended to read as follows:

Sec. 160.760. PARENTAGE UNDER ~~[VALIDATED]~~ GESTATIONAL AGREEMENT.

No equivalent provision.

SECTION 9. Sections 160.760(a) and (d), Family Code, are amended to read as follows:

(a) On the birth of a child to a gestational mother under a ~~[validated]~~ gestational agreement, the intended parents shall file a notice of the birth with the court not later than the 300th day after the date assisted reproduction occurred.

(d) If the intended parents fail to file the notice required by Subsection (a), the gestational mother or an appropriate state agency may file the notice required by that subsection. On a showing that a ~~[an order validating the]~~ gestational agreement was entered into by the intended parents and the gestational mother, the agreement was not terminated before the gestational mother became pregnant, and a court has not denied the existence of the parent-child relationship between the intended parents and the child ~~[rendered in accordance with Section 160.756]~~, the court shall order that the intended parents are the child's parents and are financially responsible for the child.

No equivalent provision.

SECTION 10. Section 160.761, Family Code, is amended to read as follows:

Sec. 160.761. EFFECT OF GESTATIONAL MOTHER'S MARRIAGE AFTER ENTERING ~~[VALIDATION OF]~~ AGREEMENT. If a gestational mother is married after entering into ~~[the court renders an order validating]~~ a gestational agreement ~~[under this subchapter]~~:

- (1) the validity of the gestational agreement is not affected;
- (2) the gestational mother's husband is not required to consent to the agreement; and
- (3) the gestational mother's husband is not a presumed father of the child born under the terms of the agreement.

No equivalent provision.

SECTION 11. Section 160.762, Family Code, is amended to read as follows:

Sec. 160.762. RESPONSIBILITY OF

No equivalent provision.

INTENDED PARENTS UNDER [EFFECT OF] GESTATIONAL AGREEMENT; FEES AND COSTS [THAT IS NOT VALIDATED].

~~(a) [A gestational agreement that is not validated as provided by this subchapter is unenforceable, regardless of whether the agreement is in a record.~~

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

~~[(c) A party to a gestational agreement [that is not validated as provided by this subchapter] who is an intended parent under the agreement shall [may] be held liable for the support of a child born under the agreement, unless the agreement was terminated before the gestational mother became pregnant or a court denies the existence of the parent-child relationship between the intended parent and the child [even if the agreement is otherwise unenforceable].~~

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

No equivalent provision.

SECTION 2. Section 102.003(a), Family Code, as amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, is amended to read as follows:

(a) An original suit may be filed at any time by:

- (1) a parent of the child;
- (2) the child through a representative authorized by the court;
- (3) a custodian or person having the right of visitation with or access to the child appointed by an order of a court of another state or country;
- (4) a guardian of the person or of the estate of the child;
- (5) a governmental entity;
- (6) the Department of Family and Protective Services;
- (7) a licensed child placing agency;
- (8) a man alleging himself to be the father

of a child filing in accordance with Chapter 160, subject to the limitations of that chapter, but not otherwise;

(9) a person, other than a foster parent, who has had actual care, control, and possession of the child for at least six months ending not more than 90 days preceding the date of the filing of the petition;

(10) a person designated as the managing conservator in a revoked or unrevoked affidavit of relinquishment under Chapter 161 or to whom consent to adoption has been given in writing under Chapter 162;

(11) a person with whom the child and the child's guardian, managing conservator, or parent have resided for at least six months ending not more than 90 days preceding the date of the filing of the petition if the child's guardian, managing conservator, or parent is deceased at the time of the filing of the petition;

(12) a person who is the foster parent of a child placed by the Department of Family and Protective Services in the person's home for at least 12 months ending not more than 90 days preceding the date of the filing of the petition;

(13) a person who is a relative of the child within the third degree by consanguinity, as determined by Chapter 573, Government Code, if the child's parents are deceased at the time of the filing of the petition; ~~[or]~~

(14) a person who has been named as a prospective adoptive parent of a child by a pregnant woman or the parent of the child, in a verified written statement to confer standing executed under Section 102.0035, regardless of whether the child has been born; or

(15) a person who is an intended parent of a child under a gestational agreement that substantially complies with the requirements of Section 160.754, regardless of whether the child has been born.

SECTION 12. Section 6.406(a), Family Code, as amended by this Act, applies only to a petition for dissolution of a marriage that is filed on or after the effective date of this Act. A petition for dissolution of a marriage that is filed before the effective date of this Act is

SECTION 3. Same as introduced version.

governed by the law in effect on the date the petition is filed, and the former law is continued in effect for that purpose.

SECTION 13. This Act takes effect September 1, 2015.

SECTION 4. Same as introduced version.