

BILL ANALYSIS

Senate Research Center
78R5260 KLA-D

H.B. 729
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Jurisprudence
5/9/2003
Engrossed

DIGEST AND PURPOSE

Under current Texas law, there are no provisions regulating an agreement between a gestational mother and the intended parents. Without regulation of these agreements, the legal parent-child relationships of a child of a gestational agreement could be unclear. H.B.729 sets forth provisions establishing procedures for gestational agreements.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Department of Health in SECTION 2 (Section 160.763, Family Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 160.602, Family Code, as follows:

Sec. 160.602. STANDING TO MAINTAIN PROCEEDING. Authorizes a proceeding to adjudicate parentage, subject to Subchapter D and Sections 160.607 and 160.609, to be maintained by certain persons, including a person who is an intended parent.

SECTION 2. Amends Chapter 160, Family Code, by adding Subchapter I, as follows:

SUBCHAPTER I. GESTATIONAL AGREEMENTS

Sec. 160.751. DEFINITION. Defines "gestational mother."

Sec. 160.752. SCOPE OF SUBCHAPTER; CHOICE OF LAW. (a) Provides that notwithstanding any other provision of this chapter or another law, this subchapter authorizes an agreement between a woman and the intended 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 the intended parents become the parents of the child.

(b) Provides that this subchapter controls over any other law with respect to a child conceived under a gestational agreement under this subchapter.

Sec. 160.753. ESTABLISHMENT OF PARENT-CHILD RELATIONSHIP. (a) Provides that 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, regardless of the fact that the gestational mother gave birth to the child.

(b) Provides that the father-child relationship exists between 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.

Sec. 160.754. GESTATIONAL AGREEMENT AUTHORIZED. (a) Authorizes a

prospective gestational mother, her husband if she is married, each donor, and each intended parent to enter into a written agreement providing certain understandings.

(b) Requires the intended parents to be married to each other. Requires each intended parent to be a party to the gestational agreement.

(c) Requires the gestational agreement to require that the eggs used in the assisted reproduction procedure be retrieved from an intended parent or a donor. Prohibits the gestational mother's eggs from being used in the assisted reproduction procedure.

(d) Requires the gestational agreement to state that the physician who will perform the assisted reproduction procedure as provided by the agreement has informed the parties to the agreement of certain facts.

(e) Requires the parties to a gestational agreement to enter into the agreement before the 14th day preceding the date the transfer of eggs, sperm, or embryos to the gestational mother occurs for the purpose of conception or implantation.

(f) Provides that a gestational agreement does not apply to the birth of a child conceived by means of sexual intercourse.

(g) Prohibits a gestational agreement from limiting the right of the gestational mother to make decisions to safeguard her health or the health of an embryo.

Sec. 160.755. PETITION TO VALIDATE GESTATIONAL AGREEMENT. (a) Authorizes the intended parents and the prospective gestational mother under a gestational agreement to commence a proceeding to validate the agreement.

(b) Authorizes a person to maintain a proceeding to validate a gestational agreement only if certain criteria exists.

Sec. 160.756. HEARING TO VALIDATE GESTATIONAL AGREEMENT. (a) Requires a gestational agreement to be validated as provided by this section.

(b) Authorizes the court to validate a gestational agreement as provided by Subsection (c) only if the court finds that certain facts exist.

(c) Authorizes the court, if the court finds that the requirements of Subsection (b) are satisfied, to render an order validating the gestational agreement and declaring that the intended parents will be the parents of a child born under the agreement.

(d) Authorizes the court to validate the gestational agreement at the court's discretion. Provides that the court's determination of whether to validate the agreement is subject to review only for abuse of discretion.

Sec. 160.757. INSPECTION OF RECORDS. Provides that 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.

Sec. 160.758. CONTINUING, EXCLUSIVE JURISDICTION. Provides that subject to Section 152.201, a court that conducts a proceeding under this subchapter has continuing, exclusive jurisdiction of all matters arising out of the gestational agreement until the date a child born to the gestational mother during the period covered by the agreement reaches 180 days of age.

Sec. 160.759. TERMINATION OF GESTATIONAL AGREEMENT. (a) Authorizes the prospective gestational mother, her husband if she is married, or either intended

parent, before a prospective gestational mother becomes pregnant by means of assisted reproduction, to terminate a gestational agreement validated under Section 160.756 by giving written notice of the termination to each other party to the agreement.

(b) Requires a person who terminates a gestational agreement under Subsection (a) to file notice of the termination with the court. Provides that a person having the duty to notify the court who does not notify the court of the termination of the agreement is subject to appropriate sanctions.

(c) Requires the court, on receipt of the notice of termination, to vacate the order rendered under Section 160.756 validating the gestational agreement.

(d) Prohibits a prospective gestational mother and her husband, if she is married, from being liable to an intended parent for terminating a gestational agreement if the termination is in accordance with this section.

Sec. 160.760. PARENTAGE UNDER VALIDATED GESTATIONAL AGREEMENT.

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

(b) Requires the court, after receiving notice of the birth, to render a certain order.

(c) Requires the court, if a person alleges that a child born to a gestational mother did not result from assisted reproduction, to order that scientifically accepted parentage testing be conducted to determine the child's parentage.

Sec. 160.761. EFFECT OF GESTATIONAL MOTHER'S MARRIAGE AFTER VALIDATION OF AGREEMENT. Provides that if a gestational mother is married after the court renders an order validating a gestational agreement under this subchapter, the validity of the gestational agreement is not affected; the gestational mother's husband is not required to consent to the agreement; and the gestational mother's husband is not a presumed father of the child born under the terms of the agreement.

Sec. 160.762. EFFECT OF GESTATIONAL AGREEMENT THAT IS NOT VALIDATED. (a) Provides that a gestational agreement that is not validated as provided by this subchapter is unenforceable, regardless of whether the agreement is in a record.

(b) Provides that 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) Authorizes a party to a gestational agreement that is not validated as provided by this subchapter who is an intended parent under the agreement to be held liable for the support of a child born under the agreement, even if the agreement is otherwise unenforceable.

(d) Authorizes the court to 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. Authorizes attorney's fees awarded by the court to be paid directly to the attorney. Authorizes an attorney who is awarded attorney's fees to enforce the order in the attorney's own name.

Sec. 160.763. HEALTH CARE FACILITY REPORTING REQUIREMENT. (a) Requires the Texas Department of Health (TDH) by rule to develop and implement a confidential reporting system that requires each health care facility in this state at which assisted reproduction procedures are performed under gestational agreements to report statistics related to those procedures.

(b) Requires TDH, in developing the reporting system, to require each health care facility described by Subsection (a) to annually report certain information.

SECTION 3. Repealer: Section 160.103(d) (Scope of Chapter; Choice of Law), Family Code.

SECTION 4. Requires TDH, not later than December 1, 2003, to implement the reporting system required by Section 160.763, Family Code, as added by this Act.

SECTION 5. (a) Effective date: September 1, 2003.

(b) Makes application of this Act prospective.