

AMENDED IN ASSEMBLY MARCH 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2349

Introduced by Assembly Member Chiu

February 18, 2016

An act to amend ~~Section 298~~ *Sections 7620 and 7962* of the Family Code, relating to ~~domestic partners~~: *assisted reproduction*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2349, as amended, Chiu. ~~Domestic partners~~. *Assisted reproduction agreements for gestational carriers.*

The Uniform Parentage Act defines the parent and child relationship as the legal relationship existing between a child and the child's parents, governs proceedings to establish that relationship, and establishes the jurisdiction of the courts under the act. Existing law provides that a party to an assisted reproduction agreement may bring an action under the act at any time to establish a parent and child relationship consistent with the intent expressed in that assisted reproduction agreement. Existing law allows an action to establish the parent-child relationship between the intended parent or parents and the child as to a child conceived pursuant to an assisted reproduction agreement for gestational carriers to be filed before the child's birth and specifies the counties where that action may be filed.

This bill would extend the jurisdiction of the courts under the act to a proceeding to determine parentage of the child as to a child who is conceived pursuant to an assisted reproduction agreement for gestational carriers if certain conditions are satisfied, including if the child is born in this state, or one or more of the parties to the assisted reproduction agreement for gestational carriers resides in this state or

resided in this state at the time the assisted reproduction agreement for gestational carriers was executed.

Existing law requires an assisted reproduction agreement for gestational carriers to contain specified information, including the persons from which the gametes originated, unless anonymously donated.

This bill would instead require an assisted reproduction agreement for gestational carriers to contain information regarding the persons from whom the gametes originated, unless donated gametes were used, in which case the agreement shall specify whether the donated gamete or gametes were eggs, sperm, or embryos, or all.

~~Existing law authorizes 2 unmarried, unrelated adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring to establish a domestic partnership by filing a Declaration of Domestic Partnership with the Secretary of State if both persons are members of the same sex or one or both are over 62 years of age. Existing law requires the Secretary of State to prepare the form for the Declaration of Domestic Partnership pursuant to specified requirements. The Declaration of Domestic Partnership requires, among other things, each person who wants to become a domestic partner to provide a mailing address.~~

~~This bill would make technical, nonsubstantive changes to this provision.~~

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

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

- 1 *SECTION 1. Section 7620 of the Family Code is amended to*
- 2 *read:*
- 3 7620. (a) A person who has sexual intercourse or causes
- 4 conception with the intent to become a legal parent by assisted
- 5 reproduction in this—state state, or who enters into an assisted
- 6 reproduction agreement for gestational carriers in this state,
- 7 thereby submits to the jurisdiction of the courts of this state as to
- 8 an action brought under this part with respect to a child who may
- 9 have been conceived by that act of intercourse or assisted
- 10 reproduction.
- 11 (b) *If a child is conceived pursuant to an assisted reproduction*
- 12 *agreement for gestational carriers, as defined in Section 7960 and*

1 *as described in Section 7962, the courts of this state shall have*
2 *jurisdiction over a proceeding to determine parentage of the child*
3 *if any of the following conditions is satisfied:*

4 (1) *One or more of the parties to the assisted reproduction*
5 *agreement for gestational carriers resides in this state, or resided*
6 *in this state at the time the assisted reproduction agreement for*
7 *gestational carriers was executed.*

8 (2) *The medical procedures leading to conception, including in*
9 *vitro fertilization or embryo transfer, or both, were carried out in*
10 *this state.*

11 (3) *The child is born in this state.*

12 ~~(b)~~

13 (c) *An action under this part shall be brought in one of the*
14 *following:*

15 (1) *The county in which the child resides or is found.*

16 (2) *If the child is the subject of a pending or proposed adoption,*
17 *any county in which a licensed California adoption agency to which*
18 *the child has been relinquished or is proposed to be relinquished*
19 *maintains an office.*

20 (3) *If the child is the subject of a pending or proposed adoption,*
21 *the county in which an office of the department or a public adoption*
22 *agency investigating the petition is located.*

23 (4) *If the parent is deceased, the county in which proceedings*
24 *for probate of the estate of the parent of the child have been or*
25 *could be commenced.*

26 (5) *If the child was conceived pursuant to an assisted*
27 *reproduction agreement for gestational carriers, any county*
28 *described in subdivision (e) of Section 7962.*

29 *SEC. 2. Section 7962 of the Family Code is amended to read:*

30 7962. (a) *An assisted reproduction agreement for gestational*
31 *carriers shall contain, but shall not be limited to, all of the following*
32 *information:*

33 (1) *The date on which the assisted reproduction agreement for*
34 *gestational carriers was executed.*

35 (2) *The persons from which the gametes originated, unless*
36 ~~*anonymously donated.*~~ *donated gametes were used, in which case*
37 *the assisted reproduction agreement does not need to specify the*
38 *name of the donor but shall specify whether the donated gamete*
39 *or gametes were eggs, sperm, or embryos, or all.*

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

1 (4) Disclosure of how the intended parents will cover the
2 medical expenses of the gestational carrier and of the newborn or
3 newborns. If health care coverage is used to cover those medical
4 expenses, the disclosure shall include a review of the health care
5 policy provisions related to coverage for surrogate pregnancy,
6 including any possible liability of the gestational carrier, third-party
7 liability liens or other insurance coverage, and any notice
8 requirements that could affect coverage or liability of the
9 gestational carrier. The review and disclosure do not constitute
10 legal advice. If coverage of liability is uncertain, a statement of
11 that fact shall be sufficient to meet the requirements of this section.

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

16 (c) The assisted reproduction agreement for gestational carriers
17 shall be executed by the parties and the signatures on the assisted
18 reproduction agreement for gestational carriers shall be notarized
19 or witnessed by an equivalent method of affirmation as required
20 in the jurisdiction where the assisted reproduction agreement for
21 gestational carriers is executed.

22 (d) The parties to an assisted reproduction agreement for
23 gestational carriers shall not undergo an embryo transfer procedure,
24 or commence injectable medication in preparation for an embryo
25 transfer for assisted reproduction purposes, until the assisted
26 reproduction agreement for gestational carriers has been fully
27 executed as required by subdivisions (b) and (c) of this section.

28 (e) An action to establish the parent-child relationship between
29 the intended parent or parents and the child as to a child conceived
30 pursuant to an assisted reproduction agreement for gestational
31 carriers may be filed before the child's birth and may be filed in
32 the county where the child is anticipated to be born, the county
33 where the intended parent or intended parents reside, the county
34 where the surrogate resides, the county where the assisted
35 reproduction agreement for gestational carriers is executed, or the
36 county where medical procedures pursuant to the agreement are
37 to be performed. A copy of the assisted reproduction agreement
38 for gestational carriers shall be lodged in the court action filed for
39 the purpose of establishing the parent-child relationship. The parties
40 to the assisted reproduction agreement for gestational carriers shall

1 attest, under penalty of perjury, and to the best of their knowledge
2 and belief, as to the parties' compliance with this section in entering
3 into the assisted reproduction agreement for gestational carriers.
4 Submitting those declarations shall not constitute a waiver, under
5 Section 912 of the Evidence Code, of the lawyer-client privilege
6 described in Article 3 (commencing with Section 950) of Chapter
7 4 of Division 8 of the Evidence Code.

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

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

1 (g) The petition, relinquishment or consent, agreement, order,
 2 report to the court from any investigating agency, and any power
 3 of attorney and deposition filed in the office of the clerk of the
 4 court pursuant to this part shall not be open to inspection by any
 5 person other than the parties to the proceeding and their attorneys
 6 and the State Department of Social Services, except upon the
 7 written authority of a judge of the superior court. A judge of the
 8 superior court shall not authorize anyone to inspect the petition,
 9 relinquishment or consent, agreement, order, report to the court
 10 from any investigating agency, or power of attorney or deposition,
 11 or any portion of those documents, except in exceptional
 12 circumstances and where necessary. The petitioner may be required
 13 to pay the expense of preparing the copies of the documents to be
 14 inspected.

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

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

27 ~~SECTION 1. Section 298 of the Family Code is amended to~~
 28 ~~read:~~

29 ~~298. (a) (1) The Secretary of State shall prepare forms entitled~~
 30 ~~“Declaration of Domestic Partnership” and “Notice of Termination~~
 31 ~~of Domestic Partnership” to meet the requirements of this division.~~
 32 ~~These forms shall require the signature and seal of an~~
 33 ~~acknowledgment by a notary public to be binding and valid.~~

34 ~~(2) When funding allows, the Secretary of State shall include~~
 35 ~~on the form notice that a lesbian, gay, bisexual, and transgender~~
 36 ~~specific domestic abuse brochure is available upon request.~~

37 ~~(b) (1) The Secretary of State shall distribute these forms to~~
 38 ~~each county clerk. These forms shall be available to the public at~~
 39 ~~the office of the Secretary of State and each county clerk.~~

1 ~~(2) The Secretary of State shall, by regulation, establish fees~~
2 ~~for the actual costs of processing each of these forms, and the cost~~
3 ~~for preparing and sending the mailings and notices required~~
4 ~~pursuant to Section 299.3, and shall charge these fees to persons~~
5 ~~filing the forms.~~

6 ~~(3) There is hereby established a fee of twenty-three dollars~~
7 ~~(\$23) to be charged in addition to the existing fees established by~~
8 ~~regulation to persons filing domestic partner registrations pursuant~~
9 ~~to Section 297 for development and support of a lesbian, gay,~~
10 ~~bisexual, and transgender curriculum for training workshops on~~
11 ~~domestic violence, conducted pursuant to Section 13823.15 of the~~
12 ~~Penal Code, and for the support of a grant program to promote~~
13 ~~healthy nonviolent relationships in the lesbian, gay, bisexual, and~~
14 ~~transgender community. This paragraph shall not apply to persons~~
15 ~~of opposite sexes filing a domestic partnership registration and~~
16 ~~who meet the qualifications described in subparagraph (B) of~~
17 ~~paragraph (5) of subdivision (b) of Section 297.~~

18 ~~(4) The fee established by paragraph (3) shall be deposited in~~
19 ~~the Equality in Prevention and Services for Domestic Abuse Fund,~~
20 ~~which is hereby established. The fund shall be administered by~~
21 ~~the Office of Emergency Services, and expenditures from the fund~~
22 ~~shall be used to support the purposes of paragraph (3).~~

23 ~~(e) The Declaration of Domestic Partnership shall require each~~
24 ~~person who wants to become a domestic partner to do all of the~~
25 ~~following:~~

26 ~~(1) State that he or she meets the requirements of Section 297~~
27 ~~at the time the form is signed.~~

28 ~~(2) Provide a mailing address.~~

29 ~~(3) State that he or she consents to the jurisdiction of the~~
30 ~~Superior Courts of California for the purpose of a proceeding to~~
31 ~~obtain a judgment of dissolution or nullity of the domestic~~
32 ~~partnership or for legal separation of partners in the domestic~~
33 ~~partnership, or for any other proceeding related to the partners'~~
34 ~~rights and obligations, even if one or both partners ceases to be a~~
35 ~~resident of, or to maintain a domicile in, this state.~~

36 ~~(4) Sign the form with a declaration that representations made~~
37 ~~therein are true, correct, and contain no material omissions of fact~~
38 ~~to the best knowledge and belief of the applicant.~~

39 ~~(5) Have a notary public acknowledge his or her signature. Both~~
40 ~~partners' signatures shall be affixed to one Declaration of Domestic~~

1 ~~Partnership form, which form shall then be transmitted to the~~
2 ~~Secretary of State according to the instructions provided on the~~
3 ~~form. Filing an intentionally and materially false Declaration of~~
4 ~~Domestic Partnership shall be punishable as a misdemeanor.~~
5 ~~(d) The Declaration of Domestic Partnership form shall contain~~
6 ~~an optional section for either party or both parties to indicate a~~
7 ~~change in name pursuant to Section 298.6. The optional section~~
8 ~~shall require a party indicating a change in name to provide his or~~
9 ~~her date of birth.~~

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