

AMENDED IN SENATE AUGUST 24, 2012

AMENDED IN SENATE AUGUST 22, 2012

AMENDED IN SENATE AUGUST 6, 2012

AMENDED IN SENATE JUNE 11, 2012

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

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**ASSEMBLY BILL**

**No. 1217**

**Introduced by Assembly Member Fuentes**

February 18, 2011

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An act to amend Section 7960 of, 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 agreements.

LEGISLATIVE COUNSEL'S DIGEST

AB 1217, as amended, Fuentes. 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.

This bill would require a surrogate mother and the intended parent or intended parents, as defined, to be represented by separate independent counsel of their choosing prior to executing an assisted reproduction agreement for gestational carriers, as defined. The bill also would require an assisted reproduction agreement for gestational carriers to contain specified information. The bill would require the assisted reproduction agreement for gestational carriers to be executed by the parties and notarized or otherwise witnessed, as specified. The bill would prohibit the parties to an assisted reproduction agreement for gestational carriers from undergoing an embryo transfer procedure or commencing injectable medication for assisted reproduction until the assisted reproduction agreement for gestational carriers has been fully executed pursuant to the requirements of these provisions. The bill would permit an action to establish the parent-child relationship to be filed before the child's birth, and would specify where that action may be filed. The bill would require the parties to the assisted reproduction agreement for gestational carriers to attest, under penalty of perjury, and to the best of their knowledge and belief, as to their compliance with these provisions. By expanding the existing crime of perjury, the bill would impose a state-mandated local program. The bill would provide that an assisted reproduction agreement for gestational carriers executed in accordance with these provisions is presumptively valid. The bill would provide that the assisted reproduction agreement for gestational carriers and related documents are not open to inspection, except by the parties to the proceeding and their attorneys and the State Department of Social Services, except as specified.

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.

*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:

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4 PART 7. SURROGACY FACILITATORS AND ASSISTED  
5 REPRODUCTION AGREEMENTS FOR GESTATIONAL  
6 CARRIERS

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8 SEC. 2. Section 7960 of the Family Code is amended to read:

9 7960. For purposes of this part, the following terms have the  
10 following meanings:

11 (a) “Assisted reproduction agreement” has the same meaning  
12 as defined in subdivision (b) of Section 7606.

13 (b) “Fund management agreement” means the agreement  
14 between the intended parents and the surrogacy facilitator relating  
15 to the fee or other valuable consideration for services rendered or  
16 that will be rendered by the surrogacy facilitator.

17 (c) “Intended parent” means an individual, married or unmarried,  
18 who manifests the intent to be legally bound as the parent of a  
19 child resulting from assisted reproduction.

20 (d) “Nonattorney surrogacy facilitator” means a surrogacy  
21 practitioner who is not an attorney in good standing licensed to  
22 practice law in this state.

23 (e) “Surrogacy facilitator” means a person or organization that  
24 engages in either of the following activities:

25 (1) Advertising for the purpose of soliciting parties to an assisted  
26 reproduction agreement or acting as an intermediary between the  
27 parties to an assisted reproduction agreement.

28 (2) Charging a fee or other valuable consideration for services  
29 rendered relating to an assisted reproduction agreement.

30 (f) “Surrogate” means a woman who bears and carries a child  
31 for another through medically assisted reproduction and pursuant  
32 to a written agreement, as set forth in Sections 7606 and 7962.  
33 Within the definition of surrogate are two different and distinct  
34 types:

35 (1) “Traditional surrogate” means a woman who agrees to  
36 gestate an embryo, in which the woman is the gamete donor and  
37 the embryo was created using the sperm of the intended father or  
38 a donor arranged by the intended parent or parents.

1 (2) “Gestational carrier” means a woman who is not an intended  
2 parent and who agrees to gestate an embryo that is genetically  
3 unrelated to her pursuant to an assisted reproduction agreement.

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

5 7962. (a) An assisted reproduction agreement for gestational  
6 carriers shall contain, but shall not be limited to, all of the following  
7 information:

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

10 (2) The persons from which the gametes originated, unless  
11 anonymously donated.

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

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

17 (c) The assisted reproduction agreement for gestational carriers  
18 shall be executed by the parties and the signatures on the assisted  
19 reproduction agreement for gestational carriers shall be notarized  
20 or witnessed by an equivalent method of affirmation as required  
21 in the jurisdiction where the assisted reproduction agreement for  
22 gestational carriers is executed.

23 (d) The parties to an assisted reproduction agreement for  
24 gestational carriers shall not undergo an embryo transfer procedure,  
25 or commence injectable medication in preparation for an embryo  
26 transfer for assisted reproduction purposes, until the assisted  
27 reproduction agreement for gestational carriers has been fully  
28 executed as required by subdivisions (b) and (c) of this section.

29 (e) An action to establish the parent-child relationship between  
30 the intended parent or parents and the child as to a child conceived  
31 pursuant to an assisted reproduction agreement for gestational  
32 carriers may be filed before the child’s birth and may be filed in  
33 the county where the child is anticipated to be born, the county  
34 where the intended parent or intended parents reside, the county  
35 where the surrogate resides, the county where the assisted  
36 reproduction agreement for gestational carriers is executed, or the  
37 county where medical procedures pursuant to the agreement are  
38 to be performed. A copy of the assisted reproduction agreement  
39 for gestational carriers shall be lodged in the court action filed for  
40 the purpose of establishing the parent-child relationship. The parties

1 to the assisted reproduction agreement for gestational carriers shall  
2 attest, under penalty of perjury, and to the best of their knowledge  
3 and belief, as to the parties' compliance with this section in entering  
4 into the assisted reproduction agreement for gestational carriers.  
5 Submitting those declarations shall not constitute a waiver, under  
6 Section 912 of the Evidence Code, of the lawyer-client privilege  
7 described in Article 3 (commencing with Section 950) of Chapter  
8 4 of Division 8 of the Evidence Code.

9 (f) (1) A notarized assisted reproduction agreement for  
10 gestational carriers signed by all the parties, with the attached  
11 declarations of independent attorneys, and lodged with the superior  
12 court in accordance with this section, shall rebut any presumptions  
13 contained within Part 2 (commencing with Section 7540),  
14 subdivision (b) of Section 7610, and Sections 7611 and 7613, as  
15 to the gestational carrier surrogate, her spouse, or partner being a  
16 parent of the child or children.

17 (2) Upon petition of any party to a properly executed ~~surrogacy~~  
18 ~~agreement~~ *assisted reproduction agreement for gestational*  
19 *carriers*, the court shall issue a judgment or order establishing a  
20 parent-child relationship, whether pursuant to Section 7630 or  
21 otherwise. The judgment or order may be issued before or after  
22 the child's or children's birth subject to the limitations of Section  
23 7633. Subject to proof of compliance with this section, the  
24 judgment or order shall establish the parent-child relationship of  
25 the intended parent or intended parents identified in the surrogacy  
26 agreement and shall establish that the surrogate, her spouse, or  
27 partner is not a parent of, and has no parental rights or duties with  
28 respect to, the child or children. The judgment or order shall  
29 terminate any parental rights of the surrogate and her spouse or  
30 partner without further hearing or evidence, unless the court or a  
31 party to the assisted reproduction agreement for gestational carriers  
32 has a good faith, reasonable belief that the assisted reproduction  
33 agreement for gestational carriers or attorney declarations were  
34 not executed in accordance with this section. Upon motion by a  
35 party to the assisted reproduction agreement for gestational carriers,  
36 the matter shall be scheduled for hearing before a judgment or  
37 order is issued. Nothing in this section shall be construed to prevent  
38 a court from finding and declaring that the intended parent is or  
39 intended parents are the parent or parents of the child where  
40 compliance with this section has not been met; however, the court

1 shall require sufficient proof entitling the parties to the relief  
2 sought.

3 (g) The petition, relinquishment or consent, agreement, order,  
4 report to the court from any investigating agency, and any power  
5 of attorney and deposition filed in the office of the clerk of the  
6 court pursuant to this part shall not be open to inspection by any  
7 person other than the parties to the proceeding and their attorneys  
8 and the State Department of Social Services, except upon the  
9 written authority of a judge of the superior court. A judge of the  
10 superior court shall not authorize anyone to inspect the petition,  
11 relinquishment or consent, agreement, order, report to the court  
12 from any investigating agency, or power of attorney or deposition,  
13 or any portion of those documents, except in exceptional  
14 circumstances and where necessary. The petitioner may be required  
15 to pay the expense of preparing the copies of the documents to be  
16 inspected.

17 (h) Upon the written request of any party to the proceeding and  
18 the order of any judge of the superior court, the clerk of the court  
19 shall not provide any documents referred to in subdivision (g) for  
20 inspection or copying to any other person, unless the name of the  
21 gestational carrier or any information tending to identify the  
22 gestational carrier is deleted from the documents or copies thereof.

23 (i) An assisted reproduction agreement for gestational carriers  
24 executed in accordance with this section is presumptively valid  
25 and shall not be rescinded or revoked without a court order. For  
26 purposes of this part, any failure to comply with the requirements  
27 of this section shall rebut the presumption of the validity of the  
28 assisted reproduction agreement for gestational carriers.

29 SEC. 4. No reimbursement is required by this act pursuant to  
30 Section 6 of Article XIII B of the California Constitution because  
31 the only costs that may be incurred by a local agency or school  
32 district will be incurred because this act creates a new crime or  
33 infraction, eliminates a crime or infraction, or changes the penalty  
34 for a crime or infraction, within the meaning of Section 17556 of  
35 the Government Code, or changes the definition of a crime within  
36 the meaning of Section 6 of Article XIII B of the California  
37 Constitution.

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