

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2468

By: Dunnington of the House

and

Howard of the Senate

7
8
9 COMMITTEE SUBSTITUTE

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

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

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

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

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

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

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

22 The following definitions shall apply to this act:

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

24

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

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

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

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

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

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

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

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

23 10. "Intended parent" means any person who is a United States
24 citizen and intends to become the lawful parent of a child

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 5. Have completed a mental health consultation.

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

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

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

6 1. The gestational carrier;

7 2. The gestational spouse, if applicable; and

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

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

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

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

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

22 4. If there are two intended parents that are party to a
23 gestational agreement, then they must be married to each other.
24

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

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

6 1. The gestational agreement must be in writing;

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

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

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

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

22 1. That each party to the gestational agreement consents to
23 personal jurisdiction in the courts of Oklahoma for all matters
24 connected with the gestational agreement and all matters concerning

1 the parentage of any child born as part of the gestational carrier
2 arrangement;

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

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

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

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

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

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

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

- 12 a. the rate of successful conceptions and births
13 attributable to the procedure, including the most
14 recent published outcome statistics of the procedure
15 at the facility at which it will be performed,
- 16 b. the potential for and risks associated with the
17 implantation of multiple embryos and consequent
18 multiple births resulting from the procedure,
- 19 c. the nature of and expenses related to the procedure,
- 20 d. the health risks associated with, as applicable,
21 fertility drugs used in the procedure, egg retrieval
22 procedures and egg or embryo transfer procedures, and
- 23 e. reasonably foreseeable psychological effects resulting
24 from the procedure; and

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

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

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

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

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

22 2. The gestational carrier's agreement to abstain from any
23 activities that the intended parents or the physician providing care
24 to the gestational carrier during the pregnancy reasonably believe

1 to be harmful to the pregnancy or the future health of any resulting
2 child, including, without limitation, smoking, drinking alcohol,
3 using nonprescribed drugs, using prescription drugs not authorized
4 by a physician aware of the pregnancy, exposure to radiation or any
5 other activity proscribed by a health care provider;

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

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

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

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

19 A. A gestational agreement must be validated as provided by the
20 Oklahoma Gestational Agreement Act prior to the transfer of gametes
21 or embryos to the gestational carrier for the purpose of conception
22 or implantation under a gestational carrier arrangement.

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

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

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

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

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

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

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

22 B. The parent-child relationship for a child born as a result
23 of an assisted reproduction procedure under a gestational agreement
24

1 that is not validated as provided by this act is determined as
2 otherwise provided by Oklahoma law.

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

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

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

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

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

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

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

24

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

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

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

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

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

22 5. Any party not joining the petition to validate shall be
23 served with a copy of the petition to validate and a summons in the
24 same manner as in civil cases. After being so duly served, the

1 nonjoining party shall answer and respond to the petition to
2 validate within ten (10) days and shall provide allegations and
3 evidence to aid the court in its determination of whether the
4 requirements to validate the gestational agreement have been met.
5 The failure of any nonjoining party to answer or otherwise respond
6 after being duly served shall not prevent the court from validating
7 a gestational agreement if the requirements of this act are
8 otherwise satisfied.

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

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

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

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

19 2. The parties to the gestational agreement meet all the
20 requirements set forth in this act for such parties and all
21 necessary parties to the gestational agreement have entered into the
22 gestational agreement;

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

1 4. The medical evidence provided shows that the intended mother
2 is unable to carry a pregnancy to term and give birth to a child or
3 is unable to carry a pregnancy to term and give birth to a child
4 without unreasonable risk to her physical or mental health or to the
5 health of the unborn child;

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

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

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

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

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

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

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

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

- 15 a. the right to immediate custody of and access to such
16 child upon birth,
- 17 b. the right to name such child,
- 18 c. the right to make any and all health decisions
19 regarding such child upon birth, and
- 20 d. the right to be designated as the people to be issued
21 armbands or other security devices identifying them as
22 the parents of such child. The gestational carrier
23 and any spouse of the gestational carrier shall not
24

1 receive such armbands or security devices unless it is
2 medically necessary for such child's welfare.

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

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

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

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

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

15 A. Upon the validation by the court of a gestational agreement
16 conforming with the requirements of the Oklahoma Gestational
17 Agreement Act, any child born as a result of an assisted
18 reproduction procedure to a gestational carrier under the
19 gestational agreement shall be considered at law in all respects the
20 same as a naturally conceived legitimate child of the intended
21 parents. The parent-child relationship shall exist solely between
22 such intended parents and such child regardless of the fact that the
23 gestational carrier gave birth to the child or that the spouse of
24 the gestational carrier is or was married to the gestational carrier

1 at or before the time of such birth. The gestational carrier and
2 any spouse of the gestational carrier if she is married shall have
3 no parental rights or obligations with respect to such child.

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

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

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

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

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

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

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

24

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

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

10 1. Did not result from assisted reproduction; or

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

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

1 The preceding sentence shall be interpreted as a statute of repose
2 and not as a statute of limitations.

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

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

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

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

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

23 E. A validated gestational agreement may not be amended to
24 change the identity of the gestational carrier, the gestational

1 spouse, if applicable, or any intended parent. In such instances,
2 the validated gestational agreement must be terminated in compliance
3 with the Oklahoma Gestational Agreement Act, and the gestational
4 agreement with the new parties must be validated in a separate
5 action.

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

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

14 A gestational agreement may be terminated only in compliance
15 with this section:

16 1. A gestational agreement may not be terminated after the
17 gestational carrier becomes pregnant by means of assisted
18 reproduction;

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

22 3. Any of the parties to a validated gestational agreement may
23 seek to terminate the gestational agreement by first giving written
24

1 notice of termination of the gestational agreement to each other
2 party to the gestational agreement;

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

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

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

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

23 8. Upon receipt of a notice to terminate a gestational
24 agreement, the gestational carrier shall not undergo any assisted

1 reproductive procedure to transfer any gametes or embryos to the
2 gestational carrier for the purpose of conception or implantation as
3 part of the gestational carrier arrangement unless otherwise
4 permitted by the court;

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

15 10. Notwithstanding anything in this act to the contrary,
16 within one (1) year of the termination of a gestational agreement,
17 whether validated or not, any party to the gestational agreement may
18 file a written petition with the court that terminated a gestational
19 agreement seeking to reinstate the gestational agreement and
20 requesting the court validate the gestational agreement. The party
21 filing such petition shall serve such petition on all other parties
22 to the gestational agreement in the same manner as serving a
23 petition in a civil case in Oklahoma. In any such case, the sole
24 basis upon which the court may reinstate the gestational agreement

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

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

22 Unless otherwise provided by the Oklahoma Gestational Agreement
23 Act, any proceedings conducted pursuant to this act will be governed
24 by the Code of Civil Procedure of the State of Oklahoma. All such

1 proceedings, any pleadings, motions, documents or records associated
2 therewith and the identities of the parties to a gestational
3 agreement are all to be kept confidential, and any such proceedings
4 shall be held in closed court without the admittance of any person
5 other than interested parties and their counsel. It is the intent
6 of this section that the same standards of confidentiality,
7 inspection and disclosure applied to cases of adoption in this state
8 shall apply to the proceedings and papers related to gestational
9 agreements under this act.

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

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

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

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

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

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

23 A. Any one or more donors that will be supplying any gametes or
24 embryos in connection with a gestational carrier arrangement may be,

1 but are not required to be, a party to the gestational agreement,
2 and any consents required of such donor or such donor's physician by
3 Oklahoma law may be incorporated into the gestational agreement.

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

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

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

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

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

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

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

21 A. In the event that an intended parent predeceases the birth
22 of a child contemplated by a validated gestational agreement, the
23 terms and conditions of the gestational agreement shall remain in
24 full force and effect, and upon birth the resulting child shall be

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

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

24

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

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

13 B. The divorce or separation of the gestational carrier and any
14 spouse of the gestational carrier shall not affect the validation or
15 enforceability of such gestational agreement or the ability of the
16 court to validate such gestational agreement that otherwise complies
17 with this act.

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

21 A. If a gestational agreement has been validated and if,
22 because of a laboratory error or clinical error, the resulting child
23 under such gestational agreement is not genetically related to one
24 or more of the intended parents or one or more of the donors who

1 donated to the intended parent or parents and if, in the absence of
2 such error, the child should have been so genetically related, then
3 the intended parents under the gestational agreement shall
4 nonetheless be considered the parents of the child, unless a
5 determination to the contrary is made by a court of competent
6 jurisdiction in an action which may only be brought by one or more
7 genetic parents of the resulting child within one hundred eighty
8 (180) days after the birth of the child.

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

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

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

21 B. In the event of a breach of a gestational agreement or
22 noncompliance with the requirements of this act, the court shall
23 determine the respective rights and obligations of the parties to
24

1 the gestational agreement based solely on the evidence of the
2 original intent of the parties and the provisions of this act.

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

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

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

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

20 SECTION 26. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 557.25 of Title 10, unless there
22 is created a duplication in numbering, reads as follows:
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24

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

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

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6 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/20/2019 - DO
7 PASS, As Amended and Coauthored.

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