

Assembly Bill No. 1217

CHAPTER 466

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.

[Approved by Governor September 23, 2012. Filed with
Secretary of State September 23, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1217, 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.

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

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

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

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

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

(a) "Assisted reproduction agreement" has the same meaning as defined in subdivision (b) of Section 7606.

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

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

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

(e) "Surrogacy facilitator" means a person or organization that engages in either of the following activities:

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) An action to establish the parent-child relationship between the intended parent or parents and the child as to a child conceived pursuant to an assisted reproduction agreement for gestational carriers may be filed before the child’s birth and may be filed in the county where the child is anticipated to be born, the county where the intended parent or intended parents reside, the county where the surrogate resides, the county where the assisted reproduction agreement for gestational carriers is executed, or the county where medical procedures pursuant to the agreement are to be performed. A copy of the assisted reproduction agreement for gestational carriers shall be lodged in the court action filed for the purpose of establishing the parent-child relationship. The parties to the assisted reproduction agreement for gestational carriers shall attest, under penalty of perjury, and to the best of their knowledge and belief, as to the parties’ compliance with this section in entering into the assisted reproduction agreement for gestational carriers. Submitting those declarations shall not constitute a waiver, under Section 912 of the Evidence Code, of the lawyer-client privilege described in Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(f) (1) A notarized assisted reproduction agreement for gestational carriers signed by all the parties, with the attached declarations of independent attorneys, and lodged with the superior court in accordance

with this section, shall rebut any presumptions contained within Part 2 (commencing with Section 7540), subdivision (b) of Section 7610, and Sections 7611 and 7613, as to the gestational carrier surrogate, her spouse, or partner being a parent of the child or children.

(2) Upon petition of any party to a properly executed assisted reproduction agreement for gestational carriers, the court shall issue a judgment or order establishing a parent-child relationship, whether pursuant to Section 7630 or otherwise. The judgment or order may be issued before or after the child's or children's birth subject to the limitations of Section 7633. Subject to proof of compliance with this section, the judgment or order shall establish the parent-child relationship of the intended parent or intended parents identified in the surrogacy agreement and shall establish that the surrogate, her spouse, or partner is not a parent of, and has no parental rights or duties with respect to, the child or children. The judgment or order shall terminate any parental rights of the surrogate and her spouse or partner without further hearing or evidence, unless the court or a party to the assisted reproduction agreement for gestational carriers has a good faith, reasonable belief that the assisted reproduction agreement for gestational carriers or attorney declarations were not executed in accordance with this section. Upon motion by a party to the assisted reproduction agreement for gestational carriers, the matter shall be scheduled for hearing before a judgment or order is issued. Nothing in this section shall be construed to prevent a court from finding and declaring that the intended parent is or intended parents are the parent or parents of the child where compliance with this section has not been met; however, the court shall require sufficient proof entitling the parties to the relief sought.

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

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

(i) An assisted reproduction agreement for gestational carriers executed in accordance with this section is presumptively valid and shall not be rescinded or revoked without a court order. For purposes of this part, any

failure to comply with the requirements of this section shall rebut the presumption of the validity of the assisted reproduction agreement for gestational carriers.

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