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AB-1049 Parent and child relationship. (2015-2016)

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Assembly Bill No. 1049

CHAPTER 91

An act to amend Sections 7612, 7960, and 7961 of, and to amend the heading of Part 7 (commencing with Section 7960) of Division 12 of, the Family Code, relating to children.

[Approved by Governor July 14, 2015. Filed with Secretary of State July 14, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1049, Patterson. Parent and child relationship.

Under existing law, a man is conclusively presumed to be the father of a child if he was married to and cohabiting with the child's mother, except as specified. Existing law also provides that if a man signs a voluntary declaration of paternity, it has the force and effect of a judgment of paternity, subject to certain exceptions. Existing law provides that these presumptions are rebuttable.

This bill would state that a person's offer or refusal to sign a voluntary declaration of paternity may be considered as a factor, but shall not be determinative as to the issue of legal parentage in any proceedings regarding the establishment or termination of parental rights.

Existing law requires a nonattorney surrogacy facilitator to direct his or her client to deposit client funds in an independent, bonded escrow account or a trust account maintained by an attorney, subject to specified withdrawal requirements.

This bill would additionally require a nonattorney donor facilitator to direct his or her client to deposit client funds, as specified above.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 7612 of the Family Code is amended to read:

7612. (a) Except as provided in Chapter 1 (commencing with Section 7540) and Chapter 3 (commencing with Section 7570) of Part 2 or in Section 20102, a presumption under Section 7611 is a rebuttable presumption affecting the burden of proof and may be rebutted in an appropriate action only by clear and convincing evidence.

(b) If two or more presumptions arise under Section 7610 or 7611 that conflict with each other, or if a presumption under Section 7611 conflicts with a claim pursuant to Section 7610, the presumption which on the facts is founded on the weightier considerations of policy and logic controls.

(c) In an appropriate action, a court may find that more than two persons with a claim to parentage under this division are parents if the court finds that recognizing only two parents would be detrimental to the child. In determining detriment to the child, the court shall consider all relevant factors, including, but not limited to, the harm of removing the child from a stable placement with a parent who has fulfilled the child's physical needs and the child's psychological needs for care and affection, and who has assumed that role for a substantial period of time. A finding of detriment to the child does not require a finding of unfitness of any of the parents or persons with a claim to parentage.

(d) Unless a court orders otherwise after making the determination specified in subdivision (c), a presumption under Section 7611 is rebutted by a judgment establishing parentage of the child by another person.

(e) Within two years of the execution of a voluntary declaration of paternity, a person who is presumed to be a parent under Section 7611 may file a petition pursuant to Section 7630 to set aside a voluntary declaration of paternity. The court's ruling on the petition to set aside the voluntary declaration of paternity shall be made taking into account the validity of the voluntary declaration of paternity, and the best interests of the child based upon the court's consideration of the factors set forth in subdivision (b) of Section 7575, as well as the best interests of the child based upon the nature, duration, and quality of the petitioning party's relationship with the child and the benefit or detriment to the child of continuing that relationship. In the event of any conflict between the presumption under Section 7611 and the voluntary declaration of paternity, the weightier considerations of policy and logic shall control.

(f) A voluntary declaration of paternity is invalid if, at the time the declaration was signed, any of the following conditions exist:

- (1) The child already had a presumed parent under Section 7540.
- (2) The child already had a presumed parent under subdivision (a), (b), or (c) of Section 7611.
- (3) The man signing the declaration is a sperm donor, consistent with subdivision (b) of Section 7613.

(g) A person's offer or refusal to sign a voluntary declaration of paternity may be considered as a factor, but shall not be determinative, as to the issue of legal parentage in any proceedings regarding the establishment or termination of parental rights.

SEC. 2. The heading of Part 7 (commencing with Section 7960) of Division 12 of the Family Code is amended to read:

PART 7. SURROGACY AND DONOR FACILITATORS, ASSISTED REPRODUCTION AGREEMENTS FOR GESTATIONAL CARRIERS, AND OOCYTE DONATIONS

SEC. 3. Section 7960 of the Family Code is amended to read:

7960. For purposes of this part, the following terms have the following meanings:

(a) "Assisted reproduction agreement" has the same meaning as defined in subdivision (b) of Section 7606.

(b) "Fund management agreement" means the agreement between the intended parents and the surrogacy or donor facilitator relating to the fee or other valuable consideration for services rendered or that will be rendered by the surrogacy or donor facilitator.

(c) "Intended parent" means an individual, married or unmarried, who manifests the intent to be legally bound as the parent of a child resulting from assisted reproduction.

(d) "Nonattorney surrogacy or donor facilitator" means a surrogacy or donor practitioner who is not an attorney in good standing licensed to practice law in this state.

(e) "Surrogacy or donor facilitator" means a person or organization that engages in either of the following activities:

- (1) Advertising for the purpose of soliciting parties to an assisted reproduction agreement or for the donation of oocytes for use by a person other than the provider of the oocytes, or acting as an intermediary between the parties to an assisted reproduction agreement or oocyte donation.
- (2) Charging a fee or other valuable consideration for services rendered relating to an assisted reproduction agreement or oocyte donation.

(f) "Surrogate" means a woman who bears and carries a child for another through medically assisted reproduction and pursuant to a written agreement, as set forth in Sections 7606 and 7962. Within the definition of surrogate are two different and distinct types:

- (1) "Traditional surrogate" means a woman who agrees to gestate an embryo, in which the woman is the gamete donor and the embryo was created using the sperm of the intended father or a donor arranged by the intended parent or parents.

(2) "Gestational carrier" means a woman who is not an intended parent and who agrees to gestate an embryo that is genetically unrelated to her pursuant to an assisted reproduction agreement.

(g) "Donor" means a woman who provides her oocytes for use by another for the purpose of assisting the recipient of the oocytes in having a child or children of her own.

SEC. 4. Section 7961 of the Family Code is amended to read:

7961. (a) A nonattorney surrogacy or donor facilitator shall direct the client to deposit all client funds into either of the following:

(1) An independent, bonded escrow depository maintained by a licensed, independent, bonded escrow company.

(2) A trust account maintained by an attorney.

(b) For purposes of this section, a nonattorney surrogacy or donor facilitator may not have a financial interest in any escrow company holding client funds. A nonattorney surrogacy or donor facilitator and any of its directors or employees shall not be an agent of any escrow company holding client funds.

(c) Client funds may only be disbursed by the attorney or escrow agent as set forth in the assisted reproduction agreement and fund management agreement.

(d) This section shall not apply to funds that are both of the following:

(1) Not provided for in the fund management agreement.

(2) Paid directly to a medical doctor for medical services or a psychologist for psychological services.