

AMENDED IN SENATE AUGUST 10, 2016

AMENDED IN ASSEMBLY MAY 23, 2016

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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~~ 7613, 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.

Existing law provides that the donor of ova for use in assisted reproduction by a woman other than the donor’s spouse or partner is treated in law as if she were not the natural parent of a child thereby conceived, unless the court finds satisfactory evidence that the donor and the woman intended for the donor to be a parent.

This bill would replace the term “woman” with “person” in those provisions.

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 the

1 parties end up living in another state. California court orders
2 regarding the parentage of a child born through surrogacy must
3 be given full faith and credit only if the issuing court had subject
4 matter jurisdiction. For these reasons, California has an interest in
5 clarifying that California courts have subject matter jurisdiction
6 over assisted reproduction agreements between a surrogate and an
7 intended parent or parents if one or more parties resides in
8 California, any medical procedures leading to conception occurs
9 in California, or the child is born in California.

10 *SEC. 2. Section 7613 of the Family Code is amended to read:*

11 7613. (a) If a woman conceives through assisted reproduction
12 with semen or ova or both donated by a donor not her spouse, with
13 the consent of another intended parent, that intended parent is
14 treated in law as if he or she were the natural parent of a child
15 thereby conceived. The other intended parent's consent shall be
16 in writing and signed by the other intended parent and the woman
17 conceiving through assisted reproduction.

18 (b) (1) The donor of semen provided to a licensed physician
19 and surgeon or to a licensed sperm bank for use in assisted
20 reproduction by a woman other than the donor's spouse is treated
21 in law as if he were not the natural parent of a child thereby
22 conceived, unless otherwise agreed to in a writing signed by the
23 donor and the woman prior to the conception of the child.

24 (2) If the semen is not provided to a licensed physician and
25 surgeon or a licensed sperm bank as specified in paragraph (1),
26 the donor of semen for use in assisted reproduction by a woman
27 other than the donor's spouse is treated in law as if he were not
28 the natural parent of a child thereby conceived if either of the
29 following are met:

30 (A) The donor and the woman agreed in a writing signed prior
31 to conception that the donor would not be a parent.

32 (B) A court finds by clear and convincing evidence that the
33 child was conceived through assisted reproduction and that, prior
34 to the conception of the child, the woman and the donor had an
35 oral agreement that the donor would not be a parent.

36 (3) Paragraphs (1) and (2) do not apply to a man who provided
37 semen for use in assisted reproduction by a woman other than the
38 man's spouse pursuant to a written agreement signed by the man
39 and the woman prior to conception of the child stating that they
40 intended for the man to be a parent.

1 (c) The donor of ova for use in assisted reproduction by a ~~woman~~
2 *person* other than the donor's spouse or nonmarital partner is
3 treated in law as if ~~she~~ *the donor* were not the natural parent of a
4 child thereby conceived unless the court finds satisfactory evidence
5 that the donor and the ~~woman~~ *person* intended for the donor to be
6 a parent.

7 ~~SEC. 2.~~

8 *SEC. 3.* Section 7620 of the Family Code is amended to read:

9 7620. (a) A person who has sexual intercourse or causes
10 conception with the intent to become a legal parent by assisted
11 reproduction in this state, or who enters into an assisted
12 reproduction agreement for gestational carriers in this state, thereby
13 submits to the jurisdiction of the courts of this state as to an action
14 brought under this part with respect to a child who may have been
15 conceived by that act of intercourse or assisted reproduction, or
16 who may have been conceived as a result of that assisted
17 reproduction agreement.

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

23 (1) One or more of the parties to the assisted reproduction
24 agreement for gestational carriers resides in this state, or resided
25 in this state at the time the assisted reproduction agreement for
26 gestational carriers was executed.

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

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

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

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

34 (2) If the child is the subject of a pending or proposed adoption,
35 any county in which a licensed California adoption agency to which
36 the child has been relinquished or is proposed to be relinquished
37 maintains an office.

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

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

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

7 ~~SEC. 3.~~

8 *SEC. 4.* Section 7962 of the Family Code is amended to read:

9 7962. (a) An assisted reproduction agreement for gestational
10 carriers shall contain, but shall not be limited to, all of the following
11 information:

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

14 (2) The persons from which the gametes originated, unless
15 donated gametes were used, in which case the assisted reproduction
16 agreement does not need to specify the name of the donor but shall
17 specify whether the donated gamete or gametes were eggs, sperm,
18 or embryos, or all.

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

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

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

35 (c) The assisted reproduction agreement for gestational carriers
36 shall be executed by the parties and the signatures on the assisted
37 reproduction agreement for gestational carriers shall be notarized
38 or witnessed by an equivalent method of affirmation as required
39 in the jurisdiction where the assisted reproduction agreement for
40 gestational carriers is executed.

1 (d) The parties to an assisted reproduction agreement for
2 gestational carriers shall not undergo an embryo transfer procedure,
3 or commence injectable medication in preparation for an embryo
4 transfer for assisted reproduction purposes, until the assisted
5 reproduction agreement for gestational carriers has been fully
6 executed as required by subdivisions (b) and (c) of this section.

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

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

35 (2) Upon petition of any party to a properly executed assisted
36 reproduction agreement for gestational carriers, the court shall
37 issue a judgment or order establishing a parent-child relationship,
38 whether pursuant to Section 7630 or otherwise. The judgment or
39 order may be issued before or after the child's or children's birth
40 subject to the limitations of Section 7633. Subject to proof of

1 compliance with this section, the judgment or order shall establish
2 the parent-child relationship of the intended parent or intended
3 parents identified in the surrogacy agreement and shall establish
4 that the surrogate, her spouse, or partner is not a parent of, and has
5 no parental rights or duties with respect to, the child or children.
6 The judgment or order shall terminate any parental rights of the
7 surrogate and her spouse or partner without further hearing or
8 evidence, unless the court or a party to the assisted reproduction
9 agreement for gestational carriers has a good faith, reasonable
10 belief that the assisted reproduction agreement for gestational
11 carriers or attorney declarations were not executed in accordance
12 with this section. Upon motion by a party to the assisted
13 reproduction agreement for gestational carriers, the matter shall
14 be scheduled for hearing before a judgment or order is issued.
15 Nothing in this section shall be construed to prevent a court from
16 finding and declaring that the intended parent is or intended parents
17 are the parent or parents of the child where compliance with this
18 section has not been met; however, the court shall require sufficient
19 proof entitling the parties to the relief sought.

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

34 (h) Upon the written request of any party to the proceeding and
35 the order of any judge of the superior court, the clerk of the court
36 shall not provide any documents referred to in subdivision (g) for
37 inspection or copying to any other person, unless the name of the
38 gestational carrier or any information tending to identify the
39 gestational carrier is deleted from the documents or copies thereof.

1 (i) An assisted reproduction agreement for gestational carriers
2 executed in accordance with this section is presumptively valid
3 and shall not be rescinded or revoked without a court order. For
4 purposes of this part, any failure to comply with the requirements
5 of this section shall rebut the presumption of the validity of the
6 assisted reproduction agreement for gestational carriers.

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