

Assembly Bill No. 1349

Passed the Assembly May 2, 2011

Chief Clerk of the Assembly

Passed the Senate July 14, 2011

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 7573, 7576, 7612, and 7613 of the Family Code, relating to paternity.

LEGISLATIVE COUNSEL'S DIGEST

AB 1349, Hill. Paternity: conflicting presumptions.

Under existing law, with certain exceptions, a man is conclusively presumed to be the father of a child if he was married to and cohabiting with the child's mother. Existing law also provides that if a man signs a voluntary declaration of paternity, it has the force and effect of a judgment of paternity, subject to certain exceptions. Existing law further provides that a man is rebuttably presumed to be the father if he was married to, or attempted to marry, the mother before or after the birth of the child, or he receives the child as his own and openly holds the child out as his own. Under existing law, the voluntary declaration of paternity may be set aside by the court if genetic evidence establishes the man is not the father of the child, while the latter presumptions are rebutted by a judgment establishing paternity by another man. Existing law provides that if 2 or more presumptions conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls.

This bill would provide that a voluntary declaration of paternity is invalid if, at the time the declaration was signed, the child already had a presumed parent, as specified, or if the man signing the declaration is a sperm donor. The bill would authorize a person who is rebuttably presumed to be the child's parent under the above-described provisions to bring a motion to set aside a voluntary declaration of paternity, and would require the court to consider specified factors, including the nature, duration, and quality of the petitioning party's relationship with the child in deciding whether to set aside the voluntary declaration of paternity. The bill would include these proceedings among the exceptions to the provision that a voluntary declaration of paternity has the force and effect of a judgment of paternity. The bill would provide that, in the event of a conflict between a rebuttable presumption

of paternity and the voluntary declaration of paternity, the weightier considerations of policy and logic control. The bill would make other conforming changes.

Under existing law, 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 as if he were not the natural father of a child thereby conceived.

This bill would enable a sperm donor to be treated as a natural father if it is agreed to in a writing signed by the donor and the woman prior to the conception of the child.

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

SECTION 1. Section 7573 of the Family Code is amended to read:

7573. Except as provided in Sections 7575, 7576, 7577, and 7612, a completed voluntary declaration of paternity, as described in Section 7574, that has been filed with the Department of Child Support Services shall establish the paternity of a child and shall have the same force and effect as a judgment for paternity issued by a court of competent jurisdiction. The voluntary declaration of paternity shall be recognized as a basis for the establishment of an order for child custody, visitation, or child support.

SEC. 2. Section 7576 of the Family Code is amended to read:

7576. The following provisions shall apply for voluntary declarations signed on or before December 31, 1996.

(a) Except as provided in subdivision (d), the child of a woman and a man executing a declaration of paternity under this chapter is conclusively presumed to be the man's child. The presumption under this section has the same force and effect as the presumption under Section 7540.

(b) A voluntary declaration of paternity shall be recognized as the basis for the establishment of an order for child custody or support.

(c) In any action to rebut the presumption created by this section, a voluntary declaration of paternity shall be admissible as evidence to determine paternity of the child named in the voluntary declaration of paternity.

(d) The presumption established by this chapter may be rebutted by any person by requesting blood or genetic tests pursuant to Chapter 2 (commencing with Section 7550). The notice of motion for blood or genetic tests pursuant to this section shall be supported by a declaration under oath submitted by the moving party stating the factual basis for placing the issue of paternity before the court. The notice of motion for blood tests shall be made within three years from the date of execution of the declaration by the attesting father, or by the attesting mother, whichever signature is later. The two-year statute of limitations specified in subdivision (b) of Section 7541 is inapplicable for purposes of this section.

(e) A presumption under this chapter shall override all statutory presumptions of paternity except a presumption arising under Section 7540 or 7555, or as provided in Section 7612.

SEC. 3. Section 7612 of the Family Code is amended to read:

7612. (a) Except as provided in Chapter 1 (commencing with Section 7540) and Chapter 3 (commencing with Section 7570) of Part 2 or in Section 20102, a presumption under Section 7611 is a rebuttable presumption affecting the burden of proof and may be rebutted in an appropriate action only by clear and convincing evidence.

(b) If two or more presumptions arise under Section 7610 or 7611 that conflict with each other, or if a presumption under Section 7611 conflicts with a claim pursuant to Section 7610, the presumption which on the facts is founded on the weightier considerations of policy and logic controls.

(c) The presumption under Section 7611 is rebutted by a judgment establishing paternity of the child by another man.

(d) Within two years of the execution of a voluntary declaration of paternity, a person who is presumed to be a parent under Section 7611 may file a petition pursuant to Section 7630 to set aside a voluntary declaration of paternity. The court's ruling on the petition to set aside the voluntary declaration of paternity shall be made taking into account the validity of the voluntary declaration of paternity, and the best interests of the child based upon the court's consideration of the factors set forth in subdivision (b) of Section 7575, as well as the best interests of the child based upon the nature, duration, and quality of the petitioning party's relationship with the child and the benefit or detriment to the child of continuing that relationship. In the event of any conflict between the

presumption under Section 7611 and the voluntary declaration of paternity, the weightier considerations of policy and logic shall control.

(e) A voluntary declaration of paternity is invalid if, at the time the declaration was signed, any of the following conditions exist:

- (1) The child already had a presumed parent under Section 7540.
- (2) The child already had a presumed parent under subdivision (a), (b), or (c) of Section 7611.
- (3) The man signing the declaration is a sperm donor, consistent with subdivision (b) of Section 7613.

SEC. 4. Section 7613 of the Family Code is amended to read:

7613. (a) 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 husband's consent must be in writing and signed by him and his wife. The physician and surgeon shall certify their signatures and the date of the insemination, and retain the husband's consent as part of the medical record, where it shall be kept confidential and in a sealed file. However, the physician and surgeon's failure to do so does not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician and surgeon or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

(b) 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, unless otherwise agreed to in a writing signed by the donor and the woman prior to the conception of the child.

Approved _____, 2011

Governor