

SUBJECT: Requiring disclosure of gestational agreements in divorce proceedings

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 7 ayes — Dutton, Riddle, Hughes, Peña, Rose, Sanford, J. White

0 nays

WITNESSES: For — Crystal Travis McRae, Wendee Lee Curtis, Maulik Modi, and Letitia Plummer, Intended Parents' Rights; Sharmila Rudrappa; (*Registered, but did not testify*: Eraka Watson, Childs Law Firm, P.C.; Ingrid Montgomery, Intended Parents' Rights; Steve Bresnen, Texas Family Law Foundation; Erica Babino; Connie Gray; Marci Purcell)

Against — Cecilia Wood, Concerned Women for America of Texas; Jonathan Saenz, Texas Values Action; (*Registered, but did not testify*: Ann Hettinger, Concerned Women for America of Texas; Jeffery Patterson, Texas Catholic Conference of Bishops; MerryLynn Gerstenschlager, Texas Eagle Forum)

On — (*Registered, but did not testify*: Nichole Bunker-Henderson, Texas Education Agency)

BACKGROUND: Gestational agreements, governed by the Uniform Parentage Act under Family Code, ch. 160, subch. I, are written agreements containing agreed-upon terms to have a child using a gestational surrogate. These agreements may be formed if certain qualifications are met under Family Code, sec. 160.754. The parties seeking to have a child under a gestational agreement are known as "intended parents" and may or may not have a genetic link to the child.

Gestational agreements must follow certain guidelines under the Uniform Parentage Act in order to be validated, and the court has discretion over whether or not to validate a gestational agreement.

Family Code, sec. 6.406(a) requires parties petitioning for divorce to

disclose any child born or adopted into the marriage who is under the age of 18.

Family Code, sec. 102.003(a) provides a list of those who have standing to file a suit affecting a parent-child relationship, including a child's parent or the prospective adoptive parents of a child as named by a pregnant woman or by the child's parents.

**DIGEST:**

CSHB 1704 would require parties petitioning for divorce to disclose whether a party to the marriage was pregnant or whether the parties had entered into a gestational agreement establishing a parent-child relationship between the intended parties and the child to be born.

The bill also would allow intended parents under a gestational agreement that complied substantially with Family Code, sec. 160.754 to file a suit affecting a parent-child relationship. This provision would apply whether or not the child had been born.

CSHB 1704 would take effect September 1, 2015, and would apply only to divorce suits filed on or after that date.

**SUPPORTERS  
SAY:**

CSHB 1704 would provide critical protection to intended parents and children conceived under gestational agreements by authorizing intended parents to file lawsuits affecting the parent-child relationship and by requiring disclosure of these agreements in divorce petitions. Children conceived through in vitro fertilization (IVF) and other forms of assisted reproduction are becoming more common, and legal issues related to gestational agreements likely will increase. Texas needs to position itself to stay ahead of the issue by instituting laws that reflect modern realities.

Current law related to gestational agreements is complex, and parties wishing to assert their rights often must undergo the costly and complicated process of hiring an attorney who understands these procedures. Under this bill, intended parents would have the explicit authority to bring a suit regarding the parent-child relationship if any issues arose. Putting this authorization in statute also would increase

awareness of gestational agreements in the judiciary. Furthermore, by requiring disclosure of these agreements in divorce proceedings, this bill would allow judges to determine the best outcomes for children in divorce cases, as well as other legal suits involving the parent-child relationship.

CSHB 1704 would be important for protecting parties involved in gestational agreements who might not have a voice otherwise. Intended parents may not assert themselves because of the stigma of having children conceived through these means. Establishing a law to protect individuals pursuing assisted reproduction would raise the profile of the issue and empower more people to assert their rights. In addition, the law would protect the children conceived and born through gestational agreements by ensuring the court could protect their interests.

CSHB 1704 would provide a better solution for intended parents than would the bill as introduced. The substitute would protect the rights of intended parents while addressing concerns about the filed bill, including that HB 1704 as introduced could have required gestational agreements validated under the laws of other states or countries to be accepted in Texas. CSHB 1704 would resolve an important gap in state law while still maintaining the validation process of gestational agreements in Texas.

**OPPONENTS  
SAY:**

CSHB 1704 would protect practices that some Texans consider potentially harmful and morally questionable, in vitro fertilization (IVF) and surrogacy. These processes often result in the deliberate creation of more embryos than the surrogate can bring to term, which can lead to routine destruction of unused embryos. Gestational surrogacy can be physically and emotionally taxing on the women who carry babies to term on behalf of other parents, as well as any family members of the surrogate who may have difficulty coming to terms with the arrangement.

**NOTES:**

CSHB 1704 differs substantially from HB 1704 as introduced. The filed version of HB 1704 would have made several changes to the Uniform Parentage Act under Family Code, sec. 160 regarding gestational agreements, including changes related to:

- the procedure for establishing a parent-child relationship under a gestational agreement;
- the requirements to validate gestational agreements; and
- the responsibilities of intended parents if a gestational agreement were not validated.

CSHB 1704 does not include these changes and instead would amend what disclosures are required in a divorce petition and who could have standing in a suit affecting a parent-child relationship.

The 84th Legislature's enactment of SB 219 by Schwertner, effective April 2, 2015, amended sections of the current Human Resources Code that HB 1704 would further amend, if enacted.