

AMENDED IN ASSEMBLY MARCH 31, 2016

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CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2349

Introduced by Assembly Member Chiu

February 18, 2016

An act to amend Sections 7620 and 7962 of the Family Code, relating to assisted reproduction.

LEGISLATIVE COUNSEL'S DIGEST

AB 2349, as amended, Chiu. 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.

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, or who enters into an assisted
6 reproduction agreement for gestational carriers in this state, thereby
7 submits to the jurisdiction of the courts of this state as to an action
8 brought under this part with respect to a child who may have been
9 conceived by that act of intercourse or assisted ~~reproduction.~~
10 *reproduction, or who may have been conceived as a result of that*
11 *assisted reproduction agreement.*

12 (b) If a child is conceived pursuant to an assisted reproduction
13 agreement for gestational carriers, as defined in Section 7960 and
14 as described in Section 7962, the courts of this state shall have
15 jurisdiction over a proceeding to determine parentage of the child
16 if any of the following conditions is satisfied:

17 (1) One or more of the parties to the assisted reproduction
18 agreement for gestational carriers resides in this state, or resided
19 in this state at the time the assisted reproduction agreement for
20 gestational carriers was executed.

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

4 (3) The child is born in this state.

5 (c) An action under this part shall be brought in one of the
6 following:

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

8 (2) If the child is the subject of a pending or proposed adoption,
9 any county in which a licensed California adoption agency to which
10 the child has been relinquished or is proposed to be relinquished
11 maintains an office.

12 (3) If the child is the subject of a pending or proposed adoption,
13 the county in which an office of the department or a public adoption
14 agency investigating the petition is located.

15 (4) If the parent is deceased, the county in which proceedings
16 for probate of the estate of the parent of the child have been or
17 could be commenced.

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

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

22 7962. (a) An assisted reproduction agreement for gestational
23 carriers shall contain, but shall not be limited to, all of the following
24 information:

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

27 (2) The persons from which the gametes originated, unless
28 donated gametes were used, in which case the assisted reproduction
29 agreement does not need to specify the name of the donor but shall
30 specify whether the donated gamete or gametes were eggs, sperm,
31 or embryos, or all.

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

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

1 gestational carrier. The review and disclosure do not constitute
2 legal advice. If coverage of liability is uncertain, a statement of
3 that fact shall be sufficient to meet the requirements of this section.

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

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

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

20 (e) An action to establish the parent-child relationship between
21 the intended parent or parents and the child as to a child conceived
22 pursuant to an assisted reproduction agreement for gestational
23 carriers may be filed before the child's birth and may be filed in
24 the county where the child is anticipated to be born, the county
25 where the intended parent or intended parents reside, the county
26 where the surrogate resides, the county where the assisted
27 reproduction agreement for gestational carriers is executed, or the
28 county where medical procedures pursuant to the agreement are
29 to be performed. A copy of the assisted reproduction agreement
30 for gestational carriers shall be lodged in the court action filed for
31 the purpose of establishing the parent-child relationship. The parties
32 to the assisted reproduction agreement for gestational carriers shall
33 attest, under penalty of perjury, and to the best of their knowledge
34 and belief, as to the parties' compliance with this section in entering
35 into the assisted reproduction agreement for gestational carriers.
36 Submitting those declarations shall not constitute a waiver, under
37 Section 912 of the Evidence Code, of the lawyer-client privilege
38 described in Article 3 (commencing with Section 950) of Chapter
39 4 of Division 8 of the Evidence Code.

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

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

34 (g) The petition, relinquishment or consent, agreement, order,
35 report to the court from any investigating agency, and any power
36 of attorney and deposition filed in the office of the clerk of the
37 court pursuant to this part shall not be open to inspection by any
38 person other than the parties to the proceeding and their attorneys
39 and the State Department of Social Services, except upon the
40 written authority of a judge of the superior court. A judge of the

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

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

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