

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

FLOOR AMENDMENT

No. _____

COMMITTEE AMENDMENT

(Date)

Mr./Madame President:

I move to amend House Bill No. 2468, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

Senator Howard

Howard-TEK-FS-Req#2219
4/17/2019 4:47 PM

(Floor Amendments Only) Date and Time Filed: _____

Untimely

Amendment Cycle Extended

Secondary Amendment

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 FLOOR SUBSTITUTE
4 FOR ENGROSSED

5 HOUSE BILL NO. 2468

By: Dunnington of the House

and

Howard of the Senate

7
8 FLOOR SUBSTITUTE

9 [children - Oklahoma Gestational Agreement -
10 codification -

emergency]

11
12
13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

22 It is the policy of the State of Oklahoma to allow private
23 parties to enter into gestational agreements in order to help
24 facilitate the birth of children to parents who are not otherwise

1 able to conceive or carry them, to allow the gestational carriers of
2 such children to be properly compensated for providing this
3 important and selfless undertaking and to provide a mechanism to
4 ensure that gestational agreements will be enforced and that the
5 expectations of the parties to gestational agreements will be
6 protected.

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

10 As used in the Oklahoma Gestational Agreement Act:

- 11 1. "Act" means the Oklahoma Gestational Agreement Act;
- 12 2. "Assisted reproduction" means a method of causing pregnancy
13 other than sexual intercourse. The term includes, but is not
14 limited to, intrauterine insemination, donation of eggs, donation of
15 embryos, in vitro fertilization and transfer of embryos and
16 intracytoplasmic sperm injection;
- 17 3. "Court" means any district court of competent jurisdiction
18 as provided in this act;
- 19 4. "Donor" means an individual who contributes a gamete or
20 gametes or an embryo or embryos for the purpose of assisted
21 reproduction with no claim to present or future parental rights or
22 obligations to any resulting child and who is not an intended
23 parent, gestational carrier or gestational spouse;

24

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

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

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

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

24

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

12 10. "Intended parent" means any person who intends to become
13 the lawful parent of a child conceived, implanted or carried
14 pursuant to a gestational agreement. The term "intended parent"
15 shall mean both intended parents or, if only one intended parent is
16 party to the gestational agreement, then it shall mean such singular
17 intended parent unless context clearly requires otherwise;

18 11. "Mental health consultation" means an in-person meeting
19 with a licensed mental health professional for the purposes of
20 educating the participants about the effects and potential
21 consequences of their participation in a gestational carrier
22 arrangement, and of evaluating any potential psychological issues
23 and risks posed by a party to a gestational carrier arrangement,
24 including, but not limited to, the intended parent or parents or the

1 gestational carrier's mental health, external and environmental
2 factors, ability to manage relationships, potential attachment
3 issues, and ability to carry out his or her obligations, rights and
4 duties under a gestational carrier arrangement;

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

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

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

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

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

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

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

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

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

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

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

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

22 2. Have given birth to at least one child;

23 3. Have been a resident of Oklahoma for at least ninety (90)
24 consecutive days immediately preceding the date she enters into the

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

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

7 5. Have completed a mental health consultation.

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

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

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

19 1. The gestational carrier;

20 2. The gestational spouse, if applicable; and

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

23

24

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

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

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

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

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

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

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

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

24 1. The gestational agreement must be in writing;

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

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

9 4. The gestational agreement must contain a written statement,
10 signed by each party's legal counsel, identifying which parties to
11 the gestational agreement such counsel represents and stating that
12 such counsel has advised such parties of the potential legal
13 consequences of entering into the gestational agreement.

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

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

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

23 3. That the gestational carrier and the gestational spouse, if
24 applicable, relinquish all parental rights and obligations with

1 respect to any child contemplated by the gestational agreement that
2 is conceived or implanted through assisted reproduction and shall
3 surrender all legal and physical custody of that child to the
4 intended parents immediately upon birth of that child;

5 4. That the intended parents shall be the sole parents of any
6 child born pursuant to the gestational carrier arrangement and that
7 such intended parents shall be entitled to and shall accept legal
8 and physical custody of the child and all parental rights and
9 obligations with respect to such child immediately upon the child's
10 birth, regardless of the mental or physical condition of such child
11 or the number of such children; provided, however, that such child
12 is not a genetic child of the gestational carrier or the gestational
13 spouse;

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

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

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

24

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

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

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

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

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

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

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

24

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

4 D. A gestational agreement shall not limit the ability of the
5 gestational carrier to make decisions to safeguard her health or the
6 health of an unborn child pursuant to the then-applicable laws of
7 this state regarding such matters.

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

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

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

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

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

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

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

14 A. A gestational agreement must be validated as provided by the
15 Oklahoma Gestational Agreement Act prior to the transfer of gametes
16 or embryos to the gestational carrier for the purpose of conception
17 or implantation under a gestational carrier arrangement.

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

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

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

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

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

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

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

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

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

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

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

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

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

- 12 a. the names and current addresses, if known, of each
13 party to the gestational agreement,
- 14 b. allegations setting forth the satisfaction of this
15 act's requirements for a gestational agreement and the
16 parties thereto,
- 17 c. if any of the parties to a gestational agreement have
18 not joined the petition, the identity of such parties
19 and, if known, the reasons such parties have not
20 joined the petition,
- 21 d. whether or not any assisted reproduction procedures
22 have taken place as part of the gestational carrier
23 arrangement and, if so, the date of each such
24

1 procedure and whether such procedures have resulted in
2 pregnancy of the gestational carrier, and

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

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

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

15 5. Any party not joining the petition to validate shall be
16 served with a copy of the petition to validate and a summons in the
17 same manner as in civil cases. After being so duly served, the
18 nonjoining party shall answer and respond to the petition to
19 validate within ten (10) days and shall provide allegations and
20 evidence to aid the court in its determination of whether the
21 requirements to validate the gestational agreement have been met.
22 The failure of any nonjoining party to answer or otherwise respond
23 after being duly served shall not prevent the court from validating
24

1 a gestational agreement if the requirements of this act are
2 otherwise satisfied.

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

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

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

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

13 2. The parties to the gestational agreement meet all the
14 requirements set forth in this act for such parties and all
15 necessary parties to the gestational agreement have entered into the
16 gestational agreement;

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

19 4. The medical evidence provided shows that the intended mother
20 is unable to carry a pregnancy to term and give birth to a child or
21 is unable to carry a pregnancy to term and give birth to a child
22 without unreasonable risk to her physical or mental health or to the
23 health of the unborn child;

24

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

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

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

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

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

20 2. Orders that each intended parent who is a party to the
21 gestational agreement be listed as a parent on such child's
22 certificate of birth to be filed with the state registrar of vital
23 statistics as provided by Oklahoma law and that neither the
24

1 gestational carrier nor any spouse of the gestational carrier shall
2 be listed on said certificate of birth;

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

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

- 11 a. the right to immediate custody of and access to such
12 child upon birth,
- 13 b. the right to name such child,
- 14 c. the right to make any and all health decisions
15 regarding such child upon birth, and
- 16 d. the right to be designated as the people to be issued
17 armbands or other security devices identifying them as
18 the parents of such child. The gestational carrier
19 and any spouse of the gestational carrier shall not
20 receive such armbands or security devices unless it is
21 medically necessary for such child's welfare.

22 D. For good cause shown, a court may validate a gestational
23 agreement even though it was not validated at the time of transfer
24 of gametes or embryos to the gestational carrier for the purpose of

1 conception or implantation, provided that such gestational agreement
2 was entered into by all necessary parties to the gestational
3 agreement prior to the time of transfer of such gametes or embryos
4 to the gestational carrier for the purpose of conception or
5 implantation, and provided that the court finds that all other
6 requirements needed to validate a gestational agreement under this
7 act have been satisfied.

8 E. The court may rely solely on affidavits, declarations,
9 testimony, other competent evidence or any combination thereof in
10 making its determination as to whether the requirements to validate
11 a gestational agreement have been satisfied. A court need not
12 conduct an evidentiary hearing if it finds that the documentary
13 evidence supplied by the parties petitioning to validate a
14 gestational agreement is sufficient to show by a preponderance of
15 the evidence that the requirements to validate the agreement are
16 satisfied.

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

20 G. If the court determines that the gestational agreement does
21 not meet the necessary requirements to be validated, the court shall
22 issue an order identifying with specificity each deficiency that it
23 found which prevents it from validating the gestational agreement.
24 The parties may thereafter amend the gestational agreement or cure

1 any other identified deficiencies and thereafter file an amended
2 petition to validate the gestational agreement. The same
3 requirements shall apply to validating an amended gestational
4 agreement as would apply to validating an original gestational
5 agreement. The parties may amend as many times as needed to cure
6 any deficiencies identified by the court.

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

10 A. Upon the validation by the court of a gestational agreement
11 conforming with the requirements of the Oklahoma Gestational
12 Agreement Act, any child born as a result of an assisted
13 reproduction procedure to a gestational carrier under the
14 gestational agreement shall be considered at law in all respects the
15 same as a naturally conceived legitimate child of the intended
16 parents. The parent-child relationship shall exist solely between
17 such intended parents and such child regardless of the fact that the
18 gestational carrier gave birth to the child or that the spouse of
19 the gestational carrier is or was married to the gestational carrier
20 at or before the time of such birth. The gestational carrier and
21 any spouse of the gestational carrier if she is married shall have
22 no parental rights or obligations with respect to such child.

23 B. A person acting in the capacity of a donor shall not be a
24 parent of a child conceived as a result of assisted reproduction

1 under a gestational carrier arrangement and shall have no rights or
2 obligations with respect to such child.

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

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

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

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

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

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

19 C. If the intended parents fail to file the notice required by
20 subsection A of this section, the gestational carrier or an
21 appropriate state agency may file the notice required by that
22 subsection. On a showing that an order validating the gestational
23 agreement was rendered in accordance with the Oklahoma Gestational
24

1 Agreement Act, the court shall order that the intended parents are
2 the child's parents and are financially responsible for the child.

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

5 1. Did not result from assisted reproduction; or

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

11 the court shall order that scientifically accepted parentage testing
12 in compliance with Oklahoma law be conducted to determine the
13 child's parentage. If the court determines that any of the
14 allegations in paragraph 1 or 2 of this subsection are true, the
15 Oklahoma Gestational Agreement Act shall not apply and the
16 parentage, rights and obligations of the parties and the child shall
17 be determined as otherwise provided by Oklahoma law. Any action
18 related to such allegations may only be brought within one hundred
19 eighty (180) days after the birth of the child and not afterwards.
20 The preceding sentence shall be interpreted as a statute of repose
21 and not as a statute of limitations.

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

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

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

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

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

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

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

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

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

12 B. Other than as prohibited by subsection A of this section, a
13 gestational agreement may be terminated by any party thereto as
14 permitted by the terms of the agreement under the following
15 procedures:

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

20 2. A person who sends the notice to terminate a validated
21 gestational agreement shall file notice of the termination with the
22 appropriate court. The court shall thereafter enter an order
23 vacating the validation of the gestational agreement and terminating
24 the gestational agreement. As necessary, prior to issuing the order

1 vacating the validation and terminating the gestational agreement,
2 the court may consider evidence to confirm the gestational carrier
3 is not pregnant by means of assisted reproduction;

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

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

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

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

22 7. No party to a gestational agreement shall be liable to any
23 other party for damages for terminating a gestational agreement in
24 accordance with this section; provided, however, that termination of

1 a gestational agreement, whether validated or not, shall not relieve
2 any party of the duty to pay for or to reimburse any other party for
3 any medical, legal or travel expenses incurred pursuant to the
4 gestational agreement prior to its termination which would otherwise
5 be owed if the gestational agreement had not been terminated, and a
6 party having a duty to pay or reimburse such expenses shall be
7 liable to pay or reimburse such expenses; and

8 8. Notwithstanding anything in this act to the contrary, within
9 one (1) year of the termination of a gestational agreement, whether
10 validated or not, any party to the gestational agreement may file a
11 written petition with the court that terminated a gestational
12 agreement seeking to reinstate the gestational agreement and
13 requesting the court validate the gestational agreement. The party
14 filing such petition shall serve such petition on all other parties
15 to the gestational agreement in the same manner as serving a
16 petition in a civil case in Oklahoma. In any such case, the sole
17 basis upon which the court may reinstate the gestational agreement
18 and validate it is if the court finds through competent evidence
19 that the gestational carrier became pregnant by means of an assisted
20 reproduction procedure contemplated by the gestational agreement
21 that was performed before the party seeking to terminate the
22 gestational agreement served upon the gestational carrier the
23 written notice of termination of the gestational agreement. If the
24 court so finds, and if all the requirements to validate a

1 gestational agreement under this act are otherwise met, the
2 termination of the gestational agreement shall be null and void, and
3 the court shall enter an order reinstating the gestational agreement
4 as if it had never been terminated and validating the gestational
5 agreement. The court, taking into account the health and well-being
6 of the gestational carrier and the child with which she is pregnant,
7 may order any scientifically acceptable genetic or medical testing
8 allowed by law to aid it in its findings, may assess the costs of
9 such testing to the party or parties the court deems appropriate and
10 may wait to make its ruling on the reinstatement and validation of
11 the gestational agreement until after the birth of the child.

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

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

1 shall apply to the proceedings and papers related to gestational
2 agreements under this act.

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

6 Venue and jurisdiction for all matters arising out of or related
7 to a gestational agreement shall lie only in the district court of
8 the county where the gestational carrier resided at the time the
9 gestational agreement was entered into or in the district courts of
10 Tulsa County or Oklahoma County. Upon the filing of a petition to
11 validate gestational agreement, and regardless of any change in
12 residency of the gestational carrier, the court in which such
13 petition was properly filed shall have continuing and exclusive
14 jurisdiction over all matters arising out of or related to the
15 gestational agreement until the date a child born to the gestational
16 carrier during the period covered by the gestational agreement
17 reaches one hundred eighty (180) days of age.

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

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

24

1 B. A gestational carrier may be paid a reasonable compensation
2 for carrying a child pursuant to a gestational agreement. The
3 compensation, if any, paid to a gestational carrier must be
4 negotiated in good faith between the parties; the amount of such
5 compensation must be set forth in the gestational agreement; and the
6 compensation may in no manner be conditioned upon the purported
7 quality or any genome-related traits of the sperm, eggs, gametes,
8 embryos or resulting child; provided, that nothing in this section
9 prohibits compensation that is conditioned on the number of embryos
10 implanted, the number of assisted reproduction procedures undertaken
11 for the gestational carrier to become pregnant, the number of
12 children with which the gestational carrier becomes pregnant or the
13 duration of the pregnancy.

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

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

22 B. If one or more donors will be supplying any gametes or
23 embryos in connection with a gestational carrier arrangement, any
24 consents otherwise required by Oklahoma law to be filed with a court

1 in connection with such donation may be filed with the court as part
2 of the petition to validate gestational agreement, regardless of
3 whether or not such consents are part of the gestational agreement.
4 Filing such consents with the petition to validate shall be deemed
5 to be compliance with any filing requirements for such consents
6 otherwise required by Oklahoma law, including the provisions of
7 Sections 552 through 556, inclusive, of Title 10 of the Oklahoma
8 Statutes. If such consents are filed with the court as part of the
9 petition to validate, then validation of the gestational agreement
10 by the court shall satisfy any requirements otherwise set forth in
11 Oklahoma law for a judge's approval, execution or acknowledgment of
12 such consents.

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

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

19 No gamete or embryo to which the gestational carrier or the
20 gestational spouse has contributed any genetic material may be used
21 in the assisted reproduction procedure set forth in a gestational
22 agreement covered by the Oklahoma Gestational Agreement Act. Any
23 agreement which calls for the use of a gamete or embryo to which the
24

1 gestational carrier or gestational spouse has contributed genetic
2 material falls outside the applicability of this act.

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

6 Upon the birth of a child contemplated by a validated
7 gestational agreement, the intended parents under such validated
8 gestational agreement shall be listed as the parents on the child's
9 certificate of birth that is to be filed with the state registrar of
10 vital statistics as provided by Oklahoma law, and neither the
11 gestational carrier nor any spouse of the gestational carrier if she
12 is married shall be listed on said certificate of birth.

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

16 A. In the event that an intended parent predeceases the birth
17 of a child contemplated by a validated gestational agreement, the
18 terms and conditions of the gestational agreement shall remain in
19 full force and effect, and upon birth the resulting child shall be
20 delivered into the sole care and custody of the surviving intended
21 parent, if an intended parent so survives. If there are no
22 surviving intended parents, the child shall be delivered into the
23 sole care and custody of the guardian nominated in the estate
24 planning documents of the intended parents. If no such guardian

1 will accept or is fit to accept the sole care and custody of the
2 child, or if no valid estate planning documents of the intended
3 parents are then in effect, the child shall be delivered into the
4 sole care and custody of a guardian designated by the court as
5 provided by Oklahoma law, and in such instances nothing in the
6 Oklahoma Gestational Agreement Act shall prohibit a gestational
7 carrier or gestational spouse from being designated by the court as
8 the child's guardian.

9 B. Any child conceived by assisted reproduction and pursuant to
10 the terms of a validated gestational agreement shall have all
11 testamentary and inheritance rights from the intended parents and
12 shall have no testamentary or inheritance rights from the
13 gestational carrier or any spouse of the gestational carrier if she
14 is married. The intended parents shall have testamentary and
15 inheritance rights from the resulting child as parents, and the
16 gestational carrier and any spouse of the gestational carrier if she
17 is married shall have no testamentary or inheritance rights from the
18 resulting child as parents.

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

22 A. The marriage of a gestational carrier after she enters into
23 a gestational agreement does not affect the gestational agreement.
24 In such instances, the consent of the person who became the spouse

1 of the gestational carrier after the gestational carrier entered
2 into the gestational agreement is not required in order for the
3 court to validate the gestational agreement, and such person need
4 not be party to the validation proceedings. The spouse of the
5 gestational carrier in such instances shall not be presumed to be
6 the parent of any resulting child.

7 B. The divorce or separation of the gestational carrier and any
8 spouse of the gestational carrier shall not affect the validation or
9 enforceability of such gestational agreement or the ability of the
10 court to validate such gestational agreement that otherwise complies
11 with this act.

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

15 A. If a gestational agreement has been validated and if,
16 because of a laboratory error or clinical error, the resulting child
17 under such gestational agreement is not genetically related to one
18 or more of the intended parents or one or more of the donors who
19 donated to the intended parent or parents and if, in the absence of
20 such error, the child should have been so genetically related, then
21 the intended parents under the gestational agreement shall
22 nonetheless be considered the parents of the child, unless a
23 determination to the contrary is made by a court of competent
24 jurisdiction in an action which may only be brought by one or more

1 genetic parents of the resulting child within one hundred eighty
2 (180) days after the birth of the child.

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

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

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

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

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

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

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

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

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

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

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

23

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