05/14/2019 02:00:54 PM

HOUSE OF REPRESENTATIVES
CONFERENCE COMMITTEE REPORT

Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

HB2468

By: Dunnington of the House and Howard of the Senate

Title: Children; creating the Oklahoma Gestational Agreement Act; codification; effective date; emergency.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its amendment and;
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

House Action _____ Date _____ Senate Action _____ Date _____

HB2468 CCR (A)

HOUSE CONFEREES

Echols, Jon		Fugate, Andy	
Kannady, Chris		Kiger, Lundy	
Meredith, Matt		Pfeiffer, John	
Taylor, Zack		West, Josh	

HB2468 CCR A

SENATE CONFEREES

Howard

Daniels

Leewright

Sharp

Boren

Brooks

House Action _____ Date _____ Senate Action _____ Date _____

House Action _____ Date _____ Senate Action _____ Date _____

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2468 By: Dunnington of the House

and

Howard, Brooks and
Standridge of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to children; creating the Oklahoma Gestational Agreement Act; providing policy; defining terms; providing qualifications to serve as a gestational carrier; providing qualification for intended parents; listing necessary persons to a gestational agreement; providing certain requirements for agreement; requiring certain terms for valid agreement; providing exceptions; requiring certain provisions; requiring validation prior to transfer of gametes or embryos; providing procedure for court to validate gestational agreement; requiring certain terms to be included in petition; specifying when a court may validate a gestational agreement; providing procedural requirements; providing for amendments and termination of a gestational agreement; providing for governance of this act; providing for jurisdiction and venue; providing for reimbursement and payment to gestational carriers; providing donor rights; prohibiting use of certain gametes or embryos; providing rights to parents; providing rights of child; prohibiting change of marital status by gestational carrier to affect rights to the child; providing for validation for gestational agreement for certain errors; providing governance for breach of agreement; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 557 of Title 10, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 26 of this act shall be known and may be cited as the "Oklahoma Gestational Agreement Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 557.1 of Title 10, unless there is created a duplication in numbering, reads as follows:

It is the policy of the State of Oklahoma to allow private parties to enter into gestational agreements in order to help facilitate the birth of children to parents who are not otherwise able to conceive or carry them, to allow the gestational carriers of such children to be properly compensated for providing this important and selfless undertaking and to provide a mechanism to ensure that gestational agreements will be enforced and that the expectations of the parties to gestational agreements will be protected.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 557.2 of Title 10, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Gestational Agreement Act:

1. "Act" means the Oklahoma Gestational Agreement Act;

2. "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse. The term includes, but is not limited to, intrauterine insemination, donation of eggs, donation of embryos, in vitro fertilization and transfer of embryos and intracytoplasmic sperm injection;

3. "Court" means any district court of competent jurisdiction as provided in this act;

4. "Donor" means an individual who contributes a gamete or gametes or an embryo or embryos for the purpose of assisted reproduction with no claim to present or future parental rights or obligations to any resulting child and who is not an intended parent, gestational carrier or gestational spouse;

5. "Gamete" means either the ovum (egg) or the spermatozoon (sperm);

6. "Gestational agreement" means a written contract between the gestational carrier, the gestational spouse if applicable, the intended parents and, optionally, one or more donors, if applicable, which sets forth the obligations, rights and duties of the parties to a gestational carrier arrangement;

7. "Gestational carrier" means a woman, whether married or unmarried, who is neither an intended parent nor a donor and who agrees to become pregnant with the genetic child of one or more intended parents and/or one or more donors by means of assisted reproduction pursuant to a gestational carrier arrangement;

8. "Gestational carrier arrangement" means the process by which a gestational carrier attempts to become pregnant with a child through assisted reproduction using any number of gametes or embryos that are provided by one or more intended parents and/or one or more donors, who may or may not be genetically related to any intended parent, and carry and give birth to such child with the intention that such child will be solely the legal child of the intended parents. A gestational carrier arrangement does not include any attempt to conceive, implant or carry a child to which the gestational carrier or gestational spouse has made any genetic contribution;

9. "Gestational spouse" means the spouse of the gestational carrier if the gestational carrier is married at the time the gestational carrier enters into the gestational agreement. The term does not apply to any person the gestational carrier marries after the gestational carrier enters into the gestational agreement. Unless context clearly requires otherwise, any reference to a gestational spouse in this act and any action required of a gestational spouse by this act or any prohibition applicable to a gestational spouse by this act shall not apply if the gestational carrier was not married to such person at the time the gestational carrier entered into the gestational agreement;

10. "Intended parent" means any person who intends to become the lawful parent of a child conceived, implanted or carried

pursuant to a gestational agreement. The term "intended parent" shall mean both intended parents or, if only one intended parent is party to the gestational agreement, then it shall mean such singular intended parent unless context clearly requires otherwise;

11. "Mental health consultation" means an in-person meeting with a licensed mental health professional for the purposes of educating the participants about the effects and potential consequences of their participation in a gestational carrier arrangement, and of evaluating any potential psychological issues and risks posed by a party to a gestational carrier arrangement, including, but not limited to, the intended parent or parents or the gestational carrier's mental health, external and environmental factors, ability to manage relationships, potential attachment issues, and ability to carry out his or her obligations, rights and duties under a gestational carrier arrangement;

12. "Mental health professional" means an individual who:

a. holds a master's or doctoral degree in the field of psychiatry, psychology, counseling, social work, psychiatric nursing or marriage and family therapy, and

b. is duly licensed, certified, authorized or registered under the laws of a state to practice in the mental health field; and

13. "Spouse of the gestational carrier" means a person to whom the gestational carrier is married, whether or not such person is a gestational spouse under this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 557.3 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. Any prospective gestational carrier who meets the requirements for gestational carriers pursuant to the Oklahoma Gestational Agreement Act and the gestational spouse, if applicable, may enter into a gestational agreement with one or more intended parents of a child to be conceived pursuant to such gestational agreement.

B. A gestational agreement must meet the minimum requirements under this act, including validation by the court. A gestational agreement that conforms to these requirements and has been validated in compliance with this act is a legal contract and is legally enforceable.

C. A gestational agreement under this act shall be governed by Oklahoma law, and this act shall control over any other law which conflicts with the express terms of this act insofar as such other law relates to the creation, validation or enforcement of gestational agreements, the rights and obligations of the parties thereto and any children born as a result thereof.

D. A gestational carrier arrangement carried out under a validated gestational agreement in compliance with this act shall not be considered trafficking in children.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 557.4 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. In order to serve as a gestational carrier under a gestational agreement, the gestational carrier must:

1. Be at least twenty-one (21) years of age at the time she enters into the gestational agreement;

2. Have given birth to at least one child;

3. Have been a resident of Oklahoma for at least ninety (90) consecutive days immediately preceding the date she enters into the gestational agreement, unless one or more intended parent has been a resident of Oklahoma for at least ninety (90) consecutive days immediately preceding the date the gestational carrier enters into the agreement;

4. Have completed a physical medical evaluation relating to the anticipated pregnancy; and

5. Have completed a mental health consultation.

B. Each intended parent of a child to be born pursuant to a gestational carrier agreement must have completed a mental health consultation.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 557.5 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. The following persons, and only the following persons, are necessary parties to a gestational agreement, and a gestational agreement shall not be validated if all such applicable necessary parties have not joined in the gestational agreement in compliance with the Oklahoma Gestational Agreement Act:

1. The gestational carrier;

2. The gestational spouse, if applicable; and

3. Each intended parent of a child to be born pursuant to a gestational carrier arrangement.

B. The following requirements apply to the necessary parties to a gestational agreement, and failure to meet such requirements shall prevent a court from validating the gestational agreement:

1. The gestational carrier, the gestational spouse, if applicable, and each intended parent must be at least twenty-one (21) years of age at the time the parties enter into the gestational agreement;

2. No more than two intended parents may be party to a gestational agreement;

3. If an intended parent is married, then that intended parent's spouse must be a party to the gestational agreement as an intended parent;

4. If there are two intended parents that are party to a gestational agreement, then they must be married to each other; and

5. No person may be a party to a gestational agreement under this act if such person is in the United States illegally pursuant to the immigration laws of the United States in effect at the time of a gestational agreement.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 557.6 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. A gestational agreement must meet the following requirements in order for it to be validated:

1. The gestational agreement must be in writing;

2. The gestational agreement must be acknowledged before a notary public by each of the parties;

3. All parties to the gestational agreement must be represented by legal counsel regarding the gestational agreement, and the parties to the gestational agreement may share legal counsel provided that the gestational carrier and gestational spouse, if applicable, must have legal counsel that is separate and independent from the legal counsel for the intended parents; and

4. The gestational agreement must contain a written statement, signed by each party's legal counsel, identifying which parties to the gestational agreement such counsel represents and stating that

such counsel has advised such parties of the potential legal consequences of entering into the gestational agreement.

B. A gestational agreement must contain terms providing each of the following in order for it to be validated:

1. That each party to the gestational agreement consents to personal jurisdiction in the courts of Oklahoma for all matters connected with the gestational agreement and all matters concerning the parentage of any child born as part of the gestational carrier arrangement;

2. That the gestational carrier agrees to pregnancy by means of assisted reproduction;

3. That the gestational carrier and the gestational spouse, if applicable, relinquish all parental rights and obligations with respect to any child contemplated by the gestational agreement that is conceived or implanted through assisted reproduction and shall surrender all legal and physical custody of that child to the intended parents immediately upon birth of that child;

4. That the intended parents shall be the sole parents of any child born pursuant to the gestational carrier arrangement and that such intended parents shall be entitled to and shall accept legal and physical custody of the child and all parental rights and obligations with respect to such child immediately upon the child's birth, regardless of the mental or physical condition of such child or the number of such children; provided, however, that such child

is not a genetic child of the gestational carrier or the gestational spouse;

5. That the gestational carrier, the gestational spouse, if applicable, and each intended parent agree to exchange throughout the period covered by the gestational agreement all relevant information regarding their respective health;

6. That any gametes used in the assisted reproduction procedure shall be retrieved from an intended parent or a donor and not the gestational carrier or the gestational spouse;

7. The identity of one or more physicians or one or more medical facilities that will or may perform the assisted reproduction procedure contemplated by the gestational agreement;

8. A statement acknowledging that at least one or more physicians or medical facilities that will or may perform the assisted reproduction procedure as provided by the gestational agreement has informed the necessary parties to the gestational agreement of:

a. the rate of successful conceptions and births attributable to the procedure, including the most recent published outcome statistics of the procedure at the facility at which it will be performed,

b. the potential for and risks associated with the implantation of multiple embryos and consequent multiple births resulting from the procedure,

c. the nature of and expenses related to the procedure,

d. the health risks associated with, as applicable, fertility drugs used in the procedure, egg retrieval procedures and egg or embryo transfer procedures, and

e. reasonably foreseeable psychological effects resulting from the procedure; and

9. The identity of which party or parties are responsible for the reasonable medical, legal and travel expenses associated with the gestational carrier arrangement, including providing for who is responsible for those expenses if the gestational agreement is terminated.

C. The Oklahoma Gestational Agreement Act shall not apply to any child conceived by means of sexual intercourse, and a gestational agreement shall not apply to any child so conceived.

D. The inclusion in a gestational agreement of any one or more of the following provisions shall not constitute cause for a court to deny the validation of the gestational agreement, and such provisions in a validated gestational agreement shall be enforceable:

1. The gestational carrier's agreement to undergo all medical examinations, treatments and fetal monitoring procedures recommended for the success of the pregnancy by the physician providing care to the gestational carrier during the pregnancy;

2. The gestational carrier's agreement to abstain from any activities that the intended parents or the physician providing care to the gestational carrier during the pregnancy reasonably believe to be harmful to the pregnancy or the future health of any resulting child, including, without limitation, smoking, drinking alcohol, using nonprescribed drugs, using prescription drugs not authorized by a physician aware of the pregnancy, exposure to radiation or any other activity proscribed by a health care provider;

3. The agreement of the intended parents to pay the gestational carrier reasonable compensation;

4. The agreement of the intended parents to pay for or reimburse the gestational carrier or any spouse of the gestational carrier for reasonable expenses, including, without limitation, medical, legal or other professional expenses or lost time from work related to the gestational carrier arrangement or the gestational agreement; and

5. Any other agreement of the parties not contrary to this act or any other applicable law.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 557.7 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. A gestational agreement must be validated as provided by the Oklahoma Gestational Agreement Act prior to the transfer of gametes

or embryos to the gestational carrier for the purpose of conception or implantation under a gestational carrier arrangement.

B. Nothing in this act shall prohibit any of the following, undertaken in compliance with applicable law, even though a gestational agreement is not yet validated:

1. The gestational carrier from undertaking a medical or hormonal regimen designed to increase the likelihood of conception or implantation;

2. One or more intended parents or one or more donors from undertaking a medical or hormonal regimen designed to aid in the production or vitality of gametes;

3. The acquisition, retrieval, collection, creation, growth, testing or storage of gametes from one or more intended parents or one or more donors; or

4. The acquisition, retrieval, collection, creation, growth, testing or storage of embryos derived from the gametes of one or more intended parents or one or more donors.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 557.8 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. A gestational agreement that is not validated as provided by the Oklahoma Gestational Agreement Act is unenforceable except to the extent expressly provided by this act.

B. The parent-child relationship for a child born as a result of an assisted reproduction procedure under a gestational agreement that is not validated as provided by this act is determined as otherwise provided by Oklahoma law.

C. A gestational agreement that has not been validated shall nonetheless be enforceable to the extent it requires any party under such gestational agreement to pay for or to reimburse any other party for any medical, legal or travel expenses incurred pursuant to the gestational agreement.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 557.9 of Title 10, unless there is created a duplication in numbering, reads as follows:

The following shall be the procedure to request that the court validate a gestational agreement:

1. Any one or more of the parties to a gestational agreement shall file a petition to validate the gestational agreement in a district court having jurisdiction as provided by the Oklahoma Gestational Agreement Act;

2. A petition to validate the gestational agreement shall, at a minimum, provide:

a. the names and current addresses, if known, of each party to the gestational agreement,

b. allegations setting forth the satisfaction of this act's requirements for a gestational agreement and the parties thereto,

c. if any of the parties to a gestational agreement have not joined the petition, the identity of such parties and, if known, the reasons such parties have not joined the petition,

d. whether or not any assisted reproduction procedures have taken place as part of the gestational carrier arrangement and, if so, the date of each such procedure and whether such procedures have resulted in pregnancy of the gestational carrier, and

e. a request that the court validate the gestational agreement, as well as a request setting forth any additional relief sought in connection with the validation of the gestational agreement;

3. A complete, unredacted copy of the gestational agreement must be attached to the petition;

4. The petitioner shall attach affidavits, declarations, statements, other evidence or any combination thereof to the petition to support the allegations in the petition regarding the satisfaction of the requirements of this act and to aid the court in its determination of whether the requirements to validate the gestational agreement have been met; and

5. Any party not joining the petition to validate shall be served with a copy of the petition to validate and a summons in the same manner as in civil cases. After being so duly served, the nonjoining party shall answer and respond to the petition to validate within ten (10) days and shall provide allegations and evidence to aid the court in its determination of whether the requirements to validate the gestational agreement have been met. The failure of any nonjoining party to answer or otherwise respond after being duly served shall not prevent the court from validating a gestational agreement if the requirements of this act are otherwise satisfied.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 557.10 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. A court may validate a gestational agreement only as provided by this section.

B. A gestational agreement may be validated under the Oklahoma Gestational Agreement Act only if the court finds by a preponderance of the evidence that:

1. The court has jurisdiction over all parties to the gestational agreement;

2. The parties to the gestational agreement meet all the requirements set forth in this act for such parties and all

necessary parties to the gestational agreement have entered into the gestational agreement;

3. The gestational agreement meets all the requirements for gestational agreements set forth in this act;

4. The medical evidence provided shows that the intended parent is unable to carry a pregnancy to term and give birth to a child or is unable to carry a pregnancy to term and give birth to a child without unreasonable risk to the intended parent's physical or mental health or to the health of the unborn child;

5. Each party to the gestational agreement has been advised by legal counsel in compliance with this act and has voluntarily entered into and understands the terms of the gestational agreement;

6. The gestational carrier has given birth to at least one child and carrying another pregnancy to term and giving birth to another child would not pose an unreasonable risk to that child's health or the physical or mental health of the gestational carrier; and

7. The intended parents have made guardianship provisions for the prospective child by amending their existing estate planning documents or by executing estate planning documents containing such provisions if they previously had no existing estate planning documents.

C. If the court finds that the requirements of subsection B of this section are satisfied, then the court shall render an order that:

1. Validates the gestational agreement and declares that the intended parents will be the sole parents of any child born under the gestational agreement;

2. Orders that each intended parent who is a party to the gestational agreement be listed as a parent on such child's certificate of birth to be filed with the state registrar of vital statistics as provided by Oklahoma law and that neither the gestational carrier nor any spouse of the gestational carrier shall be listed on said certificate of birth;

3. Orders the hospital, birthing facility or any other medical facility where such child is born to recognize the intended parents as the legal parents of such child for all purposes immediately upon the birth of such child; and

4. Unless the gestational agreement provides otherwise, orders the hospital, birthing facility or any other medical facility where such child is born to grant the intended parents the following rights:

a. the right to immediate custody of and access to such child upon birth,

b. the right to name such child,

c. the right to make any and all health decisions regarding such child upon birth, and

d. the right to be designated as the people to be issued armbands or other security devices identifying them as the parents of such child. The gestational carrier and any spouse of the gestational carrier shall not receive such armbands or security devices unless it is medically necessary for such child's welfare.

D. For good cause shown, a court may validate a gestational agreement even though it was not validated at the time of transfer of gametes or embryos to the gestational carrier for the purpose of conception or implantation, provided that such gestational agreement was entered into by all necessary parties to the gestational agreement prior to the time of transfer of such gametes or embryos to the gestational carrier for the purpose of conception or implantation, and provided that the court finds that all other requirements needed to validate a gestational agreement under this act have been satisfied.

E. The court may rely solely on affidavits, declarations, testimony, other competent evidence or any combination thereof in making its determination as to whether the requirements to validate a gestational agreement have been satisfied. A court need not conduct an evidentiary hearing if it finds that the documentary evidence supplied by the parties petitioning to validate a

gestational agreement is sufficient to show by a preponderance of the evidence that the requirements to validate the agreement are satisfied.

F. The court's determination as to whether or not the requirements to validate a gestational agreement have been satisfied is subject to review only for abuse of discretion.

G. If the court determines that the gestational agreement does not meet the necessary requirements to be validated, the court shall issue an order identifying with specificity each deficiency that it found which prevents it from validating the gestational agreement. The parties may thereafter amend the gestational agreement or cure any other identified deficiencies and thereafter file an amended petition to validate the gestational agreement. The same requirements shall apply to validating an amended gestational agreement as would apply to validating an original gestational agreement. The parties may amend as many times as needed to cure any deficiencies identified by the court.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 557.11 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. Upon the validation by the court of a gestational agreement conforming with the requirements of the Oklahoma Gestational Agreement Act, any child born as a result of an assisted reproduction procedure to a gestational carrier under the

gestational agreement shall be considered at law in all respects the same as a naturally conceived legitimate child of the intended parents. The parent-child relationship shall exist solely between such intended parents and such child regardless of the fact that the gestational carrier gave birth to the child or that the spouse of the gestational carrier is or was married to the gestational carrier at or before the time of such birth. The gestational carrier and any spouse of the gestational carrier if she is married shall have no parental rights or obligations with respect to such child.

B. A person acting in the capacity of a donor shall not be a parent of a child conceived as a result of assisted reproduction under a gestational carrier arrangement and shall have no rights or obligations with respect to such child.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 557.12 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. Upon the birth of a child to a gestational carrier under a validated gestational agreement, the intended parents shall file a notice of the birth with the court not later than twenty-one (21) days after the birth occurs.

B. Upon receiving notice of the birth, the court shall render an order that:

1. Confirms that the intended parents are the child's parents;

2. If necessary, requires the gestational carrier and any spouse of the gestational carrier if she is married to surrender the child to the intended parents; and

3. If necessary, requires the state registrar of vital statistics to issue a birth certificate naming the intended parents as the child's sole parents.

C. If the intended parents fail to file the notice required by subsection A of this section, the gestational carrier or an appropriate state agency may file the notice required by that subsection. On a showing that an order validating the gestational agreement was rendered in accordance with the Oklahoma Gestational Agreement Act, the court shall order that the intended parents are the child's parents and are financially responsible for the child.

D. If a person alleges that a child born to a gestational carrier:

1. Did not result from assisted reproduction; or

2. Is a genetic child of the gestational carrier or the gestational spouse, such that either the gestational carrier or the gestational spouse made a genetic contribution to any gamete from which the child was conceived or the embryo from which the child was grown,

the court shall order that scientifically accepted parentage testing in compliance with Oklahoma law be conducted to determine the child's parentage. If the court determines that any of the

allegations in paragraph 1 or 2 of this subsection are true, the Oklahoma Gestational Agreement Act shall not apply and the parentage, rights and obligations of the parties and the child shall be determined as otherwise provided by Oklahoma law. Any action related to such allegations may only be brought within one hundred eighty (180) days after the birth of the child and not afterward. The preceding sentence shall be interpreted as a statute of repose and not as a statute of limitations.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 557.13 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. If the parties to a validated gestational agreement desire to amend it, the amended gestational agreement must be validated to be enforceable.

B. To validate amendments to a previously validated gestational agreement, an amended petition must be filed in the same cause as the petition under which the gestational agreement was originally validated. The amended petition must identify the amendments the parties seek to make to the gestational agreement, and said parties must attach a copy of the amended gestational agreement.

C. The court shall apply the same requirements and utilize the same procedures in determining whether to validate the amended gestational agreement as are used in determining whether to validate any other gestational agreement.

D. Upon validation of the amended gestational agreement, the amended gestational agreement shall supersede any earlier versions of the gestational agreement, and the earlier versions of the gestational agreement shall be of no further force or effect.

E. A validated gestational agreement may not be amended to change the identity of the gestational carrier, the gestational spouse, if applicable, or any intended parent. In such instances, the validated gestational agreement must be terminated in compliance with the Oklahoma Gestational Agreement Act, and the gestational agreement with the new parties must be validated in a separate action.

F. Nothing in this section shall prevent a gestational agreement that has not been previously validated from being amended as to any matter or term by agreement of the parties. Any such amended gestational agreement must still be validated in compliance with this act in order for it be enforceable.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 557.14 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. In no event may a gestational agreement be terminated after the gestational carrier becomes pregnant by means of assisted reproduction.

B. Other than as prohibited by subsection A of this section, a gestational agreement may be terminated by any party thereto as

permitted by the terms of the agreement under the following procedures:

1. Any of the parties to a validated gestational agreement may seek to terminate the gestational agreement by first giving written notice of termination of the gestational agreement to each other party to the gestational agreement;

2. A person who sends the notice to terminate a validated gestational agreement shall file notice of the termination with the appropriate court. The court shall thereafter enter an order vacating the validation of the gestational agreement and terminating the gestational agreement. As necessary, prior to issuing the order vacating the validation and terminating the gestational agreement, the court may consider evidence to confirm the gestational carrier is not pregnant by means of assisted reproduction;

3. A validated gestational agreement is not terminated until an order vacating the validation and terminating the gestational agreement has been entered by the court;

4. If a gestational agreement has not been validated, it may be terminated by any of the parties thereto by such party sending a written notice of termination to the other parties to the gestational agreement. It is not necessary for a court to enter an order terminating a gestational agreement that has not been validated;

5. The notice of termination required by this section shall be served upon the other parties to the gestational agreement in the same manner as summons is served in civil cases;

6. Upon receipt of a notice to terminate a gestational agreement, the gestational carrier shall not undergo any assisted reproductive procedure to transfer any gametes or embryos to the gestational carrier for the purpose of conception or implantation as part of the gestational carrier arrangement unless otherwise permitted by the court;

7. No party to a gestational agreement shall be liable to any other party for damages for terminating a gestational agreement in accordance with this section; provided, however, that termination of a gestational agreement, whether validated or not, shall not relieve any party of the duty to pay for or to reimburse any other party for any medical, legal or travel expenses incurred pursuant to the gestational agreement prior to its termination which would otherwise be owed if the gestational agreement had not been terminated, and a party having a duty to pay or reimburse such expenses shall be liable to pay or reimburse such expenses; and

8. Notwithstanding anything in this act to the contrary, within one (1) year of the termination of a gestational agreement, whether validated or not, any party to the gestational agreement may file a written petition with the court that terminated a gestational agreement seeking to reinstate the gestational agreement and

requesting the court validate the gestational agreement. The party filing such petition shall serve such petition on all other parties to the gestational agreement in the same manner as serving a petition in a civil case in Oklahoma. In any such case, the sole basis upon which the court may reinstate the gestational agreement and validate it is if the court finds through competent evidence that the gestational carrier became pregnant by means of an assisted reproduction procedure contemplated by the gestational agreement that was performed before the party seeking to terminate the gestational agreement served upon the gestational carrier the written notice of termination of the gestational agreement. If the court so finds, and if all the requirements to validate a gestational agreement under this act are otherwise met, the termination of the gestational agreement shall be null and void, and the court shall enter an order reinstating the gestational agreement as if it had never been terminated and validating the gestational agreement. The court, taking into account the health and well-being of the gestational carrier and the child with which she is pregnant, may order any scientifically acceptable genetic or medical testing allowed by law to aid it in its findings, may assess the costs of such testing to the party or parties the court deems appropriate and may wait to make its ruling on the reinstatement and validation of the gestational agreement until after the birth of the child.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 557.15 of Title 10, unless there is created a duplication in numbering, reads as follows:

Unless otherwise provided by the Oklahoma Gestational Agreement Act, any proceedings conducted pursuant to this act will be governed by the Code of Civil Procedure of the State of Oklahoma. All such proceedings, any pleadings, motions, documents or records associated therewith and the identities of the parties to a gestational agreement are all to be kept confidential, and any such proceedings shall be held in closed court without the admittance of any person other than interested parties and their counsel. It is the intent of this section that the same standards of confidentiality, inspection and disclosure applied to cases of adoption in this state shall apply to the proceedings and papers related to gestational agreements under this act.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 557.16 of Title 10, unless there is created a duplication in numbering, reads as follows:

Venue and jurisdiction for all matters arising out of or related to a gestational agreement shall lie only in the district court of the county where the gestational carrier resided at the time the gestational agreement was entered into or in the district courts of Tulsa County or Oklahoma County. Upon the filing of a petition to validate gestational agreement, and regardless of any change in

residency of the gestational carrier, the court in which such petition was properly filed shall have continuing and exclusive jurisdiction over all matters arising out of or related to the gestational agreement until the date a child born to the gestational carrier during the period covered by the gestational agreement reaches one hundred eighty (180) days of age.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 557.17 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. A gestational carrier may receive reimbursement for expenses and economic losses resulting from participation in the gestational carrier arrangement contemplated by a gestational agreement.

B. A gestational carrier may be paid a reasonable compensation for carrying a child pursuant to a gestational agreement. The compensation, if any, paid to a gestational carrier must be negotiated in good faith between the parties; the amount of such compensation must be set forth in the gestational agreement; and the compensation may in no manner be conditioned upon the purported quality or any genome-related traits of the sperm, eggs, gametes, embryos or resulting child; provided, that nothing in this section prohibits compensation that is conditioned on the number of embryos implanted, the number of assisted reproduction procedures undertaken for the gestational carrier to become pregnant, the number of

children with which the gestational carrier becomes pregnant or the duration of the pregnancy.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 557.18 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. Any one or more donors that will be supplying any gametes or embryos in connection with a gestational carrier arrangement may be, but are not required to be, a party to the gestational agreement, and any consents required of such donor or such donor's physician by Oklahoma law may be incorporated into the gestational agreement.

B. If one or more donors will be supplying any gametes or embryos in connection with a gestational carrier arrangement, any consents otherwise required by Oklahoma law to be filed with a court in connection with such donation may be filed with the court as part of the petition to validate gestational agreement, regardless of whether or not such consents are part of the gestational agreement. Filing such consents with the petition to validate shall be deemed to be compliance with any filing requirements for such consents otherwise required by Oklahoma law, including the provisions of Sections 552 through 556, inclusive, of Title 10 of the Oklahoma Statutes. If such consents are filed with the court as part of the petition to validate, then validation of the gestational agreement by the court shall satisfy any requirements otherwise set forth in

Oklahoma law for a judge's approval, execution or acknowledgment of such consents.

C. This act shall not affect any other law regarding the allowance or prohibition of compensation paid to any donor for that donor's contribution of gametes or embryos.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 557.19 of Title 10, unless there is created a duplication in numbering, reads as follows:

No gamete or embryo to which the gestational carrier or the gestational spouse has contributed any genetic material may be used in the assisted reproduction procedure set forth in a gestational agreement covered by the Oklahoma Gestational Agreement Act. Any agreement which calls for the use of a gamete or embryo to which the gestational carrier or gestational spouse has contributed genetic material falls outside the applicability of this act.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 557.20 of Title 10, unless there is created a duplication in numbering, reads as follows:

Upon the birth of a child contemplated by a validated gestational agreement, the intended parents under such validated gestational agreement shall be listed as the parents on the child's certificate of birth that is to be filed with the state registrar of vital statistics as provided by Oklahoma law, and neither the

gestational carrier nor any spouse of the gestational carrier if she is married shall be listed on said certificate of birth.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 557.21 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. In the event that an intended parent predeceases the birth of a child contemplated by a validated gestational agreement, the terms and conditions of the gestational agreement shall remain in full force and effect, and upon birth the resulting child shall be delivered into the sole care and custody of the surviving intended parent, if an intended parent so survives. If there are no surviving intended parents, the child shall be delivered into the sole care and custody of the guardian nominated in the estate planning documents of the intended parents. If no such guardian will accept or is fit to accept the sole care and custody of the child, or if no valid estate planning documents of the intended parents are then in effect, the child shall be delivered into the sole care and custody of a guardian designated by the court as provided by Oklahoma law, and in such instances nothing in the Oklahoma Gestational Agreement Act shall prohibit a gestational carrier or gestational spouse from being designated by the court as the child's guardian.

B. Any child conceived by assisted reproduction and pursuant to the terms of a validated gestational agreement shall have all

testamentary and inheritance rights from the intended parents and shall have no testamentary or inheritance rights from the gestational carrier or any spouse of the gestational carrier if she is married. The intended parents shall have testamentary and inheritance rights from the resulting child as parents, and the gestational carrier and any spouse of the gestational carrier if she is married shall have no testamentary or inheritance rights from the resulting child as parents.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 557.22 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. The marriage of a gestational carrier after she enters into a gestational agreement does not affect the gestational agreement. In such instances, the consent of the person who became the spouse of the gestational carrier after the gestational carrier entered into the gestational agreement is not required in order for the court to validate the gestational agreement, and such person need not be party to the validation proceedings. The spouse of the gestational carrier in such instances shall not be presumed to be the parent of any resulting child.

B. The divorce or separation of the gestational carrier and any spouse of the gestational carrier shall not affect the validation or enforceability of such gestational agreement or the ability of the

court to validate such gestational agreement that otherwise complies with this act.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 557.23 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. If a gestational agreement has been validated and if, because of a laboratory error or clinical error, the resulting child under such gestational agreement is not genetically related to one or more of the intended parents or one or more of the donors who donated to the intended parent or parents and if, in the absence of such error, the child should have been so genetically related, then the intended parents under the gestational agreement shall nonetheless be considered the parents of the child, unless a determination to the contrary is made by a court of competent jurisdiction in an action which may only be brought by one or more genetic parents of the resulting child within one hundred eighty (180) days after the birth of the child.

B. Nothing in the Oklahoma Gestational Agreement Act shall create, affect or diminish any cause of action that a person may have under Oklahoma law for a laboratory error or clinical error occurring as part of an assisted reproduction procedure.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 557.24 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. This section shall govern the breach of validated gestational agreements and any gestational agreements that have not been validated, but only to the extent those nonvalidated gestational agreements are otherwise enforceable under the Oklahoma Gestational Agreement Act.

B. In the event of a breach of a gestational agreement or noncompliance with the requirements of this act, the court shall determine the respective rights and obligations of the parties to the gestational agreement based solely on the evidence of the original intent of the parties and the provisions of this act.

C. Except as otherwise provided by this act or an express term of the gestational agreement, the gestational carrier, the gestational spouse and any intended parent shall be entitled to any remedy available at law or equity for breach of the gestational agreement or noncompliance with any requirement of this act.

D. Notwithstanding any breach of the gestational agreement, the remedy of specific performance shall not be available to the extent the ordering of such remedy would require the gestational carrier or any other party to be impregnated or undergo an assisted reproduction procedure.

E. The breach of the gestational agreement by any intended parent does not relieve the intended parents of the obligation to support a child born pursuant to the gestational agreement.

F. Unless otherwise provided by the gestational agreement, the court in any action for the alleged breach or the enforcement of a gestational agreement shall award costs, attorney fees and expert fees to the prevailing party.

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 557.25 of Title 10, unless there is created a duplication in numbering, reads as follows:

Except as otherwise expressly provided by the Oklahoma Gestational Agreement Act, all other laws regarding parentage and the determination thereof remain in full force and effect.

SECTION 27. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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