

AMENDED IN SENATE JUNE 20, 2011

AMENDED IN ASSEMBLY MAY 9, 2011

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 7613.5~~ *Sections 7613.5 and 7962* to, the Family Code, relating to assisted ~~reproductive technology~~ *reproduction*.

LEGISLATIVE COUNSEL'S DIGEST

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

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 if agreed to in a writing signed by the donor and the woman prior to the ~~conception of the child~~ *creation of*

the embryo, 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~~ *an embryo transfer* 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 creation of the embryo. 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 creation of the embryo, 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. The bill would specify that if that embryo transfer was on behalf of an intended parent or parents and the woman agrees in writing prior to the creation of the embryo, then that woman would be treated in law as if she were not the natural parent of a child thereby conceived, and the intended parent or parents would be presumed to be the child's natural parent or parents.~~

Existing law regulates the practice of surrogacy facilitators, as defined, and 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.

The bill would also prohibit a medical or legal professional from medically treating or legally representing an intended parent or surrogate mother while acting as a surrogacy facilitator for either party or having an ownership interest in a surrogacy facilitator.

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 7613 of the Family Code is amended to
2 read:

3 7613. (a) If, under the supervision of a licensed physician and
4 surgeon and with the consent of her husband, a wife is inseminated
5 artificially with semen donated by a man not her husband, the
6 husband is treated in law as if he were the natural father of a child
7 thereby conceived. The husband's consent must be in writing and
8 signed by him and his wife. The physician and surgeon shall certify
9 their signatures and the date of the insemination, and retain the
10 husband's consent as part of the medical record, where it shall be
11 kept confidential and in a sealed file. However, the physician and
12 surgeon's failure to do so does not affect the father and child
13 relationship. All papers and records pertaining to the insemination,
14 whether part of the permanent record of a court or of a file held
15 by the supervising physician and surgeon or elsewhere, are subject
16 to inspection only upon an order of the court for good cause shown.

17 (b) The donor of semen provided to a licensed physician and
18 surgeon or to a licensed sperm bank for use in artificial
19 insemination or in vitro fertilization of a woman other than the
20 donor's wife is treated in law as if he were not the natural father
21 of a child thereby conceived, unless otherwise agreed to in a writing
22 signed by the donor and the woman prior to the ~~conception of the~~
23 ~~child~~ *creation of the embryo*, in which case the donor is presumed
24 to be the natural father of the child.

25 SEC. 2. Section 7613.5 is added to the Family Code, to read:

26 7613.5. (a) ~~Except as otherwise provided in subdivision~~
27 ~~(c), if,~~ under the supervision of a licensed physician and surgeon
28 and with the consent of her spouse, a woman undergoes ~~in vitro~~
29 ~~fertilization~~ *an embryo transfer* using donated eggs from a person
30 other than her spouse, that spouse is treated in law as if that spouse
31 were the natural parent of a child thereby conceived. The spouse's
32 consent must be in writing and signed by both the woman and her
33 spouse. The physician and surgeon shall certify their signatures
34 and the date of the in vitro fertilization, and retain the spouse's
35 consent as part of the medical record, where it shall be kept
36 confidential and in a sealed file. However, the physician and
37 surgeon's failure to do so does not affect the parent-child
38 relationship. All papers and records pertaining to the in vitro

1 fertilization, whether part of the permanent record of a court or of
2 a file held by the supervising physician and surgeon or elsewhere,
3 are subject to inspection only upon an order of the court for good
4 cause shown.

5 (b) The donor of eggs provided to a licensed physician and
6 surgeon for use in the in vitro fertilization of a woman other than
7 the donor's spouse is treated in law as if she were not the natural
8 parent of a child thereby conceived, unless otherwise agreed to in
9 a writing signed by the donor and the woman prior to the creation
10 of the embryo, in which case the donor is presumed to be the
11 natural parent of the child. *The writing shall be signed by both the*
12 *donor and the woman. The physician and surgeon shall certify*
13 *their signatures and the date of the in vitro fertilization, and retain*
14 *the writing as part of the medical record, and it shall be kept in a*
15 *confidential sealed file. However, the physician and surgeon's*
16 *failure to do so does not affect the parent-child relationship. All*
17 *papers and records pertaining to the in vitro fertilization, including*
18 *the permanent record of a court and any file held by the supervising*
19 *physician and surgeon, shall be subject to inspection only upon*
20 *an order of the court for good cause shown.*

21 (c) If, under the supervision of a licensed physician and surgeon,
22 a woman undergoes ~~in vitro fertilization~~ *an embryo transfer* using
23 donated eggs on behalf of *an* intended parent or parents and the
24 woman agrees in a writing signed by the woman and the intended
25 parent or parents prior to the creation of the embryo, then the
26 woman is treated in law as if she were not the natural parent of the
27 child and the intended parent or parents are presumed to be the
28 child's natural parent or parents. *The writing shall be signed by*
29 *both the donor and the woman. The physician and surgeon shall*
30 *certify their signatures and the date of the in vitro fertilization,*
31 *and retain the writing as part of the medical record, and it shall*
32 *be kept in a confidential sealed file. However, the physician and*
33 *surgeon's failure to do so does not affect the parent-child*
34 *relationship. All papers and records pertaining to the in vitro*
35 *fertilization, including the permanent record of a court and any*
36 *file held by the supervising physician and surgeon, shall be subject*
37 *to inspection only upon an order of the court for good cause shown.*

38 SEC. 3. Section 7962 is added to the Family Code, to read:

39 7962. *To avoid a conflict of interest, a medical or legal*
40 *professional shall not medically treat or legally represent an*

- 1 *intended parent or surrogate mother while acting as a surrogacy*
- 2 *facilitator for either party or having an ownership interest in a*
- 3 *surrogacy facilitator, including being an owner or coowner of, or*
- 4 *having a financial interest in, the surrogacy facilitator that has*
- 5 *recruited either party.*

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