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AB-2349 Assisted reproduction agreements for gestational carriers. (2015-2016)

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Assembly Bill No. 2349

CHAPTER 385

An act to amend Sections 7613, 7620, and 7962 of the Family Code, relating to assisted reproduction.

[Approved by Governor September 16, 2016. Filed with Secretary of State September 16, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2349, 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 Local Program: no

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

SECTION 1. The Legislature finds and declares both of the following:

(a) California courts already have subject matter jurisdiction over actions involving an assisted reproduction agreement between a surrogate and an intended parent or parents under Section 7630 of the Family Code. However, current law does not explicitly provide that California courts have subject matter jurisdiction or clearly explain the circumstances under which subject matter jurisdiction exists.

(b) Many intended parents and surrogates enter into assisted reproduction agreements in California in which one or more of the parties end up living in another state. California court orders regarding the parentage of a child born through surrogacy must be given full faith and credit only if the issuing court had subject matter jurisdiction. For these reasons, California has an interest in clarifying that California courts have subject matter jurisdiction over assisted reproduction agreements between a surrogate and an intended parent or parents if one or more parties resides in California, any medical procedures leading to conception occurs in California, or the child is born in California.

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

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

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

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

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

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

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

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

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

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

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

(1) 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.

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

(3) The child is born in this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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