This bill clarifies that notwithstanding current law, any interested party may bring an action for the purpose of determining a parent and child relationship at any time.

Existing law:
1. Provides that the child of a wife who lives with her husband, who is not impotent or sterile, is conclusively presumed to be a child of the marriage. (Fam. Code Sec. 7540)

2. Provides that a man is presumed to be the natural father of a child in any of the following instances:
   A. He and the child's mother are married to each other when the child is born, or the child is born within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce; or
   B. Before the child's birth, he and the child's mother attempted to marry each other, although the attempted marriage is or could be declared invalid, and either the child is born during the attempted marriage or within 300 days after its termination, or if the attempted marriage is invalid without a court order and the child is born within 300 days after the termination of cohabitation; or
   C. After the child's birth, he and the mother have married or attempted to marry and with his consent he is named on the birth certificate as the child's father, or he has obligated to support the child in writing. (Fam. Code Sec. 7611 (a)-(c))

3. Provides that a donor of semen to a licensed physician or 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 the child thereby conceived unless otherwise agreed to in a writing signed prior to the conception of the child. (Fam. Code Sec. 7613 (b))

This bill allows any interested party, regardless of treatment
under the law as a sperm donor to a licensed physician or sperm

Background

It is the policy of the State of California to establish paternity for all children. The establishment of paternity provides children with equal rights and access to benefits such as health insurance, child support, and inheritance. (Fam. Code Sec. 7570) Under existing law, a child born during a marriage to a wife who lives with her husband is conclusively presumed to be the child of the marriage. (Fam. Code Sec. 7546) For a child born outside of a marriage, paternity may be established by a voluntary declaration of paternity or through another legal presumption of paternity. (Fam. Code Sec. 7573, 7611) In the event that two or more presumptions of paternity arise, the court is required to find in favor of the presumption which on the facts is founded on the weightier considerations of policy and logic. (Fam. Code Sec. 7612)

For most heterosexual couples, conception is achieved with the woman's own eggs and the sperm of her male partner, making parental identity straightforward. However, individuals and couples are increasingly using assisted reproduction technology, which can rely upon donor sperm, donor eggs, donor embryos, and host wombs, thereby impelling the legal concept of parentage to evolve.

Generally, donors of genetic material are treated under law as though they are not the parents of a child conceived from that material. For example, California's Family Code treats sperm donors who are not married to the woman who conceives using the donor's sperm as "if he were not the natural father of the child thereby conceived, unless otherwise agreed to by the woman and donor in writing prior to conception of the child. (Fam. Code Sec. 7613 (b)) In most of these cases, the law instead looks to the "intended parents," as defined by the California Supreme Court in Buzzanca v. Buzzanca (1998) 61 Cal.App.4th 1410, which held that, regardless of who provides the eggs, sperm or uterus, the intended parent(s) are "the first cause, prime movers, of the procreative relationship." (Id. at 1424) Therefore, a

Comments

According to the author's office:

According to the Centers for Disease Control, California has more fertility clinics than any other state in the nation. Unmarried individuals in California are increasingly making use of assisted reproduction to conceive children with the intent to raise those children jointly. Current law is unclear about the relationship between the statutes within the Family Code, which govern both the treatment of a man who provides his semen to a licensed physician for use in assisted reproduction, and the ability of any interested party to bring an action at any time for the purpose of determining the existence or nonexistence of the presumed father and child relationship.

This [bill] is necessary because California trial courts are interpreting existing statutory language governing the treatment of donors of semen for use in insemination or in vitro
fertilization of a woman other than a donor's wife to find that it precludes further examination of the presumed father and child relationship. Courts are finding it difficult to harmonize the two relevant code sections, even when doing so is in the best interest of the child, and would preserve an ongoing relationship between a child and his/her known, biological father.

Prior Legislation

SB 1349 (Hill, Chapter 185, Statutes of 2011) provided that a voluntary declaration of paternity is invalid under specified circumstances, and allowed a presumed parent to bring a motion set aside the voluntary declaration within a specified amount of time; required the court to consider specified factors in deciding whether to set aside the voluntary declaration; provided that, in the event of a conflict between a rebuttable presumption and a voluntary declaration, the weightier considerations of policy and logic control; and provided that a sperm donor would not be considered the natural father unless otherwise agreed to in writing.

SB 375 (Wright, 2011) would have allowed for any presumed father to bring a motion for genetic testing to rebut the presumption of paternity within two years after he becomes aware of facts that lead him to reasonably believe that he is not the biological father of the child. Hearing in the Senate Judiciary Committee was cancelled at the author's request.

SB 377 (Wright, 2011) would have invalidated a voluntary declaration of paternity that is signed by a minor if it is not also signed by the parent or guardian of the minor parent. Hearing in the Senate Judiciary Committee was cancelled at the author's request.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 4/16/13)

Association of Certified Family Law Specialists
Equality California
National Center for Lesbian Rights

AL:ej 4/18/13 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

CONTINUED