

AMENDED IN ASSEMBLY MAY 23, 2016
AMENDED IN ASSEMBLY MARCH 31, 2016
AMENDED IN ASSEMBLY MARCH 18, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2349

Introduced by Assembly Member Chiu
(Coauthors: Assembly Members Eggman and Gordon)

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. The Legislature finds and declares both of the*
- 2 *following:*
- 3 *(a) California courts already have subject matter jurisdiction*
- 4 *over actions involving an assisted reproduction agreement between*
- 5 *a surrogate and an intended parent or parents under Section 7630*
- 6 *of the Family Code. However, current law does not explicitly*
- 7 *provide that California courts have subject matter jurisdiction or*
- 8 *clearly explain the circumstances under which subject matter*
- 9 *jurisdiction exists.*
- 10 *(b) Many intended parents and surrogates enter into assisted*
- 11 *reproduction agreements in California in which one or more of*
- 12 *the parties end up living in another state. California court orders*
- 13 *regarding the parentage of a child born through surrogacy must*
- 14 *be given full faith and credit only if the issuing court had subject*
- 15 *matter jurisdiction. For these reasons, California has an interest*
- 16 *in clarifying that California courts have subject matter jurisdiction*
- 17 *over assisted reproduction agreements between a surrogate and*
- 18 *an intended parent or parents if one or more parties resides in*
- 19 *California, any medical procedures leading to conception occurs*
- 20 *in California, or the child is born in California.*

1 **SECTION 1.**

2 *SEC. 2.* Section 7620 of the Family Code is amended to 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, or
10 who may have been conceived as a result of that assisted
11 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.

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

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

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

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

28 (2) If the child is the subject of a pending or proposed adoption,
29 any county in which a licensed California adoption agency to which
30 the child has been relinquished or is proposed to be relinquished
31 maintains an office.

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

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

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

1 ~~SEC. 2.~~

2 SEC. 3. Section 7962 of the Family Code is amended to read:

3 7962. (a) An assisted reproduction agreement for gestational
4 carriers shall contain, but shall not be limited to, all of the following
5 information:

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

8 (2) The persons from which the gametes originated, unless
9 donated gametes were used, in which case the assisted reproduction
10 agreement does not need to specify the name of the donor but shall
11 specify whether the donated gamete or gametes were eggs, sperm,
12 or embryos, or all.

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

14 (4) Disclosure of how the intended parents will cover the
15 medical expenses of the gestational carrier and of the newborn or
16 newborns. If health care coverage is used to cover those medical
17 expenses, the disclosure shall include a review of the health care
18 policy provisions related to coverage for surrogate pregnancy,
19 including any possible liability of the gestational carrier, third-party
20 liability liens or other insurance coverage, and any notice
21 requirements that could affect coverage or liability of the
22 gestational carrier. The review and disclosure do not constitute
23 legal advice. If coverage of liability is uncertain, a statement of
24 that fact shall be sufficient to meet the requirements of this section.

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

29 (c) The assisted reproduction agreement for gestational carriers
30 shall be executed by the parties and the signatures on the assisted
31 reproduction agreement for gestational carriers shall be notarized
32 or witnessed by an equivalent method of affirmation as required
33 in the jurisdiction where the assisted reproduction agreement for
34 gestational carriers is executed.

35 (d) The parties to an assisted reproduction agreement for
36 gestational carriers shall not undergo an embryo transfer procedure,
37 or commence injectable medication in preparation for an embryo
38 transfer for assisted reproduction purposes, until the assisted
39 reproduction agreement for gestational carriers has been fully
40 executed as required by subdivisions (b) and (c) of this section.

1 (e) An action to establish the parent-child relationship between
2 the intended parent or parents and the child as to a child conceived
3 pursuant to an assisted reproduction agreement for gestational
4 carriers may be filed before the child's birth and may be filed in
5 the county where the child is anticipated to be born, the county
6 where the intended parent or intended parents reside, the county
7 where the surrogate resides, the county where the assisted
8 reproduction agreement for gestational carriers is executed, or the
9 county where medical procedures pursuant to the agreement are
10 to be performed. A copy of the assisted reproduction agreement
11 for gestational carriers shall be lodged in the court action filed for
12 the purpose of establishing the parent-child relationship. The parties
13 to the assisted reproduction agreement for gestational carriers shall
14 attest, under penalty of perjury, and to the best of their knowledge
15 and belief, as to the parties' compliance with this section in entering
16 into the assisted reproduction agreement for gestational carriers.
17 Submitting those declarations shall not constitute a waiver, under
18 Section 912 of the Evidence Code, of the lawyer-client privilege
19 described in Article 3 (commencing with Section 950) of Chapter
20 4 of Division 8 of the Evidence Code.

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

29 (2) Upon petition of any party to a properly executed assisted
30 reproduction agreement for gestational carriers, the court shall
31 issue a judgment or order establishing a parent-child relationship,
32 whether pursuant to Section 7630 or otherwise. The judgment or
33 order may be issued before or after the child's or children's birth
34 subject to the limitations of Section 7633. Subject to proof of
35 compliance with this section, the judgment or order shall establish
36 the parent-child relationship of the intended parent or intended
37 parents identified in the surrogacy agreement and shall establish
38 that the surrogate, her spouse, or partner is not a parent of, and has
39 no parental rights or duties with respect to, the child or children.
40 The judgment or order shall terminate any parental rights of the

1 surrogate and her spouse or partner without further hearing or
2 evidence, unless the court or a party to the assisted reproduction
3 agreement for gestational carriers has a good faith, reasonable
4 belief that the assisted reproduction agreement for gestational
5 carriers or attorney declarations were not executed in accordance
6 with this section. Upon motion by a party to the assisted
7 reproduction agreement for gestational carriers, the matter shall
8 be scheduled for hearing before a judgment or order is issued.
9 Nothing in this section shall be construed to prevent a court from
10 finding and declaring that the intended parent is or intended parents
11 are the parent or parents of the child where compliance with this
12 section has not been met; however, the court shall require sufficient
13 proof entitling the parties to the relief sought.

14 (g) The petition, relinquishment or consent, agreement, order,
15 report to the court from any investigating agency, and any power
16 of attorney and deposition filed in the office of the clerk of the
17 court pursuant to this part shall not be open to inspection by any
18 person other than the parties to the proceeding and their attorneys
19 and the State Department of Social Services, except upon the
20 written authority of a judge of the superior court. A judge of the
21 superior court shall not authorize anyone to inspect the petition,
22 relinquishment or consent, agreement, order, report to the court
23 from any investigating agency, or power of attorney or deposition,
24 or any portion of those documents, except in exceptional
25 circumstances and where necessary. The petitioner may be required
26 to pay the expense of preparing the copies of the documents to be
27 inspected.

28 (h) Upon the written request of any party to the proceeding and
29 the order of any judge of the superior court, the clerk of the court
30 shall not provide any documents referred to in subdivision (g) for
31 inspection or copying to any other person, unless the name of the
32 gestational carrier or any information tending to identify the
33 gestational carrier is deleted from the documents or copies thereof.

34 (i) An assisted reproduction agreement for gestational carriers
35 executed in accordance with this section is presumptively valid
36 and shall not be rescinded or revoked without a court order. For
37 purposes of this part, any failure to comply with the requirements

- 1 of this section shall rebut the presumption of the validity of the
- 2 assisted reproduction agreement for gestational carriers.

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