

AMENDED IN ASSEMBLY JUNE 26, 2003

AMENDED IN ASSEMBLY JUNE 4, 2003

AMENDED IN ASSEMBLY MAY 12, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 252

Introduced by Assembly Member Jackson

February 3, 2003

An act to amend Section 7634 of, *to add Section 7635.5 to*, and to add Article 1.5 (commencing with Section 7645) to Chapter 4 of Part 3 of Division 12 of, the Family Code, relating to paternity.

LEGISLATIVE COUNSEL'S DIGEST

AB 252, as amended, Jackson. Paternity judgments.

(1) Existing law permits a local child support agency to bring an action to determine the existence or nonexistence of a father and child relationship.

This bill would permit the Department of Child Support Services to review the current practices of service of process in regard to those actions, and to develop methods to increase personal delivery.

The bill would also require a court to notify an alleged father of a child of his right to have genetic testing performed to determine if he is the biological father and of his right to move to set aside or vacate a judgement of paternity, as specified.

(2) Existing law authorizes a local child support agency to issue an administrative order requiring the mother, the child, and the alleged father to submit to genetic testing to determine paternity in any civil

action or proceeding in which paternity is a relevant fact and a contested issue.

This bill would set forth procedures whereby certain persons may move to set aside or vacate a default judgment establishing paternity entered by a court of this state, as specified.

(3) Existing law authorizes a party in a civil action to make a motion to vacate a judgment within a specified period of time.

This bill would permit the court to grant those motions if certain conditions are satisfied, as specified, and would require court-ordered genetic testing, if requested by an authorized person or the court. Regardless of those test results, the bill would confer upon the court the discretion to deny a motion, if *that is* in the best interest of the child after consideration of specified factors. The bill would not apply to any adoption case or to any paternity case relating to a child conceived by artificial insemination.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

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

1 SECTION 1. Section 7634 of the Family Code is amended to
2 read:

3 7634. (a) The local child support agency may, in the local
4 child support agency’s discretion, bring an action under this
5 chapter in any case in which the local child support agency
6 believes it to be appropriate.

7 (b) The Department of Child Support Services may review the
8 current practices of service of process used by the local child
9 support agencies pursuant to subdivision (a), and may develop
10 methods to increase the number of persons served using personal
11 delivery.

12 SEC. 2. *Section 7635.5 is added to the Family Code, to read:*

13 7635.5. *In any action brought pursuant to this article, if the
14 alleged father appears in the action, the court shall give notice to
15 the alleged father of his right to have genetic testing performed to
16 determine if he is the biological father of the child. The court shall
17 further give notice to the alleged father of his right to move to set
18 aside or vacate a judgment of paternity pursuant to Section 7646
19 within one year of the date he received notice of the action to
20 establish paternity, and that after that time has expired he may not*



1 *move to set aside or vacate the judgment of paternity, regardless*
2 *of whether genetic testing shows him not to be the biological father*
3 *of the child.*

4 SEC. 3. Article 1.5 (commencing with Section 7645) is added
5 to Chapter 4 of Part 3 of Division 12 of the Family Code, to read:

6
7 Article 1.5. Setting Aside or Vacating Judgment of Paternity

8
9 7645. For purposes of this article, the following definitions
10 shall apply:

11 (a) “Child” means the child of a previously established father,
12 as determined by the superior court in a judgment that is the subject
13 of a motion brought pursuant to this article, or as a matter of law.

14 (b) “Judgment” means a judgment, order, or decree entered in
15 a court of this state that establishes paternity, and includes a
16 voluntary declaration of paternity. For purposes of this article,
17 “judgment” does not include a judgment in any action for marital
18 dissolution, legal separation, or nullity.

19 (c) “Previously established father” means a person identified
20 as the father of a child in a judgment issued by the superior court
21 in which the issue of paternity was determined.

22 (d) “Previously established mother” means a person identified
23 as the mother of a child in a judgment issued by the superior court
24 that is the subject of a motion brought pursuant to this article.

25 7646. (a) Notwithstanding any other provision of law, a
26 judgment establishing paternity may be set aside or vacated upon
27 a motion by the previously established mother of a child, the
28 previously established father of a child, the child, or the legal
29 representative of any of these persons if genetic testing indicates
30 that the previously established father of a child is not the biological
31 father of the child. The motion shall be brought prior to the 18th
32 birthday of the child and within ~~either~~ *one* of the following time
33 periods:

34 (1) Within a one-year period commencing with the ~~time date~~
35 *on which* the moving party knew or should have known that the
36 previously established father was declared the father or from the
37 date the moving party knew or should have known of the existence
38 of an action to adjudicate the issue of paternity, whichever is first.

39 (2) *If the previously established father is presumed to be the*
40 *father of the child pursuant to subdivision (d) of Section 7611,*



1 *within one year of the date the previously established father first*
2 *received the child into his home and held it out to be his natural*
3 *child.*

4 (3) In the case of any previously established father who is
5 subject to a ~~judicially imposed enforcement mechanism~~ *child*
6 *support collection enforcement* as a result of a default judgment,
7 ~~including, but not limited to, a writ of execution or an earnings~~
8 ~~assignment order~~ regarding a child support obligation as of the
9 effective date of this section, within a one-year period
10 commencing with the enactment of this section.

11 (b) Subdivision (a) does not apply if the child is presumed to
12 be a child of a marriage pursuant to Section 7540.

13 7647. (a) A court may grant a motion to set aside or vacate a
14 judgment establishing paternity only if all of the following
15 conditions are met:

16 (1) The motion is filed in a court of proper venue.

17 (2) The motion contains, at a minimum, all of the following
18 information, if known:

19 (A) The legal name, age, county of residence, and residence
20 address of the child.

21 (B) The names, mailing addresses, and counties of residence,
22 or, if deceased, the date and place of death, of the following
23 persons:

24 (i) The previously established father and the previously
25 established mother, and the biological mother and father of the
26 child.

27 (ii) The guardian of the child, if any.

28 (iii) Any person who has physical custody of the child.

29 (iv) The guardian ad litem of the child, if any, as appointed
30 pursuant to Section 7647.5.

31 (C) A declaration that the person filing the motion believes that
32 the previously established father is not the biological father of the
33 child, the specific reasons for this belief, and a declaration that the
34 person desires that the motion be granted. The moving party is not
35 required to present evidence of a paternity test indicating that the
36 previously established father is not the biological father of the
37 child in order to bring this motion pursuant to Section 7646.

38 (D) A declaration that the marital presumption set forth in
39 Section 7540 does not apply.



1 (3) The court finds that the conclusions of the expert, as
2 described in Section 7552, and as supported by the evidence, are
3 that the previously established father is not the biological father of
4 the child.

5 (b) The motion shall include a proof of service upon the
6 following persons, excluding the person bringing the motion:

7 (1) The previously established mother.

8 (2) The previously established father.

9 (3) The local child support agency, if services are being
10 provided to the child pursuant to Title IV-D or IV-E of the Social
11 Security Act (42 U.S.C. Sec. 651 et seq. and 42 U.S.C. Sec. 670
12 et seq.).

13 7647.5. A guardian ad litem may be appointed for the child to
14 represent the best interests of the child in an action brought
15 pursuant to this article.

16 7647.7. Any genetic testing used to support the motion to set
17 aside or vacate shall be conducted in accordance with Section
18 7552. The court shall, at the request of any person authorized to
19 make a motion pursuant to this article, or may upon its own
20 motion, order genetic testing to assist the court in making a
21 determination whether the previously established father is the
22 biological father of the child.

23 7648. If the court finds that the conclusions of all of the
24 experts, based upon the results of genetic tests performed pursuant
25 to Chapter 2 (commencing with Section 7550) of Part 2, indicate
26 that the previously established father is not the biological father of
27 the child, the court may, nevertheless, deny the motion if it
28 determines that denial of the motion is in the best interest of the
29 child, after consideration of the following factors:

30 (a) The age of the child.

31 (b) The length of time since the entry of the judgment or order
32 establishing paternity.

33 (c) The nature, duration, and quality of any relationship
34 between the previously established father and the child, including
35 the duration and frequency of any time periods during which the
36 child and the previously established father resided in the same
37 household or enjoyed a parent-child relationship.

38 (d) The request of the previously established father that the
39 parent-child relationship continue.



1 (e) Notice by the biological father of the child that he does not
2 oppose preservation of the relationship between the previously
3 established father and the child.

4 (f) The benefit or detriment to the child in establishing the
5 biological parentage of the child.

6 (g) Whether the conduct of the previously established father
7 has impaired the ability to ascertain the identity of, or get support
8 from, the biological father.

9 (h) Additional factors deemed by the court to be relevant to its
10 determination of the best interest of the child.

11 7648.1. If the court denies a motion pursuant to Section 7648,
12 the court shall state on the record the basis for the denial of that
13 motion and any supporting facts.

14 7648.2. (a) When the local child support agency participates
15 in a proceeding under this article, it may obtain an administrative
16 order for genetic tests as described in Section 7558.

17 (b) Except when ordered by a court, the local child support
18 agency is not responsible for the costs of genetic testing when
19 performed in connection with a proceeding under this article, nor
20 is the local child support agency required to provide for, or assist
21 in, genetic testing in any case in which it is not providing services
22 under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et
23 seq.).

24 7648.3. A court may not issue an order setting aside or
25 vacating a judgment establishing paternity pursuant to this article
26 under any of the following circumstances:

27 (a) The judgment was made or entered by a tribunal of another
28 state, even if the enforcement of that judgment is sought in this
29 state.

30 (b) The judgment was made or entered in this state and genetic
31 tests were conducted prior to the entry of the judgment which did
32 not exclude the previously established father as the biological
33 father of the child.

34 7648.4. Notwithstanding any other provision of law, if the
35 court grants a motion to set aside or vacate a paternity judgment
36 pursuant to this article, the court shall vacate any order for child
37 support and arrearages issued on the basis of that previous
38 judgment of paternity. The previously established father has no
39 right of reimbursement for any amount of support paid prior to the
40 granting of the motion.



1 7648.8. This article does not establish a basis for termination
2 of any adoption, and does not affect any obligation of an adoptive
3 parent to an adoptive child.

4 7648.9. This article does not establish a basis for setting aside
5 or vacating a judgment establishing paternity with regard to a child
6 conceived by artificial insemination pursuant to Section 7613.

7 7649. *Nothing in this article shall limit the rights and*
8 *remedies available under any other provision of law with regard*
9 *to setting aside or vacating a judgment of paternity or a voluntary*
10 *declaration of paternity.*

