

AMENDED IN SENATE APRIL 9, 2012

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 Sections 7613.5 and 7962 to, the Family Code, relating to assisted reproduction. An act to amend the heading of Part 7 (commencing with Section 7960) of Division 12 of, and to add Section 7962 to, the Family Code, relating to surrogacy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1217, as amended, Fuentes. ~~Assisted reproduction. Surrogacy agreements.~~

The Uniform Parentage Act defines the parent and child relationship as the legal relationship existing between a child and the child's parents, and governs proceedings to establish that relationship. Existing law provides that a party to an assisted reproduction agreement may bring an action under the Uniform Parentage Act at any time to establish a parent and child relationship consistent with the intent expressed in the agreement. Existing law also regulates the practice of surrogacy

facilitators in assisted reproduction agreements, including surrogacy agreements.

The bill would require, in the case of a surrogacy agreement, a surrogate mother and the intended parent or parents to be represented by independent counsel of their choosing. Before the surrogate mother could begin medication for assisted reproduction, this bill would require the parties' counsel to review the surrogacy agreement and its ramifications with the surrogate mother and the intended parent or parents. Counsel would be required to issue legal clearance letters to the reproductive endocrinologist following that review. The bill would require the surrogacy agreement to be executed by the parties and notarized. This bill would require the surrogacy agreement to be lodged in the superior court in the county in which the child is to be born, and would require the agreement to be accompanied by declarations of its legitimacy. Further, this bill would provide that a surrogacy agreement that does not meet the above requirements would not be presumptively valid. Because this bill would require the declarations accompanying the surrogacy agreement to be made under penalty of perjury, it would expand the class of people who could be prosecuted for a crime.

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.

~~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 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 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 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~~-yes. State-mandated local program: ~~no~~-yes.

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

1 SECTION 1. *The heading of Part 7 (commencing with Section*
2 *7960) of Division 12 of the Family Code is amended to read:*

3
4 PART 7. SURROGACY FACILITATORS AND AGREEMENTS

5
6 SEC. 2. *Section 7962 is added to the Family Code, to read:*

7 7962. (a) *For purposes of this part, "surrogate" means a*
8 *woman carrying and bearing a child for another.*

9 (b) *A surrogate and the intended parent or parents shall be*
10 *represented by independent counsel of their choosing. After*
11 *reviewing the parties' surrogacy agreement and its ramifications*
12 *with their respective clients, counsels shall issue written legal*
13 *clearance letters to the reproductive endocrinologist.*

14 (c) *The surrogacy agreement shall be executed by the parties*
15 *and the signatures on the agreement shall be notarized.*

16 (d) *A surrogate shall not be permitted to commence medication*
17 *for assisted reproduction until the written legal clearance letters*

1 required under subdivision (b) are issued and the surrogacy
 2 agreement is executed and notarized.

3 (e) At the time that the parties seek to establish a parent-child
 4 relationship prior to the child's birth, the surrogacy agreement
 5 shall be lodged in the superior court in the county where the child
 6 will be born. The parties and their counsels shall attest to its
 7 legitimacy under penalty of perjury.

8 (f) A surrogacy agreement that is not executed in accordance
 9 with this section shall not be considered presumptively valid.

10 SEC. 3. No reimbursement is required by this act pursuant to
 11 Section 6 of Article XIII B of the California Constitution because
 12 the only costs that may be incurred by a local agency or school
 13 district will be incurred because this act creates a new crime or
 14 infraction, eliminates a crime or infraction, or changes the penalty
 15 for a crime or infraction, within the meaning of Section 17556 of
 16 the Government Code, or changes the definition of a crime within
 17 the meaning of Section 6 of Article XIII B of the California
 18 Constitution.

19 SECTION 1. ~~Section 7613 of the Family Code is amended to~~
 20 ~~read:~~

21 7613. (a) ~~If, under the supervision of a licensed physician and~~
 22 ~~surgeon and with the consent of her husband, a wife is inseminated~~
 23 ~~artificially with semen donated by a man not her husband, the~~
 24 ~~husband is treated in law as if he were the natural father of a child~~
 25 ~~thereby conceived. The husband's consent must be in writing and~~
 26 ~~signed by him and his wife. The physician and surgeon shall certify~~
 27 ~~their signatures and the date of the insemination, and retain the~~
 28 ~~husband's consent as part of the medical record, where it shall be~~
 29 ~~kept confidential and in a sealed file. However, the physician and~~
 30 ~~surgeon's failure to do so does not affect the father and child~~
 31 ~~relationship. All papers and records pertaining to the insemination,~~
 32 ~~whether part of the permanent record of a court or of a file held~~
 33 ~~by the supervising physician and surgeon or elsewhere, are subject~~
 34 ~~to inspection only upon an order of the court for good cause shown.~~

35 (b) ~~The donor of semen provided to a licensed physician and~~
 36 ~~surgeon or to a licensed sperm bank for use in artificial~~
 37 ~~insemination or in vitro fertilization of a woman other than the~~
 38 ~~donor's wife is treated in law as if he were not the natural father~~
 39 ~~of a child thereby conceived, unless otherwise agreed to in a writing~~
 40 ~~signed by the donor and the woman prior to the creation of the~~

1 embryo, in which case the donor is presumed to be the natural
2 father of the child.

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

4 7613.5.— (a) Except as otherwise provided in subdivision (c),
5 if, under the supervision of a licensed physician and surgeon and
6 with the consent of her spouse, a woman undergoes an embryo
7 transfer using donated eggs from a person other than her spouse,
8 that spouse is treated in law as if that spouse were the natural parent
9 of a child thereby conceived. The spouse's consent must be in
10 writing and signed by both the woman and her spouse. The
11 physician and surgeon shall certify their signatures and the date
12 of the in vitro fertilization, and retain the spouse's consent as part
13 of the medical record, where it shall be kept confidential and in a
14 sealed file. However, the physician and surgeon's failure to do so
15 does not affect the parent-child relationship. All papers and records
16 pertaining to the in vitro fertilization, whether part of the permanent
17 record of a court or of a file held by the supervising physician and
18 surgeon or elsewhere, are subject to inspection only upon an order
19 of the court for good cause shown.

20 (b) The donor of eggs provided to a licensed physician and
21 surgeon for use in the in vitro fertilization of a woman other than
22 the donor's spouse is treated in law as if she were not the natural
23 parent of a child thereby conceived, unless otherwise agreed to in
24 a writing signed by the donor and the woman prior to the creation
25 of the embryo, in which case the donor is presumed to be the
26 natural parent of the child. The writing shall be signed by both the
27 donor and the woman. The physician and surgeon shall certify
28 their signatures and the date of the in vitro fertilization, and retain
29 the writing as part of the medical record, and it shall be kept in a
30 confidential sealed file. However, the physician and surgeon's
31 failure to do so does not affect the parent-child relationship. All
32 papers and records pertaining to the in vitro fertilization, including
33 the permanent record of a court and any file held by the supervising
34 physician and surgeon, shall be subject to inspection only upon an
35 order of the court for good cause shown.

36 (c) If, under the supervision of a licensed physician and surgeon,
37 a woman undergoes an embryo transfer using donated eggs on
38 behalf of an intended parent or parents and the woman agrees in
39 a writing signed by the woman and the intended parent or parents
40 prior to the creation of the embryo, then the woman is treated in

1 law as if she were not the natural parent of the child and the
2 intended parent or parents are presumed to be the child's natural
3 parent or parents. The writing shall be signed by both the donor
4 and the woman. The physician and surgeon shall certify their
5 signatures and the date of the in vitro fertilization, and retain the
6 writing as part of the medical record, and it shall be kept in a
7 confidential sealed file. However, the physician and surgeon's
8 failure to do so does not affect the parent-child relationship. All
9 papers and records pertaining to the in vitro fertilization, including
10 the permanent record of a court and any file held by the supervising
11 physician and surgeon, shall be subject to inspection only upon an
12 order of the court for good cause shown.

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

14 7962. To avoid a conflict of interest, a medical or legal
15 professional shall not medically treat or legally represent an
16 intended parent or surrogate mother while acting as a surrogacy
17 facilitator for either party or having an ownership interest in a
18 surrogacy facilitator, including being an owner or coowner of, or
19 having a financial interest in, the surrogacy facilitator that has
20 recruited either party.