

AMENDED IN ASSEMBLY APRIL 26, 2011

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~~ *Sections 7542 and 7613.5* to, the Family Code, relating to assisted reproductive technology.

LEGISLATIVE COUNSEL'S DIGEST

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

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, 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 if agreed to in a writing signed by the donor and the woman prior to the conception of the child, the donor would be presumed to be the natural father of the child.~~

The bill would also specify that if, under the supervision of a licensed physician and surgeon and with the consent of her spouse, a woman undergoes in vitro fertilization with eggs donated by a person other than her spouse, the spouse is treated in law as if that spouse were the natural parent of a child thereby conceived, unless otherwise agreed to in writing prior to the conception of the child. The bill would also provide that the donor of eggs provided to a licensed physician and surgeon for use in the in vitro fertilization of a woman other than the donor's spouse is treated in law as if she were not the natural parent of a child thereby conceived, unless otherwise agreed to in writing prior to the conception of the child. The bill would additionally specify that if, under the supervision of a licensed physician and surgeon, a woman undergoes in vitro fertilization using donated eggs on behalf of an intended parent or parents and the woman agrees in writing prior to the conception of the child, then that woman is treated in law as if she were not the natural parent of a child thereby conceived, and the intended parent or parents are presumed to be the child's natural parent or parents.

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.
State-mandated local program: 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
31 kept confidential and in a sealed file. However, the physician and
32 surgeon's failure to do so does not affect the father and child
33 relationship. All papers and records pertaining to the insemination,
34 whether part of the permanent record of a court or of a file held
35 by the supervising physician and surgeon or elsewhere, are subject
36 to inspection only upon an order of the court for good cause shown.

37 (b) ~~Except as provided in subdivision (c), the~~ *The* donor of
38 semen provided to a licensed physician and surgeon or to a licensed

1 sperm bank for use in artificial insemination or in vitro fertilization
2 of a woman other than the donor's wife is treated in law as if he
3 were not the natural father of a child thereby conceived, *unless*
4 *otherwise agreed to in a writing signed by the donor and the*
5 *woman prior to the conception of the child, in which case the donor*
6 *is presumed to be the natural father of the child.*

7 ~~(e) Notwithstanding subdivision (a) or (b), an individual who~~
8 ~~provides gametes for, or consents to, assisted reproduction by a~~
9 ~~woman, and who intends at the time gametes or consent are~~
10 ~~provided, to be a parent of her child is a parent of the resulting~~
11 ~~child if the woman also intended, at the relevant time, that the~~
12 ~~individual would be a parent.~~

13 SEC. 3. Section 7613.5 is added to the Family Code, to read:

14 7613.5. (a) *If, under the supervision of a licensed physician*
15 *and surgeon and with the consent of her spouse, a woman*
16 *undergoes in vitro fertilization using donated eggs from a person*
17 *other than her spouse, that spouse is treated in law as if that spouse*
18 *were the natural parent of a child thereby conceived. The spouse's*
19 *consent must be in writing and signed by both the woman and her*
20 *spouse. The physician and surgeon shall certify their signatures*
21 *and the date of the in vitro fertilization, and retain the spouse's*
22 *consent as part of the medical record, where it shall be kept*
23 *confidential and in a sealed file. However, the physician and*
24 *surgeon's failure to do so does not affect the parent-child*
25 *relationship. All papers and records pertaining to the in vitro*
26 *fertilization, whether part of the permanent record of a court or*
27 *of a file held by the supervising physician and surgeon or*
28 *elsewhere, are subject to inspection only upon an order of the*
29 *court for good cause shown.*

30 (b) *The donor of eggs provided to a licensed physician and*
31 *surgeon for use in the in vitro fertilization of a woman other than*
32 *the donor's spouse is treated in law as if she were not the natural*
33 *parent of a child thereby conceived, unless otherwise agreed to in*
34 *a writing signed by the donor and the woman prior to the*
35 *conception of the child, in which case the donor is presumed to be*
36 *the natural parent of the child.*

37 (c) *If, under the supervision of a licensed physician and surgeon,*
38 *a woman undergoes in vitro fertilization using donated eggs on*
39 *behalf of intended parent or parents and the woman agrees in a*
40 *writing signed by the woman and the intended parent or parents*

1 *prior to the conception of the child, then the woman is treated in*
2 *law as if she were not the natural parent of the child and the*
3 *intended parent or parents are presumed to be the child's natural*
4 *parent or parents.*

O