

1 **SENATE FLOOR VERSION**

2 April 9, 2019

3 **AS AMENDED**

4 ENGROSSED HOUSE

5 BILL NO. 2468

6 By: Dunnington of the House

7 and

8 Howard of the Senate

9 **[ children - Oklahoma Gestational Agreement Act -**  
10 **codification - effective date ]**

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

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

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

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

20 It is the policy of the State of Oklahoma to allow private  
21 parties to enter into gestational agreements in order to help  
22 facilitate the birth of children to parents who are not otherwise  
23 able to conceive or carry them, to allow the gestational carriers of  
24 such children to be properly compensated for providing this

1 important and selfless undertaking and to provide a mechanism to  
2 ensure that gestational agreements will be enforced and that the  
3 expectations of the parties to gestational agreements will be  
4 protected.

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

8 The following definitions shall apply to this act:

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

24

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

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

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

22       9. "Gestational spouse" means the spouse of the gestational  
23 carrier if the gestational carrier is married at the time the  
24 gestational carrier enters into the gestational agreement. The term

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

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

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

1 issues, and ability to carry out his or her obligations, rights and  
2 duties under a gestational carrier arrangement;

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

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

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

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

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

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

23 B. A gestational agreement must meet the minimum requirements  
24 under this act, including validation by the court. A gestational

1 agreement that conforms to these requirements and has been validated  
2 in compliance with this act is a legal contract and is legally  
3 enforceable.

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

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

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

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

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

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

21 3. Have been a resident of Oklahoma for at least the previous  
22 ninety (90) consecutive days immediately preceding the date she  
23 enters into the gestational agreement;

24

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

3 5. Have completed a mental health consultation.

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

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

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

15 1. The gestational carrier;

16 2. The gestational spouse, if applicable; and

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

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

22 1. The gestational carrier, the gestational spouse, if  
23 applicable, and each intended parent must be at least twenty-one  
24

1 (21) years of age at the time the parties enter into the gestational  
2 agreement;

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

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

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

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

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

15 1. The gestational agreement must be in writing;

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

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

24



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

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

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

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

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

21 4. That the intended parents shall be the sole parents of any  
22 child born pursuant to the gestational carrier arrangement and that  
23 such intended parents shall be entitled to and shall accept legal  
24 and physical custody of the child and all parental rights and

1 obligations with respect to such child immediately upon the child's  
2 birth, regardless of the mental or physical condition of such child  
3 or the number of such children; provided, however, that such child  
4 is not a genetic child of the gestational carrier or the gestational  
5 spouse;

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

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

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

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

21 a. the rate of successful conceptions and births  
22 attributable to the procedure, including the most  
23 recent published outcome statistics of the procedure  
24 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. A gestational agreement shall not limit the ability of the gestational carrier to make decisions to safeguard her health or the health of an unborn child pursuant to the then-applicable laws of this state regarding such matters.

E. 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

1 provisions in a validated gestational agreement shall be  
2 enforceable:

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

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

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

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

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

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

4           A. A gestational agreement must be validated as provided by the  
5 Oklahoma Gestational Agreement Act prior to the transfer of gametes  
6 or embryos to the gestational carrier for the purpose of conception  
7 or implantation under a gestational carrier arrangement.

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

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

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

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

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

23

24

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

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

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

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

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

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

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

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

- 3           a. the names and current addresses, if known, of each  
4           party to the gestational agreement,
- 5           b. allegations setting forth the satisfaction of this  
6           act's requirements for a gestational agreement and the  
7           parties thereto,
- 8           c. if any of the parties to a gestational agreement have  
9           not joined the petition, the identity of such parties  
10           and, if known, the reasons such parties have not  
11           joined the petition,
- 12           d. whether or not any assisted reproduction procedures  
13           have taken place as part of the gestational carrier  
14           arrangement and, if so, the date of each such  
15           procedure and whether such procedures have resulted in  
16           pregnancy of the gestational carrier, and
- 17           e. a request that the court validate the gestational  
18           agreement, as well as a request setting forth any  
19           additional relief sought in connection with the  
20           validation of the gestational agreement;

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

23           4. The petitioner shall attach affidavits, declarations,  
24 statements, other evidence or any combination thereof to the

1 petition to support the allegations in the petition regarding the  
2 satisfaction of the requirements of this act and to aid the court in  
3 its determination of whether the requirements to validate the  
4 gestational agreement have been met; and

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

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

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

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

24



- 1        1. The court has jurisdiction over all parties to the  
2 gestational agreement;
- 3        2. The parties to the gestational agreement meet all the  
4 requirements set forth in this act for such parties and all  
5 necessary parties to the gestational agreement have entered into the  
6 gestational agreement;
- 7        3. The gestational agreement meets all the requirements for  
8 gestational agreements set forth in this act;
- 9        4. The medical evidence provided shows that the intended mother  
10 is unable to carry a pregnancy to term and give birth to a child or  
11 is unable to carry a pregnancy to term and give birth to a child  
12 without unreasonable risk to her physical or mental health or to the  
13 health of the unborn child;
- 14        5. Each party to the gestational agreement has been advised by  
15 legal counsel in compliance with this act and has voluntarily  
16 entered into and understands the terms of the gestational agreement;
- 17        6. The gestational carrier has given birth to at least one  
18 child and carrying another pregnancy to term and giving birth to  
19 another child would not pose an unreasonable risk to that child's  
20 health or the physical or mental health of the gestational carrier;  
21 and
- 22        7. The intended parents have made guardianship provisions for  
23 the prospective child by amending their existing estate planning  
24 documents or by executing estate planning documents containing such

1 provisions if they previously had no existing estate planning  
2 documents.

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

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

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

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

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

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

- 1           b.    the right to name such child,  
2           c.    the right to make any and all health decisions  
3                regarding such child upon birth, and  
4           d.    the right to be designated as the people to be issued  
5                armbands or other security devices identifying them as  
6                the parents of such child.  The gestational carrier  
7                and any spouse of the gestational carrier shall not  
8                receive such armbands or security devices unless it is  
9                medically necessary for such child's welfare.

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

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

1 evidence supplied by the parties petitioning to validate a  
2 gestational agreement is sufficient to show by a preponderance of  
3 the evidence that the requirements to validate the agreement are  
4 satisfied.

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

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

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

22 A. Upon the validation by the court of a gestational agreement  
23 conforming with the requirements of the Oklahoma Gestational  
24 Agreement Act, any child born as a result of an assisted

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

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

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

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

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

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

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

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

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

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

16           1. Did not result from assisted reproduction; or

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

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

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

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

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

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

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

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

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

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

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

20 A gestational agreement may be terminated only in compliance  
21 with this section:

22 1. A gestational agreement may not be terminated after the  
23 gestational carrier becomes pregnant by means of assisted  
24 reproduction;



1           2. A gestational agreement may be terminated by any party  
2 thereto for any reason, subject to the provisions and limitations of  
3 the Oklahoma Gestational Agreement Act;

4           3. Any of the parties to a validated gestational agreement may  
5 seek to terminate the gestational agreement by first giving written  
6 notice of termination of the gestational agreement to each other  
7 party to the gestational agreement;

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

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

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

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

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

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

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

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

24

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 Upon the birth of a child contemplated by a validated  
20 gestational agreement, the intended parents under such validated  
21 gestational agreement shall be listed as the parents on the child's  
22 certificate of birth that is to be filed with the state registrar of  
23 vital statistics as provided by Oklahoma law, and neither the  
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1 gestational carrier nor any spouse of the gestational carrier if she  
2 is married shall be listed on said certificate of birth.

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

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

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



1 | testamentary and inheritance rights from the intended parents and  
2 | shall have no testamentary or inheritance rights from the  
3 | gestational carrier or any spouse of the gestational carrier if she  
4 | is married. The intended parents shall have testamentary and  
5 | inheritance rights from the resulting child as parents, and the  
6 | gestational carrier and any spouse of the gestational carrier if she  
7 | is married shall have no testamentary or inheritance rights from the  
8 | resulting child as parents.

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

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

21 |       B. The divorce or separation of the gestational carrier and any  
22 | spouse of the gestational carrier shall not affect the validation or  
23 | enforceability of such gestational agreement or the ability of the  
24 |

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

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

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

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

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

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

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

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

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

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

24

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

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

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

11 SECTION 27. This act shall become effective November 1, 2019.

12 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY  
13 April 9, 2019 - DO PASS AS AMENDED

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