SENATE BILL No. 1476

Introduced by Senator Leno

February 24, 2012

An act to amend Sections 3040, 7601, and 7612 of, and to add Section 4052.5 to, the Family Code, relating to parentage.

LEGISLATIVE COUNSEL'S DIGEST

SB 1476, as introduced, Leno. Family law: parentage.

(1) Under existing law, a man is conclusively presumed to be the father of a child if he was married to and cohabiting with the child's mother, except as specified. 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 latter presumptions are rebutted by a judgment establishing paternity by another man.

This bill would authorize a court to find that a child has 2 presumed parents notwithstanding the statutory presumption of parentage of the child by another man. The bill would authorize the court to make this finding if doing so would serve the best interest of the child based on the nature, duration, and quality of the presumed or claimed parents' relationships with the child and the benefit or detriment to the child of continuing those relationships.

(2) The Uniform Parentage Act defines the parent and child relationship as the legal relationship existing between a child and the child's parents, including the mother and child relationship and the father and child relationship, and governs proceedings to establish that relationship.

This bill would provide that a child may have a parent and child relationship with more than 2 parents.

(3) Existing law requires a family court to determine the best interest of the child for purposes of deciding child custody in proceedings for dissolution of marriage, nullity of marriage, legal separation of the parties, petitions for exclusive custody of a child, and proceedings under the Domestic Violence Prevention Act. In making that determination, the court must consider specified factors, including the health, safety, and welfare of the child. Existing law establishes an order of preference for allocating child custody and directs the court to choose a parenting plan that is in the child's best interest.

This bill would, in the case of a child with more than 2 legal parents, require the court to allocate custody and visitation among the parents based on the best interest of the child, including stability for the child.

(4) Under existing law, the parents of a minor child are responsible for supporting the child. Existing law establishes statewide uniform guidelines for calculating court-ordered child support. These guidelines direct a court to consider the parents' incomes, standard of living, and level of responsibility for the child.

This bill would, in the case of a child with more than 2 legal parents, direct the court to divide child support obligations among the parents based on the statewide uniform guidelines, adjusted to permit recognition of more than 2 parents.

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 3040 of the Family Code is amended to
2 read:
3 3040. (a) Custody should be granted in the following order of
4 preference according to the best interest of the child as provided
5 in Sections 3011 and 3020:
6 (1) To both parents jointly pursuant to Chapter 4 (commencing
7 with Section 3080) or to either parent. In making an order granting
8 custody to either parent, the court shall consider, among other
9 factors, which parent is more likely to allow the child frequent and
10 continuing contact with the noncustodial parent, consistent with
11 Section 3011 and 3020, and shall not prefer a parent as custodian
12 because of that parent's sex. The court, in its discretion, may

1 require the parents to submit to the court a plan for the
2 implementation of the custody order.
3   (2) If to neither parent, to the person or persons in whose home
4 the child has been living in a wholesome and stable environment.
5   (3) To any other person or persons deemed by the court to be
6 suitable and able to provide adequate and proper care and guidance
7 for the child.
8   (b) This section establishes neither a preference nor a
9 presumption for or against joint legal custody, joint physical
10 custody, or sole custody, but allows the court and the family the
11 widest discretion to choose a parenting plan that is in the best
12 interest of the child.
13 *(c) In cases where a child has more than two legal parents, the*
14 *court shall allocate custody and visitation among the parents based*
15 *on the best interest of the child, including, but not limited to,*
16 *stability for the child. This may mean that not all parents share*
17 *legal or physical custody of the child.*
18   SEC. 2. Section 4052.5 is added to the Family Code, to read:
19   4052.5. In any case in which a child has more than two legal
20 parents, the court shall divide child support obligations among the
21 parents based on income and amount of time spent with the child
22 by each parent, according to the principles set forth in Section
23 4053 and the general formula set forth in Section 4055, adjusted
24 to permit recognition of more than two parents.
25   SEC. 3. Section 7601 of the Family Code is amended to read:
26   7601. "Parent and child relationship" as used in this part means
27 the legal relationship existing between a child and the child's
28 natural or adoptive parents incident to which the law confers or
29 imposes rights, privileges, duties, and obligations. The term
30 includes the mother and child relationship and the father and child
31 relationship. *Nothing in this part shall be construed to preclude a*
32 *finding that a child has a parent and child relationship with more*
33 *than two parents.*
34   SEC. 4. Section 7612 of the Family Code is amended to read:
35   7612. (a) Except as provided in Chapter 1 (commencing with
36 Section 7540) and Chapter 3 (commencing with Section 7570) of
37 Part 2 or in Section 20102, a presumption under Section 7611 is
38 a rebuttable presumption affecting the burden of proof and may
39 be rebutted in an appropriate action only by clear and convincing
40 evidence.

1   (b) If two or more presumptions arise under Section 7610 or
2 7611 that conflict with each other, or if a presumption under
3 Section 7611 conflicts with a claim pursuant to Section 7610, the
4 presumption which on the facts is founded on the weightier
5 considerations of policy and logic controls. *In an appropriate*
6 *action, a court may find that a child has more than two natural or*
7 *adoptive parents if required to serve the best interest of the child.*
8 *In determining a child's best interest under this section, a court*
9 *shall consider the nature, duration, and quality of the presumed*
10 *or claimed parents' relationships with the child and the benefit or*
11 *detriment to the child of continuing those relationships.*
12   (c) ~~The~~ *Unless a court orders otherwise, a* presumption under
13 Section 7611 is rebutted by a judgment establishing paternity of
14 the child by another man.
15   (d) Within two years of the execution of a voluntary declaration
16 of paternity, a person who is presumed to be a parent under Section
17 7611 may file a petition pursuant to Section 7630 to set aside a
18 voluntary declaration of paternity. The court's ruling on the petition
19 to set aside the voluntary declaration of paternity shall be made
20 taking into account the validity of the voluntary declaration of
21 paternity, and the best interests of the child based upon the court's
22 consideration of the factors set forth in subdivision (b) of Section
23 7575, as well as the best interests of the child based upon the
24 nature, duration, and quality of the petitioning party's relationship
25 with the child and the benefit or detriment to the child of continuing
26 that relationship. In the event of any conflict between the
27 presumption under Section 7611 and the voluntary declaration of
28 paternity, the weightier considerations of policy and logic shall
29 control.
30   (e) A voluntary declaration of paternity is invalid if, at the time
31 the declaration was signed, any of the following conditions exist:
32   (1) The child already had a presumed parent under Section 7540.
33   (2) The child already had a presumed parent under subdivision
34 (a), (b), or (c) of Section 7611.
35   (3) The man signing the declaration is a sperm donor, consistent
36 with subdivision (b) of Section 7613.

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