

AMENDED IN SENATE APRIL 8, 2013

AMENDED IN SENATE MARCH 13, 2013

SENATE BILL

No. 115

Introduced by Senator Hill

January 16, 2013

An act to amend Section 7630 of the Family Code, relating to parent and child relationship.

LEGISLATIVE COUNSEL'S DIGEST

SB 115, as amended, Hill. Parent and child relationship.

Existing law, the Uniform Parentage Act, sets forth the circumstances under which a man may be presumed to be the natural father of a child. Under existing law, those circumstances include if he receives the child into his home and openly holds out the child as his natural child and if the child is in utero after the father's death and specified conditions applicable with respect to determining rights to the property to be distributed upon the death of the decedent are satisfied. Existing law authorizes any interested party to bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship that is presumed under those circumstances. The Uniform Parentage Act also 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, unless otherwise agreed to in a writing signed by the donor and the woman prior to the conception of the child.

This bill would instead provide that notwithstanding the treatment in law of the sperm donor under those ~~circumstance~~ *circumstances*, any interested party may bring an action at any time for the purpose of

determining the ~~existence or nonexistence of the father and child relationship presumed under the previously described circumstances~~ *parentage of a man presumed to be the father because he receives the child into his home and openly holds out the child as his natural child.*

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

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

1 SECTION 1. Section 7630 of the Family Code is amended to
 2 read:

3 7630. (a) A child, the child’s natural mother, a man presumed
 4 to be the child’s father under subdivision (a), (b), or (c) of Section
 5 7611, an adoption agency to whom the child has been relinquished,
 6 or a prospective adoptive parent of the child may bring an action
 7 as follows:

8 (1) At any time for the purpose of declaring the existence of the
 9 father and child relationship presumed under subdivision (a), (b),
 10 or (c) of Section 7611.

11 (2) For the purpose of declaring the nonexistence of the father
 12 and child relationship presumed under subdivision (a), (b), or (c)
 13 of Section 7611 only if the action is brought within a reasonable
 14 time after obtaining knowledge of relevant facts. After the
 15 presumption has been rebutted, paternity of the child by another
 16 man may be determined in the same action, if he has been made
 17 a party.

18 (b) (1) Notwithstanding subdivision (b) of Section 7613, any
 19 interested party may bring an action at any time for the purpose
 20 of determining the existence or nonexistence of the father and child
 21 relationship presumed under subdivision (d) ~~or (f)~~ of Section 7611.

22 (2) *Any interested party may bring an action at any time for the*
 23 *purpose of determining the existence or nonexistence of the father*
 24 *and child relationship presumed under subdivision (f) of Section*
 25 *7611.*

26 (c) Except as to cases coming within Chapter 1 (commencing
 27 with Section 7540) of Part 2, an action to determine the existence
 28 of the father and child relationship may be brought by the child or
 29 personal representative of the child, the Department of Child
 30 Support Services, the mother or the personal representative or a
 31 parent of the mother if the mother has died or is a minor, a man

1 alleged or alleging himself to be the father, or the personal
2 representative or a parent of the alleged father if the alleged father
3 has died or is a minor.

4 (d) (1) If a proceeding has been filed under Chapter 2
5 (commencing with Section 7820) of Part 4, an action under
6 subdivision (a) or (b) shall be consolidated with that proceeding.
7 The parental rights of the presumed father shall be determined as
8 set forth in Sections 7820 to 7829, inclusive.

9 (2) If a proceeding pursuant to Section 7662 has been filed under
10 Chapter 5 (commencing with Section 7660), an action under
11 subdivision (c) shall be consolidated with that proceeding. The
12 parental rights of the alleged natural father shall be determined as
13 set forth in Section 7664.

14 (3) The consolidated action under paragraph (1) or (2) shall be
15 heard in the court in which the proceeding under Section 7662 or
16 Chapter 2 (commencing with Section 7820) of Part 4 is filed, unless
17 the court finds, by clear and convincing evidence, that transferring
18 the action to the other court poses a substantial hardship to the
19 petitioner. Mere inconvenience does not constitute a sufficient
20 basis for a finding of substantial hardship. If the court determines
21 there is a substantial hardship, the consolidated action shall be
22 heard in the court in which the paternity action is filed.

23 (e) (1) If any prospective adoptive parent who has physical
24 custody of the child, or any licensed California adoption agency
25 that has legal custody of the child, has not been joined as a party
26 to an action to determine the existence of a father and child
27 relationship under subdivision (a), (b), or (c), or an action for
28 custody by the alleged natural father, the court shall join the
29 prospective adoptive parent or licensed California adoption agency
30 as a party upon application or on its own motion, without the
31 necessity of a motion for joinder. A joined party shall not be
32 required to pay a fee in connection with this action.

33 (2) If a man brings an action to determine paternity and custody
34 of a child who he has reason to believe is in the physical or legal
35 custody of an adoption agency, or of one or more persons other
36 than the child's mother who are prospective adoptive parents, he
37 shall serve his entire pleading on, and give notice of all proceedings
38 to, the adoption agency or the prospective adoptive parents, or
39 both.

1 (f) A party to an assisted reproduction agreement may bring an
2 action at any time to establish a parent and child relationship
3 consistent with the intent expressed in that assisted reproduction
4 agreement.

5 (g) (1) In an action to determine the existence of the father and
6 child relationship brought pursuant to subdivision (b), if the child's
7 other parent has died and there are no existing court orders or
8 pending court actions involving custody or guardianship of the
9 child, then the persons having physical custody of the child shall
10 be served with notice of the proceeding at least 15 days prior to
11 the hearing, either by mail or in any manner authorized by the
12 court. If any person identified as having physical custody of the
13 child cannot be located, the court shall prescribe the manner of
14 giving notice.

15 (2) If known to the person bringing the parentage action,
16 relatives within the second degree of the child shall be given notice
17 of the proceeding at least 15 days prior to the hearing, either by
18 mail or in any manner authorized by the court. If a person identified
19 as a relative of the second degree of the child cannot be located,
20 or his or her whereabouts are unknown or cannot be ascertained,
21 the court shall prescribe the manner of giving notice, or shall
22 dispense with giving notice to that person.

23 (3) Proof of notice pursuant to this subdivision shall be filed
24 with the court before the proceeding to determine the existence of
25 the father and child relationship is heard.