

AMENDED IN SENATE JUNE 9, 2014

AMENDED IN ASSEMBLY APRIL 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2344

Introduced by Assembly Member Ammiano

February 21, 2014

An act to amend Sections 7962, 9001, 9002, 9006, and 9007 of, and to add Sections 7613.5 and 9000.5 to, the Family Code, relating to family law.

LEGISLATIVE COUNSEL'S DIGEST

AB 2344, as amended, Ammiano. Family law: parentage.

(1) The Uniform Parentage Act defines the parent and child relationship as the legal relationship existing between a child and the child's parents, including the mother and child relationship and the father and child relationship, and governs proceedings to establish that relationship. Under existing law the donor of semen provided to a licensed physician and surgeon or to a licensed sperm bank for use in assisted reproduction of a woman other than the donor's spouse is treated at law as if he were not the natural parent of the child thereby conceived unless otherwise agreed in a writing signed by the donor and the woman prior to the conception of the child.

This bill would establish statutory forms for assisted reproduction to provide clarity regarding a person's intent to be a legal parent if he or she is using assisted reproduction at the time of conception. The bill would state that the forms satisfy the writing requirement described above, but would state that use of the forms would not be required to satisfy that writing requirement.

(2) Existing law establishes the process by which a person may be adopted by a stepparent who is married to or is the domestic partner of the person’s parent. Existing law requires that each case of stepparent adoption be investigated by certain individuals or entities, including a probation officer, private licensed adoption agency, or county welfare department in the county in which the adoption proceeding is pending. Under existing law, the prospective adoptive parent is liable for all reasonable costs incurred in connection with the stepparent adoption, including costs incurred for the investigation. Existing law also requires the prospective adoptive parents to be examined by the court, as specified.

This bill would establish a procedure for conducting a stepparent adoption involving a spouse or partner who gave birth to the child during the marriage or domestic partnership, and would exempt these adoptions from the requirements that a home visit or home study be performed, that the prospective adoptive parent appear before the court, and that the prospective adoptive parent be liable for all reasonable costs incurred in connection with the stepparent adoption, unless otherwise ordered by the court for good cause. The bill would make related and conforming changes.

(3) Existing law requires an assisted reproduction agreement for gestational carriers to include the date on which the assisted reproduction agreement was executed, the persons from which the gametes originated, unless anonymously donated, and the identity of the intended parent or parents.

This bill would require a disclosure of the manner in which the intended parents will cover the medical expenses of the gestational carrier and of the newborn, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7613.5 is added to the Family Code, to
 2 read:
 3 7613.5. (a) An intended parent may, but is not required to, use
 4 the forms set forth in this section to demonstrate his or her intent
 5 to be a legal parent of a child conceived through assisted
 6 reproduction. These forms shall satisfy the writing requirement
 7 specified in Section 7613, and are designed to provide clarity

1 regarding the intentions, at the time of conception, of intended
2 parents using assisted reproduction. These forms do not affect any
3 presumptions of parentage based on Section 7611, and do not
4 preclude a court from considering any other claims to parentage
5 under California statute or case law.

6 (b) These forms apply only in very limited circumstances. Please
7 read the forms carefully to see if you qualify for use of the forms.

8 (c) These forms do not apply to assisted reproduction agreements
9 for gestational carriers or surrogacy agreements.

10 (d) Nothing in this section shall be interpreted to require the use
11 of one of these forms to satisfy the writing requirement of Section
12 7613.

13 (e) The following are the optional California Statutory Forms
14 for Assisted Reproduction:

15

16 **California Statutory Forms for Assisted Reproduction, Form 1:**

17

18 Married Spouses or Registered Domestic Partners Using Assisted Reproduction
19 to Conceive a Child

20

21 Use this form if: (1) You and the other person are married spouses or registered
22 domestic partners (including registered domestic partners or civil union partners
23 from another jurisdiction); (2) you and the other person are conceiving a child
24 through assisted reproduction using sperm and/or egg donation; and (3) one
25 of you will be giving birth.

26

27 WARNING: Signing this form does not terminate the parentage of a sperm
28 donor, who is only treated as a sperm donor if the sperm is provided to a
29 licensed physician or surgeon or to a licensed sperm bank prior to insemination
30 as required by Section 7613(b) of the Family Code.

31

32 The laws about parentage of a child are complicated. **You are strongly**
33 **encouraged to consult with an attorney about your rights.** Even if you do
34 not fill out this form, a spouse or domestic partner of the parent giving birth
35 is presumed to be a legal parent of any child born during the marriage or
36 domestic partnership.

37

38 _____

39

40 This form demonstrates your intent to be parents of the child you plan to
conceive through assisted reproduction using sperm and/or egg donation.

1
 2 I, _____ (print name of spouse/partner), am married to, or
 3 in a registered domestic partnership (including a registered domestic partnership
 4 or civil union from another jurisdiction) with, a person who will give birth to
 5 a child we plan to conceive through assisted reproduction using sperm and/or
 6 egg donation. I consent to the use of assisted reproduction by my
 7 spouse/domestic partner to conceive a child. I INTEND to be a parent of the
 8 child conceived.

9
10 SIGNATURES

11
 12 Intended parent who will give birth: _____ (print name)
 13 _____ (signature) _____ (date)

14
 15 Intended parent spouse or registered domestic partner: _____ (print
 16 name)
 17 _____ (signature) _____ (date)

18
19 _____

20
21 NOTARY ACKNOWLEDGMENT

22
 23 State of California
 24 County of _____)

25
 26 On _____ before me, _____
 27 (insert name and title of the officer)

28 personally appeared _____,
 29 who proved to me on the basis of satisfactory evidence to be the person(s)
 30 whose name(s) is/are subscribed to the within instrument and acknowledged
 31 to me that he/she/they executed the same in his/her/their authorized capacity,
 32 and that by his/her/their signature(s) on the instrument the person(s), or the
 33 entity upon behalf of which the person(s) acted, executed the instrument.

34
 35 I certify under PENALTY OF PERJURY under the laws of the State of
 36 California that the foregoing paragraph is true and correct.

37
38 WITNESS my hand and official seal.

39
40 Signature _____ (Seal)

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California Statutory Forms for Assisted Reproduction, Form 2:

Unmarried, Intended Parents Using Intended Parent’s Sperm to Conceive a Child

Use this form if: (1) Neither you or the other person are married or in a registered domestic partnership (including a registered domestic partnership or civil union from another state); (2) one of you will give birth to a child conceived through assisted reproduction using the intended parent’s sperm; and (3) you both intend to be parents of that child.

Do not use this form if you are conceiving using a surrogate.

WARNING: If you do not sign this form, you will be treated as a sperm donor if your sperm is provided to a licensed physician or surgeon or to a licensed sperm bank prior to insemination according to Section 7613(b) of the Family Code.

The laws about parentage of a child are complicated. **You are strongly encouraged to consult with an attorney about your rights.**

This form demonstrates your intent to be parents of the child you plan to conceive through assisted reproduction using sperm donation.

I, _____ (print name of parent giving birth), plan to use assisted reproduction with another intended parent who is providing sperm to conceive the child. I am not married and am not in a registered domestic partnership (including a registered domestic partnership or civil union from another jurisdiction), and I INTEND for the person providing sperm to be a parent of the child to be conceived.

I, _____ (print name of parent providing sperm), plan to use assisted reproduction to conceive a child using my sperm with the parent giving birth. I am not married and am not in a registered domestic partnership

1 (including a registered domestic partnership or civil union from another
2 jurisdiction), and I INTEND to be a parent of the child to be conceived.

3
4 SIGNATURES

5
6 Intended parent giving birth: _____ (print name)
7 _____ (signature) _____ (date)

8
9 Intended parent providing sperm: _____ (print name)
10 _____ (signature) _____ (date)

11
12 _____

13
14 NOTARY ACKNOWLEDGMENT

15
16 State of California
17 County of _____)

18
19 On _____ before me, _____
20 (insert name and title of the officer)

21 personally appeared _____,
22 who proved to me on the basis of satisfactory evidence to be the person(s)
23 whose name(s) is/are subscribed to the within instrument and acknowledged
24 to me that he/she/they executed the same in his/her/their authorized capacity,
25 and that by his/her/their signature(s) on the instrument the person(s), or the
26 entity upon behalf of which the person(s) acted, executed the instrument.

27
28 I certify under PENALTY OF PERJURY under the laws of the State of
29 California that the foregoing paragraph is true and correct.

30
31 WITNESS my hand and official seal.

32
33 Signature _____ (Seal)

34
35
36 _____

1 Intended Parents Conceiving a Child Using Eggs from One Parent and the
2 Other Parent Will Give Birth

3 Use this form if: You are conceiving a child using the eggs from one of you
4 and the other person will give birth to the child; (2) and you both intend to be
5 parents to that child.

6
7 Do not use this form if you are conceiving using a surrogate.

8
9 **WARNING: Signing this form does not terminate the parentage of a sperm**
10 **donor**, who is only treated as a sperm donor if the sperm is provided to a
11 licensed physician or surgeon or to a licensed sperm bank prior to insemination
12 as required by Section 7613(b) of the Family Code.

13
14 The laws about parentage of a child are complicated. **You are strongly**
15 **encouraged to consult with an attorney about your rights.**

16
17 _____

18
19 This form demonstrates your intent to be parents of the child you plan to
20 conceive through assisted reproduction using eggs from one parent and the
21 other parent will give birth to the child.

22
23 I, _____ (print name of parent giving birth), plan to use
24 assisted reproduction to conceive and give birth to a child with another person
25 who will provide eggs to conceive the child. I INTEND for the person providing
26 eggs to be a parent of the child to be conceived.

27
28 I, _____ (print name of parent providing eggs), plan to use
29 assisted reproduction to conceive a child with another person who will give
30 birth to the child conceived using my eggs. I INTEND to be a parent of the
31 child to be conceived.

32
33 SIGNATURES

34
35 Intended parent giving birth: _____ (print name)
36 _____ (signature) _____ (date)

37
38 Intended parent providing eggs: _____ (print name)
39 _____ (signature) _____ (date)

40

1 _____

2 _____

3 NOTARY ACKNOWLEDGMENT

4 _____

5 State of California

6 County of _____)

7 _____

8 On _____ before me, _____
9 (insert name and title of the officer)

10 personally appeared _____,
11 who proved to me on the basis of satisfactory evidence to be the person(s)
12 whose name(s) is/are subscribed to the within instrument and acknowledged
13 to me that he/she/they executed the same in his/her/their authorized capacity,
14 and that by his/her/their signature(s) on the instrument the person(s), or the
15 entity upon behalf of which the person(s) acted, executed the instrument.

16 _____
17 I certify under PENALTY OF PERJURY under the laws of the State of
18 California that the foregoing paragraph is true and correct.

19 _____
20 WITNESS my hand and official seal.

21 _____
22 Signature _____ (Seal)

23 _____
24 _____
25 SEC. 2. Section 7962 of the Family Code is amended to read:
26 7962. (a) An assisted reproduction agreement for gestational
27 carriers shall contain, but shall not be limited to, all of the following
28 information:

29 (1) The date on which the assisted reproduction agreement for
30 gestational carriers was executed.

31 (2) The persons from which the gametes originated, unless
32 anonymously donated.

33 (3) The identity of the intended parent or parents.

34 (4) Disclosure of how the intended parents will cover the
35 medical expenses of the gestational carrier and of the newborn or
36 newborns. If health ~~insurance~~ *care* coverage is used to cover those
37 medical expenses, the disclosure shall include a review of the
38 health ~~insurance~~ *care* policy provisions related to coverage for
39 surrogate pregnancy, including any possible liability of the
40 gestational carrier, *third-party liability liens or other insurance*

1 coverage, and any notice requirements that could ~~impact~~ *affect*
2 coverage or liability of the gestational carrier. *The review and*
3 *disclosure do not constitute legal advice. If coverage of liability*
4 *is uncertain, a statement of that fact shall be sufficient to meet the*
5 *requirements of this section.*

6 (b) Prior to executing the written assisted reproduction
7 agreement for gestational carriers, a surrogate and the intended
8 parent or intended parents shall be represented by separate
9 independent licensed attorneys of their choosing.

10 (c) The assisted reproduction agreement for gestational carriers
11 shall be executed by the parties and the signatures on the assisted
12 reproduction agreement for gestational carriers shall be notarized
13 or witnessed by an equivalent method of affirmation as required
14 in the jurisdiction where the assisted reproduction agreement for
15 gestational carriers is executed.

16 (d) The parties to an assisted reproduction agreement for
17 gestational carriers shall not undergo an embryo transfer procedure,
18 or commence injectable medication in preparation for an embryo
19 transfer for assisted reproduction purposes, until the assisted
20 reproduction agreement for gestational carriers has been fully
21 executed as required by subdivisions (b) and (c) of this section.

22 (e) An action to establish the parent-child relationship between
23 the intended parent or parents and the child as to a child conceived
24 pursuant to an assisted reproduction agreement for gestational
25 carriers may be filed before the child's birth and may be filed in
26 the county where the child is anticipated to be born, the county
27 where the intended parent or intended parents reside, the county
28 where the surrogate resides, the county where the assisted
29 reproduction agreement for gestational carriers is executed, or the
30 county where medical procedures pursuant to the agreement are
31 to be performed. A copy of the assisted reproduction agreement
32 for gestational carriers shall be lodged in the court action filed for
33 the purpose of establishing the parent-child relationship. The parties
34 to the assisted reproduction agreement for gestational carriers shall
35 attest, under penalty of perjury, and to the best of their knowledge
36 and belief, as to the parties' compliance with this section in entering
37 into the assisted reproduction agreement for gestational carriers.
38 Submitting those declarations shall not constitute a waiver, under
39 Section 912 of the Evidence Code, of the lawyer-client privilege

1 described in Article 3 (commencing with Section 950) of Chapter
2 4 of Division 8 of the Evidence Code.

3 (f) (1) A notarized assisted reproduction agreement for
4 gestational carriers signed by all the parties, with the attached
5 declarations of independent attorneys, and lodged with the superior
6 court in accordance with this section, shall rebut any presumptions
7 contained within Part 2 (commencing with Section 7540),
8 subdivision (b) of Section 7610, and Sections 7611 and 7613, as
9 to the gestational carrier surrogate, her spouse, or partner being a
10 parent of the child or children.

11 (2) Upon petition of any party to a properly executed assisted
12 reproduction agreement for gestational carriers, the court shall
13 issue a judgment or order establishing a parent-child relationship,
14 whether pursuant to Section 7630 or otherwise. The judgment or
15 order may be issued before or after the child's or children's birth
16 subject to the limitations of Section 7633. Subject to proof of
17 compliance with this section, the judgment or order shall establish
18 the parent-child relationship of the intended parent or intended
19 parents identified in the surrogacy agreement and shall establish
20 that the surrogate, her spouse, or partner is not a parent of, and has
21 no parental rights or duties with respect to, the child or children.
22 The judgment or order shall terminate any parental rights of the
23 surrogate and her spouse or partner without further hearing or
24 evidence, unless the court or a party to the assisted reproduction
25 agreement for gestational carriers has a good faith, reasonable
26 belief that the assisted reproduction agreement for gestational
27 carriers or attorney declarations were not executed in accordance
28 with this section. Upon motion by a party to the assisted
29 reproduction agreement for gestational carriers, the matter shall
30 be scheduled for hearing before a judgment or order is issued.
31 Nothing in this section shall be construed to prevent a court from
32 finding and declaring that the intended parent is or intended parents
33 are the parent or parents of the child where compliance with this
34 section has not been met; however, the court shall require sufficient
35 proof entitling the parties to the relief sought.

36 (g) The petition, relinquishment or consent, agreement, order,
37 report to the court from any investigating agency, and any power
38 of attorney and deposition filed in the office of the clerk of the
39 court pursuant to this part shall not be open to inspection by any
40 person other than the parties to the proceeding and their attorneys

1 and the State Department of Social Services, except upon the
2 written authority of a judge of the superior court. A judge of the
3 superior court shall not authorize anyone to inspect the petition,
4 relinquishment or consent, agreement, order, report to the court
5 from any investigating agency, or power of attorney or deposition,
6 or any portion of those documents, except in exceptional
7 circumstances and where necessary. The petitioner may be required
8 to pay the expense of preparing the copies of the documents to be
9 inspected.

10 (h) Upon the written request of any party to the proceeding and
11 the order of any judge of the superior court, the clerk of the court
12 shall not provide any documents referred to in subdivision (g) for
13 inspection or copying to any other person, unless the name of the
14 gestational carrier or any information tending to identify the
15 gestational carrier is deleted from the documents or copies thereof.

16 (i) An assisted reproduction agreement for gestational carriers
17 executed in accordance with this section is presumptively valid
18 and shall not be rescinded or revoked without a court order. For
19 purposes of this part, any failure to comply with the requirements
20 of this section shall rebut the presumption of the validity of the
21 assisted reproduction agreement for gestational carriers.

22 SEC. 3. Section 9000.5 is added to the Family Code, to read:

23 9000.5. (a) Stepparent adoptions where one of the spouses or
24 partners gave birth to the child during the marriage or domestic
25 partnership, including a registered domestic partnership or civil
26 union from another jurisdiction, shall follow the procedure
27 provided by this section. Unless otherwise provided in this section,
28 the procedures for stepparent adoptions apply.

29 (b) The following are not required in stepparent adoptions under
30 this section unless otherwise ordered by the court for good cause:

31 (1) A home investigation pursuant to Section 9001 or a home
32 study.

33 (2) Costs incurred pursuant to Section 9002.

34 (3) A hearing pursuant to Section 9007.

35 (c) For stepparent adoptions filed under this section, the
36 following shall be filed with the petition for adoption:

37 (1) A copy of the parties' marriage certificate, registered
38 domestic partner certificate, or civil union from another
39 jurisdiction.

40 (2) A copy of the child's birth certificate.

1 (3) Declarations by the parent who gave birth and the spouse
2 or partner who is adopting explaining the circumstances of the
3 child's conception in detail sufficient to identify whether there
4 may be other persons with a claim to parentage of the child who
5 is required to be provided notice of, or who must consent to, the
6 adoption.

7 (d) The court may order a hearing to ascertain whether there
8 are additional persons who must be provided notice of, or who
9 must consent to, the adoption if it appears from the face of the
10 pleadings and the evidence that proper notice or consent have not
11 been provided.

12 (e) The court shall grant the stepparent adoption under this
13 section upon finding both of the following:

14 (1) That the parent who gave birth and the spouse or partner
15 who is adopting were married or in a domestic partnership,
16 including a registered domestic partnership or civil union from
17 another jurisdiction, at the time of the child's birth.

18 (2) Any other person with a claim to parentage of the child who
19 is required to be provided notice of, or who must consent to, the
20 adoption has been noticed or provided consent to the adoption.

21 SEC. 4. Section 9001 of the Family Code is amended to read:

22 9001. (a) Except as provided in Section 9000.5, the probation
23 officer, qualified court investigator, licensed clinical social worker,
24 licensed marriage family therapist, private licensed adoption
25 agency, or, at the option of the board of supervisors, the county
26 welfare department in the county in which the adoption proceeding
27 is pending shall make an investigation of each case of stepparent
28 adoption. The court may not make an order of adoption until after
29 the probation officer, qualified court investigator, licensed clinical
30 social worker, licensed marriage family therapist, private licensed
31 adoption agency, or county welfare department has filed its report
32 and recommendation and they have been considered by the court.

33 (b) If a private licensed adoption agency conducts the
34 investigation, it shall assign the investigation to a licensed clinical
35 social worker or licensed marriage and family therapist associated
36 with the agency. Any grievance regarding the investigation shall
37 be directed to the licensing authority of the clinical social worker
38 or marriage and family therapist, as applicable.

39 (c) Unless ordered by the court, no home study may be required
40 of the petitioner's home in a stepparent adoption. The agency

1 conducting the investigation or any interested person may request
2 the court to order a home study or the court may order a home
3 study on its own motion.

4 (d) “Home study” as used in this section means a physical
5 investigation of the premises where the child is residing.

6 (e) Nothing in this section shall be construed to require the State
7 Department of Social Services to issue regulations for stepparent
8 adoptions.

9 SEC. 5. Section 9002 of the Family Code is amended to read:

10 9002. Except as provided in Section 9000.5, in a stepparent
11 adoption, the prospective adoptive parent is liable for all reasonable
12 costs incurred in connection with the stepparent adoption,
13 including, but not limited to, costs incurred for the investigation
14 required by Section 9001, up to a maximum of seven hundred
15 dollars (\$700). The court, probation officer, qualified court
16 investigator, or county welfare department may defer, waive, or
17 reduce the fee if its payment would cause economic hardship to
18 the prospective adoptive parent detrimental to the welfare of the
19 adopted child.

20 SEC. 6. Section 9006 of the Family Code is amended to read:

21 9006. (a) If the petitioner moves to withdraw the adoption
22 petition or to dismiss the proceeding, the court clerk shall
23 immediately notify the probation officer, qualified court
24 investigator, or county welfare department of the action, unless a
25 home investigation was not required pursuant to Section 9000.5.

26 (b) If a birth parent has refused to give the required consent, the
27 adoption petition shall be dismissed.

28 SEC. 7. Section 9007 of the Family Code is amended to read:

29 9007. Except as provided in Section 9000.5, the prospective
30 adoptive parent and the child proposed to be adopted shall appear
31 before the court pursuant to Sections 8612, 8613, and 8613.5.