

AMENDED IN ASSEMBLY APRIL 14, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1217

Introduced by Assembly Member Fuentes

February 18, 2011

An act to amend Section 7613 of, and to add Section 7542 to, the Family Code, to amend Section 1374.55 of, to add Section 1374.555 to, to add Division 106.5 (commencing with Section 126000) to, to repeal Sections 125315 and 125320 of, and to repeal Chapter 1.5 (commencing with Section 125325) of Part 5.5 of Division 106 of, the Health and Safety Code, and to amend Section 10119.6 of, and to add Section 10119.65 to, the Insurance Code, relating to assisted *Family Code, relating to assisted* reproductive technology.

LEGISLATIVE COUNSEL'S DIGEST

AB 1217, as amended, Fuentes. Assisted reproductive technology: *parentage*.

(1) Under existing law, the State Department of Public Health licenses and regulates health care facilities and oversees the provision of various health care services. Existing law requires a physician and surgeon or other health care provider delivering fertility treatment to provide his or her patient with specified information relating to the options for disposition of human embryos remaining following fertility treatment and specifies how the embryos may be disposed. Existing law also requires specified information be given by a person or entity advertising for oocyte donation associated with delivery of fertility treatment that includes assisted oocyte production and financial payment or compensation of any kind.

~~This bill would establish the Model Act Governing Assisted Reproductive Technology, which would govern the provision of assisted reproduction, as defined. The bill would require informed consent by all participants prior to the commencement of assisted reproduction, as specified, and would require that binding agreements be reached by various parties relating to the future use of embryos created. The bill would amend, repeal, or recast related provisions.~~

~~This bill would require all participants known to the assisted reproductive technology provider to undergo a mental health consultation and to be offered continuing mental health counseling to all participants, as specified. The bill would set quality assurance standards for assisted reproductive technology providers, clinics, and storage facilities. The bill would establish enforcement provisions and would set procedures for civil suits under these provisions, including presumptions, professional standards of care, and statutes of limitations. By expanding the definition of a crime, this bill would impose a state-mandated local program.~~

~~The bill would declare that it does not amend Proposition 71 relating to stem cell research, exempt from the provisions of this bill any activities that are within the jurisdiction of Proposition 71, the California Stem Cell Research and Cures Act, approved by the voters at the November 2, 2004, general election.~~

~~(2) Under existing law, the child of a wife cohabiting with her husband is conclusively presumed to be a child of the marriage, as provided, but authorizes the presumed father to bring a motion for blood tests within 2 years of the child's birth for the purpose of rebutting that presumption.~~

~~This bill would additionally prohibit the legal spouse of a woman who gives birth to a child by means of assisted reproduction from challenging the parentage of the child unless he or she brings the action within 2 years of learning of the child's birth and the court finds that he or she did not consent to assisted reproduction. The bill would also authorize a proceeding to adjudicate parentage at any time if the court determines that legal spouse did not provide gametes for, or before or after the birth of the child did not consent to, assisted reproduction by the individual who gives birth, the legal spouse and the parent of the child have not cohabited since the probable time of assisted reproduction, and the legal spouse never openly held out the child as his or her own.~~

The Uniform Parentage Act provides that if, under the supervision of a licensed physician and surgeon and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived. The act further provides that the donor of semen provided to a licensed physician and surgeon or to a licensed sperm bank for use in artificial insemination or in vitro fertilization of a woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived.

This bill would provide that, notwithstanding those provisions, an individual who provides gametes for, or consents to, assisted reproduction by a woman ~~with the intent, and who intends at the time gametes or consent is provided,~~ to be a parent of her child is a parent of the resulting child *if the woman also intended, at the relevant time, that the individual would be a parent.*

~~(3) Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law provides for the regulation of health insurers by the Department of Insurance. Existing law requires every health care service plan contract or health insurance policy that is issued on a group basis to offer coverage for the treatment of infertility, as defined.~~

~~This bill would require every health care service plan contract or health insurance policy that is issued, amended, renewed, or delivered on or after January 1, 2012, that provides coverage for the treatment of infertility, as defined, to use a specified definition of "infertility." The bill would authorize the Department of Managed Health Care or the Department of Insurance to designate certain procedures or treatments as experimental and not required coverage under those provisions. The bill would require every health care service plan or health insurer providing treatment of infertility to provide each enrollee or insured a prominent notice of the specific coverage provided under his or her individual or group plan contract or policy. The bill would authorize a health care service plan or health insurer providing treatment of infertility to require that participating providers have specified board certifications.~~

~~Because a willful violation of the bill's provisions relative to health care service plans would be a crime, the bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: *yes-no*.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7542 is added to the Family Code, to
2 read:

3 7542. (a) Notwithstanding Section 7540, the legal spouse of
4 a woman who gives birth to a child by means of assisted
5 reproduction may not challenge the parentage of the child unless
6 both of the following apply:

7 (1) Within two years after learning of the birth of the child a
8 proceeding is commenced to adjudicate parentage.

9 (2) The court finds that the legal spouse did not consent to
10 assisted reproduction, before or after the birth of the child.

11 (b) A proceeding to adjudicate parentage may be maintained at
12 any time if the court determines all of the following:

13 (1) The legal spouse did not provide gametes for, or before or
14 after the birth of the child did not consent to, assisted reproduction
15 by the individual who gives birth.

16 (2) The legal spouse and the parent of the child have not
17 cohabited since the probable time of assisted reproduction.

18 (3) The legal spouse never openly held out the child as his or
19 her own.

20 (c) The limitation provided in this section shall apply to a
21 marriage declared invalid after assisted reproduction.

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

23 7613. (a) If, under the supervision of a licensed physician and
24 surgeon and with the consent of her husband, a wife is inseminated
25 artificially with semen donated by a man not her husband, the
26 husband is treated in law as if he were the natural father of a child
27 thereby conceived. The husband's consent must be in writing and
28 signed by him and his wife. The physician and surgeon shall certify
29 their signatures and the date of the insemination, and retain the
30 husband's consent as part of the medical record, where it shall be

1 kept confidential and in a sealed file. However, the physician and
2 surgeon's failure to do so does not affect the father and child
3 relationship. All papers and records pertaining to the insemination,
4 whether part of the permanent record of a court or of a file held
5 by the supervising physician and surgeon or elsewhere, are subject
6 to inspection only upon an order of the court for good cause shown.

7 (b) Except as provided in subdivision (c), the donor of semen
8 provided to a licensed physician and surgeon or to a licensed sperm
9 bank for use in artificial insemination or in vitro fertilization of a
10 woman other than the donor's wife is treated in law as if he were
11 not the natural father of a child thereby conceived.

12 (c) Notwithstanding subdivision (a) or (b), an individual who
13 provides gametes for, or consents to, assisted reproduction by a
14 woman ~~with the intent~~, *and who intends at the time gametes or*
15 *consent are provided*, to be a parent of her child is a parent of the
16 resulting child *if the woman also intended, at the relevant time,*
17 *that the individual would be a parent.*

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**All matter omitted in this version of the bill
appears in the bill as introduced in the
Assembly, February 18, 2011. (JR11)**