

BILL ANALYSIS

Senate Research Center

S.B. 2027
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Jurisprudence
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Some couples interested in building a family involve a third person to serve as a "gestational mother" to have their baby, either by using their own genetic material or by securing donated sperm or eggs. Current law allows a married couple to enter into an agreement with the gestational mother. The agreement is enforceable under the Family Code, and parentage is confirmed prior to implantation, guaranteeing the child will have parents at the time of birth. If a married couple engages a gestational mother without a validated agreement, there is no court order determining parentage prior to birth. This can lead to post-birth litigation over parentage and cause financial, medical, and emotional hardship.

Currently, an unmarried individual can engage a sperm or egg donor and a physician to participate in assisted reproduction using a gestational mother. Such an arrangement does not provide any assurance regarding parentage and can lead post-birth legal proceedings to establish paternity or maternity of the child, leaving the child without a parent for a period of time after birth. In the absence of a parent, issues arise regarding health insurance, consent to medical procedures, and inheritance rights in the event that an intended parent dies during the contest. If the intended parent does not follow through to establish parentage, the gestational mother has no recourse and may be unable to care for the child, relying on state and federal resources.

As proposed, S.B. 2027 authorizes an individual as well as a married couple to be an intended parent by means of assisted reproduction and to enter into an agreement with a gestational mother. The bill requires the intended parents to be married if there are two parents and that both parties be a party to the agreement.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 160.102(9), Family Code, to define "intended parent."

SECTION 2. Amends Section 160.752(a), Family Code, to provide that this subchapter, notwithstanding any other provision of this chapter or another law, authorizes an agreement between a woman and the intended parent or parents of a child in which the woman relinquishes all rights as a parent of a child conceived by means of assisted reproduction and that provides that each intended parent becomes, rather than the parents become, the parent of the child. Makes a conforming change.

SECTION 3. Amends Sections 160.754(a) and (b), Family Code, as follows:

(a) Deletes existing text authorizing each donor to enter into a written agreement providing that each donor other than the intended parents, if applicable, relinquish all parental rights and duties with respect to a child conceived through assisted reproduction. Makes conforming and nonsubstantive changes.

(b) Requires the intended parents to be married if there are two intended parents. Requires the spouse of an intended parent, if that intended parent is married, to also be a party to the agreement as an intended parent and requiring the intended parents to be

married to each other. Deletes existing text requiring each intended parent to be a party to the gestational agreement.

SECTION 4. Amends Section 160.755, Family Code, to make conforming changes.

SECTION 5. Amends Sections 160.756(b) and (c), Family Code, as follows:

(b) Authorizes the court to validate a gestational agreement as provided by Subsection (c) only if the court finds that if there is an intended mother, the medical evidence provided shows that the intended mother is unable to carry the pregnancy to term and give birth to the child without unreasonable risk to her physical or mental health or to the health of the unborn child. Makes conforming changes.

(c) Makes conforming changes.

SECTION 6. Amends Section 160.759(a), Family Code, to make a conforming change.

SECTION 7. Amends Sections 160.760(a), (b), and (d), Family Code, to make conforming changes.

SECTION 8. Provides that the changes in law made by this Act apply to a gestational agreement regardless of the date the agreement was executed or a proceeding to validate the agreement was commenced.

SECTION 9. Effective date: September 1, 2009.