

AMENDED IN ASSEMBLY MAY 4, 2017

CALIFORNIA LEGISLATURE—2017—18 REGULAR SESSION

ASSEMBLY BILL

No. 1396

Introduced by Assembly Member Burke

February 17, 2017

An act to amend Sections 7610 and 7962 of the Family Code, relating to parentage.

LEGISLATIVE COUNSEL'S DIGEST

AB 1396, as amended, Burke. Surrogacy.

(1) 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 the parent and child relationship may be established between a child and the natural parent by proof of having given birth to the child or as authorized under the act.

This bill would clarify that the parent and child relationship cannot be established between a child and a surrogate, as defined, by proof of having given birth.

(2) Existing law requires an assisted reproduction agreement for gestational carriers to include certain terms, including, among others, the identity of the intended parent or parents. Upon the petition of any party to a properly executed assisted reproduction agreement for gestational carriers, a court is required to issue a judgment or order establishing a parent-child relationship between the child or children and the intended parent or parents identified in the surrogacy agreement and further establishing 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.

This bill would require the court to issue the judgment or order regarding parentage forthwith, unless specified conditions are met.

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 7610 of the Family Code is amended to
2 read:

3 7610. The parent and child relationship may be established as
4 follows:

5 (a) Between a child and the natural parent, it may be established
6 under this part or, except in the case of a child to which a surrogate,
7 as defined in subdivision (f) of Section 7960, gives birth, by proof
8 of having given birth to the child.

9 (b) Between a child and an adoptive parent, it may be established
10 by proof of adoption.

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

12 7962. (a) An assisted reproduction agreement for gestational
13 carriers shall contain, but shall not be limited to, all of the following
14 information:

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

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

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

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

1 legal advice. If coverage of liability is uncertain, a statement of
2 that fact shall be sufficient to meet the requirements of this section.

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

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

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

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

39 (f) (1) A notarized assisted reproduction agreement for
40 gestational carriers signed by all the parties, with the attached

1 declarations of independent attorneys, and lodged with the superior
2 court in accordance with this section, shall rebut any presumptions
3 contained within Part 2 (commencing with Section 7540),
4 subdivision ~~(b)~~ (a) of Section 7610, and Sections 7611 and 7613,
5 as to the gestational carrier surrogate, her spouse, or partner being
6 a parent of the child or children.

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

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

1 or any portion of those documents, except in exceptional
2 circumstances and where necessary. The petitioner may be required
3 to pay the expense of preparing the copies of the documents to be
4 inspected.

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

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

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