

First Supplement to Memorandum 92-33

Subject: Study F-1001 - Inclusion of 1992 Legislation in Family Code

Attached to this supplement is an additional exhibit containing draft legislation necessary to add 1992 legislation concerning family law to the Family Code. The exhibit and page numbers continue from the set of exhibits attached to Memorandum 92-33.

<u>Ex.</u>	<u>Bill #</u>	<u>Ch. #</u>	<u>Author</u>
19.	AB 1296	Ch. 559	Katz & T. Friedman

It has also come to the attention of the staff that it might be a good thing to explain the mechanics of "chaptering-out." The general rule is stated in the second paragraph of Government Code Section 9605:

In the absence of any express provision to the contrary in the statute which is enacted last, it shall be conclusively presumed that the statute which is enacted last is intended to prevail over statutes which are enacted earlier at the same session and, in the absence of any express provision to the contrary in the statute which has a higher chapter number, it shall be presumed that a statute which has a higher chapter number was intended by the Legislature to prevail over a statute which is enacted at the same session but has a lower chapter number.

This rule avoids having inconsistent amendments to the same section of existing law. Two (or more) bills affect the same section if they both amend it or if one bill amends it and the other repeals it. (The statute apparently does not apply where two bills enact new sections with the same number.) "Chaptering-out" is the process whereby the amendment or repeal in the bill chaptered later is given effect and the amendment or repeal in the bill chaptered earlier is ineffective.

Where there are two bills affecting the same section, the Legislative Counsel will inform the authors of this fact. If it is

clear which bill will be chaptered first by the Secretary of State, and assuming that there is no substantive conflict, the author of the bill to be chaptered later can accept amendments to incorporate the changes that would have been made by the first bill. Since it is frequently impossible to predict the eventual chapter order, however, the safer remedy is a "double-jointing" provision. A double-jointing provision preserves the substance of both bills in an alternate section of the bill, usually inserted as a "point 5" section following the original bill section (e.g., bill Section 2.5 following bill Section 2). "Plus sections" added at the end of the bill then sort out the consequences depending on whether both bills are enacted and the order of their chaptering. It becomes a complicated job where there are more than two bills involved.

To avoid the necessity of trying to draft double-jointing provisions, the Family Code bill (AB 2650) and the conforming revisions bill (AB 2641) were made subordinate to all other legislation affecting the same sections. However, since the project involved enactment of a new code, a variation of the usual chaptering-out situation occurs. No sections in the Family Code have been chaptered-out, because all of its sections are just being enacted. However, the repeals of chunks of the Civil Code and other codes, as well as the amendments to a number of sections, are vulnerable to chaptering-out. Where a block of sections, such as the Family Law Act (Civ. Code § 4000 *et seq.*), is repealed, any bill amending or adding a section to the Family Law Act prevails over (chapters-out) the repeal, but only to the extent of the conflict.

For example, in Exhibit 19, attached to this supplement, it is necessary to re-repeal Civil Code Section 7004 because the repeal of the Uniform Parentage Act (Civ. Code § 7000 *et seq.*) by Section 4 of Chapter 162 of the Statutes of 1992 (AB 2641, the Family Code conforming revisions bill) has been chaptered-out to the extent that Civil Code Section 7004 was amended by Section 1 of Chapter 559 of the Statutes of 1992 (AB 1296).

Of course, even if AB 1296 had been chaptered before AB 2641, it would have prevailed because of the subordination provision in AB 2641. The approach of subordinating one bill to all others chaptered in the same session works well only if the subordinated bill has a

delayed operative date, as in our situation. During the 1993 legislative session, we will need to use double-jointing provisions to preserve the effect of different bills affecting the same section.

Respectfully submitted,

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#F-1001
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EXHIBIT 19

AB 1296 (Paternity)

Staff Note. The draft legislation in this exhibit would repeal a section that was repealed by AB 2650 (1992 Cal. Stat. ch. 162, § 4), which repeal was chaptered-out by AB 1296 (1992 Cal. Stat. ch. 559, § 1), and make conforming changes in the Family Code.

Civ. Code § 7004 (repealed). Presumptions concerning natural father

SEC. ____ . Section 7004 of the Civil Code is repealed.

~~7004. (a) A man is presumed to be the natural father of a child if he meets the conditions as set forth in Section 621 of the Evidence Code or in any of the following paragraphs:~~

~~(1) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court.~~

~~(2) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and either of the following is true:~~

~~(i) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce.~~

~~(ii) If the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation.~~

~~(3) After the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and either of the following is true:~~

~~(i) With his consent, he is named as the child's father on the child's birth certificate.~~

~~(ii) He is obligated to support the child under a written voluntary promise or by court order.~~

~~(4) He receives the child into his home and openly holds out the child as his natural child.~~

~~(5) If the child was born and resides in a nation with which the United States engages in an Orderly Departure Program or successor program, he acknowledges that he is the child's father in a declaration under penalty of perjury, as specified in Section 2015.5 of the Code of Civil Procedure.~~

~~This paragraph shall remain in effect only until January 1, 1997, and on that date shall become inoperative.~~

~~(b) If (a) is not applicable, then, a man shall not be presumed to be the natural father of a child if either of the following is true:~~

~~(1) The child was conceived as a result of an act in violation of Section 261 of the Penal Code and the father was convicted of that violation.~~

~~(2) The child was conceived as a result of an act in violation of Section 261.5 of the Penal Code, the father was convicted of that violation, and the mother was under the age of 15 years and the father was 21 years of age or older at the time of conception.~~

~~(c) Except as provided in Section 621 of the Evidence Code, a presumption under this section is a rebuttable presumption affecting the burden of proof and may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise under this section which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.~~

~~Comment. Subdivision (a) of former Section 7004 [as amended by 1992 Cal. Stat. ch. 559, § 1] is continued without substantive change in Family Code Section 7611 (presumption of paternity). Subdivision (b) is continued without substantive change in Family Code Section 7612.5 (exception to presumption of paternity). Subdivision (c) is continued without substantive change in Family Code Section 7612 (nature of paternity presumptions).~~

Fam. Code § 7611 (technical amendment). Presumption of paternity

SEC. ____ . Section 7611 of the Family Code is amended to read:

7611. A man is presumed to be the natural father of a child if he meets the conditions as set forth in Part 1 (commencing with Section 7500) or in any of the following subdivisions:

(a) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a judgment of separation is entered by a court.

(b) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and either of the following is true:

(1) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce; ~~or,~~

(2) If the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation.

(c) After the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance

with law, although the attempted marriage is or could be declared invalid, and either of the following is true:

(1) With his consent, he is named as the child's father on the child's birth certificate; or,

(2) He is obligated to support the child under a written voluntary promise or by court order.

(d) He receives the child into his home and openly holds out the child as his natural child.

(e) If the child was born and resides in a nation with which the United States engages in an Orderly Departure Program or successor program, he acknowledges that he is the child's father in a declaration under penalty of perjury, as specified in Section 2015.5 of the Code of Civil Procedure. This subdivision ~~shall remain~~ remains in effect only until January 1, 1997, and on that date ~~shall become~~ becomes inoperative.

Comment. Section 7611 continues former Civil Code Section 7004(a) [as amended by 1992 Cal. Stat. ch. 559, § 1] without substantive change. This section is the same in substance as Section 4(a) of the Uniform Parentage Act (1973). In subdivision (a), "judgment" has been substituted for "decree." This is not a substantive change. See Section 100 ("judgment" includes decree, as appropriate). See also Section 7612 (nature of paternity presumptions).

Interim Comment. Subdivisions (b)-(c) of Section 7611 are amended to conform to amendments to Civil Code Section 7004(a), [as amended by 1992 Cal. Stat. ch. 559, § 1].

Fam. Code § 7612.5 (added). Exception to presumption of paternity

SEC. _____. Section 7612.5 is added to the Family Code, to read:

7611.5. If Section 7611 is not applicable, a man is not presumed to be the natural father of a child if either of the following is true:

(a) The child was conceived as a result of an act in violation of Section 261 of the Penal Code and the father was convicted of that violation.

(b) The child was conceived as a result of an act in violation of Section 261.5 of the Penal Code, the father was convicted of that violation, and the mother was under the age of 15 years and the father was 21 years of age or older at the time of conception.

Comment. Section 7612.5 continues former Civil Code Section 7004(b) [as amended by 1992 Cal. Stat. ch. 559, § 1] without substantive change.

