

SENATE BILL REPORT

E2SHB 1267

As Reported by Senate Committee On:
Government Operations, Tribal Relations & Elections, March 22, 2011

Title: An act relating to clarifying and expanding the rights and obligations of state registered domestic partners and other couples related to parentage.

Brief Description: Clarifying and expanding the rights and obligations of state registered domestic partners and other couples related to parentage.

Sponsors: House Committee on General Government Appropriations & Oversight (originally sponsored by Representatives Pedersen, Walsh, Jinkins, Eddy, Roberts, Kagi, Sullivan, Van De Wege, Hurst, Goodman, Orwall, Moeller, Kirby, Frock, Carlyle, Lias, Kenney, Clibborn, Seaquist, Blake, Hudgins, Fitzgibbon, Darneille, Dunshee, Morris, Takko, Pettigrew, Finn, Billig, Hunter, Cody, Dickerson, Stanford, Springer, Reykdal, Haigh, Rolfes, Sells, Jacks, Appleton, Hunt, Maxwell, Ryu, Ormsby, Ladenburg, McCoy, Santos, Lytton, Moscoso, Upthegrove, Green, Hasegawa and Tharinger; by request of Washington State Bar Association).

Brief History: Passed House: 2/28/11, 57-41.

Committee Activity: Government Operations, Tribal Relations & Elections: 3/15/11, 3/22/11 [DP, DNP].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

Majority Report: Do pass.

Signed by Senators Pridemore, Chair; Prentice, Vice Chair; Chase and Nelson.

Minority Report: Do not pass.

Signed by Senators Swecker, Ranking Minority Member; Benton.

Staff: Sharon Swanson (786-7447)

Background: Washington's Uniform Parentage Act (UPA) is based on model legislation from the National Conference of Commissioners on Uniform State Laws (NCCUSL). The NCCUSL amended its model act in 2002 and Washington has not yet adopted those changes. Washington's UPA also has provisions addressing assisted reproduction and surrogacy.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Establishing and Challenging Parentage. Parentage may be established under the UPA based on a presumption, acknowledgement, or adjudication. A person is a presumed parent if the child was born in the context of marriage. A person is an acknowledged parent if the person signs an acknowledgement of paternity that is later filed with the State Registrar of Vital Statistics. A person is an adjudicated parent if the person's parentage was determined in a court proceeding.

The procedure for challenging parentage varies depending on whether the child has a presumed, acknowledged, or adjudicated parent. Generally, a challenge must be brought within two years from the child's birth, and parentage may be disproved by admissible results of genetic testing. There are specific procedures for when genetic testing can be ordered and when a motion for genetic testing can be denied.

Assisted Reproduction and Surrogacy. The UPA has procedures for determining parentage when a child is conceived by assisted reproduction. The provisions on surrogacy prohibit a person from entering into a surrogacy contract with a minor or a person with a mental illness or developmental disability. Surrogacy for compensation is also prohibited.

Domestic Partnerships. In 2009 the Legislature added language to the UPA stating that terms such as spouse, marriage, husband, and wife used in the chapter must be interpreted to apply equally to domestic partners, to the extent that such interpretation does not conflict with federal law. In addition, gender-specific terms must be construed to be gender neutral.

Summary of Bill: The UPA is amended to specifically reference state-registered domestic partnerships in various provisions, such as the provision establishing presumed parentage. However, acknowledgements of paternity apply only when there is a mother and a man claiming to be the genetic father of the child. Gender-specific terms are replaced with gender-neutral terms. Some of the changes made by the NCCUSL are adopted, including a new provision for presumption of parentage. A person is a presumed parent if, for the first two years of the child's life, the person resided in the same home with the child and openly held out the child as his or her own.

Challenging Parentage. The time period under which a person can challenge parentage is extended from two years to four years. If an action to challenge parentage is commenced more than two years after the child's birth, the child must be made a party to the action. If a person signed an acknowledgement or denial of paternity as a minor, the person may commence an action to rescind the acknowledgement or denial up until the date of his nineteenth birthday.

Assisted Reproduction and Disclosure of Medical History Information. Provisions on genetic testing are amended to specify that they do not apply when the child is conceived through assisted reproduction. The parentage of a child conceived through assisted reproduction may be disproved by admissible evidence showing the intent of the parents.

A child conceived through assisted reproduction who is at least 18 years old must be provided, upon request, access to medical history information of the donor and, in some cases, access to identifying information of the donor.

Surrogacy Contracts. The surrogacy statutes are replaced with provisions for surrogacy contracts that apply to both gestational and traditional surrogacy. Surrogacy for compensation is allowed; however, a person may not enter into or arrange a surrogacy contract with a woman who is diagnosed as having an intellectual or developmental disability or mental illness.

Under a surrogacy contract, the surrogate does not intend to be the parent of the child, and immediately upon the birth of the child, the intended parents are the child's legal parents. A surrogacy contract is enforceable under the UPA if the surrogate, the intended parents, and the contract meet certain requirements.

The surrogate must:

- be at least 21 years old;
- have given birth to at least one child;
- have previously acted as a surrogate for compensation no more than once;
- have completed a medical and mental health evaluation;
- have given written, informed consent to the procedures;
- have executed a health care advance directive;
- have consulted with independent counsel; and
- have obtained health, life, and long-term disability insurance policies. The health insurance coverage cannot be financed through Medicaid or the Children's Health Insurance Program, and an alternative option is created if a long-term disability policy is not available.

The intended parents must:

- have a medical need for surrogacy, as evidenced by a doctor's affidavit (affidavit is not necessary for same-sex couples);
- have completed a mental health evaluation; and
- have consulted with independent counsel.

The surrogacy contract must also meet certain requirements. For example, the contract must be executed prior to commencing any medical procedures, other than the medical and mental health evaluations. The contract must contain certain provisions, such as an express agreement that the number of embryos transferred not exceed what is recommended by certain reproductive health organizations. Nothing in the act may be construed to limit or constrain the right of the surrogate to make all health and welfare decisions regarding herself and her pregnancy, and she may not be held liable in a tort action for her decisions.

The parent-child relationship is established effective immediately upon the birth of the child if, among other things, the parties' attorneys file in court a certification stating that the parties entered into a surrogacy contract that is intended to meet all the requirements.

No action to invalidate a surrogacy contract may be brought after 12 months from the date of the child's birth.

The Department of Health may adopt rules regarding the required medical and mental health evaluations.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Today's families look very different from the image of family that we grew up with. Today's children may have one parent, or two moms, or two dads. This bill provides legal protections and a framework that recognizes these changes. The bill before the committee consists of three key changes: (1) makes line edits to capture spouse and domestic partner; (2) updates the Uniform Parentage Act to reflect changes adopted in other states; (3) repeals the law prohibiting compensation for surrogacy. The bill provides protection for families and especially for children. Growing up, I always knew I wanted children but I was advised by my doctor that I should not have my own children. After years of frustration my husband and I looked into surrogacy. We found that surrogacy for compensation is illegal in Washington. We had to travel out of state to conceive our child. We were not able to be as involved daily with our surrogate. We had to take time off of work and incur the expense of travel and staying in hotels just to attend medical appointments. We missed quite a few milestones during our surrogate's pregnancy and actually, we missed the birth of our child as our surrogate delivered early. If we had been able to have the same arrangement locally, we could have been much more involved in the experience. This bill changes the existing presumption that the person who gives birth is the legal parent. This change in legal presumptions would have helped my family. I had to adopt my biological child because my partner carried our daughter and gave birth. The law needs to catch up with medical technology. Domestic partners are supposed to have all the rights afforded to married couples. In the case of families, this is not true. This bill helps address the many inequities in the area of family law. This bill gives options to families who can not biologically create their own families. This is a pro-family bill, not an anti-woman bill. Women are capable of making good decisions about their bodies, their families, and whether or not they wish to act as a surrogate. This legislation protects women and children by creating certainty for all parties to a surrogacy arrangement.

CON: This bill expands the presumption relating to parentage to such a degree that persons that cannot possibly be biologically related to a child will be a presumed parent. The state is recognizing a parent-child relationship where it is obvious no such relationship exists. This bill allows the purchasing of parental rights. This bill will force a surrogate into birthing or aborting a child. The woman will have no legal right to change her mind and keep her child. The last time the government allowed the purchase and sale of humans involved slavery. All human life is sacred but this bill creates a financial incentive to create life. The bill also creates a financial incentive to exploit women. Financially disadvantaged women will be tempted to bear children for financial gain. We don't allow the sale of body parts but we will now allow the sale of our children. A family who receives an embryo has to have a home study and qualify. This bill offers no such protections for the babies that will be born for profit. The portion of the bill that allows a child to be removed from its birth mother at the moment of birth will cause terrible damage to the mother and child. The age of consent for surrogacy should be raised to 25. The rights of the intended parent will now trump the rights

of the birth parent and of adoptive parents. This bill is part of a larger agenda to teach deviant behavior. Surrogacy for profit is appalling and is terrible public policy. Surrogacy for profit commercializes children. This bill obscures the differences between male and female and their unique contributions to the continuance of the human race. HB 1267 is a perversion of God's design for the family unit. No children can come from a homosexual union; thus, this bill is a direct unashamed affront to God's plan. Genesis 1:26 says, God created man in his own image. In the image of God created he them, male and female; created he them. And God blessed them and said, "Be fruitful and multiply and replenish the earth." This scripture lays the framework for God's plan for the family unit - man, woman, child - husband, wife, children, not neutral gender. We are living in apocalyptic times. The Lord Jesus Christ foretold these types of events would happen before his return. How brazen for this legislative body to even be considering such an ungodly bill.

Persons Testifying: PRO: Tiffany Sparks Keeney, Darrell Aaron Keeney, Steven Glass, Jen Havig, Mark Demeray, citizens; Sara Ainsworth, Legal Voice; JP Tammen, John Tammen, Tammen Family.

CON: Russell Johnson, Family Policy Institute; John Geis, Washington State Catholic Conference; Maureen Richardson, Embryo Adoption Services of Cedar Park; Rose Gunderson, Washington Anti-Trafficking Engagement; Brett Harvey, Alliance Defense Fund; Bob Higley, citizen.

Signed In, Unable to Testify & Submitted Written Testimony: CON: Rebecca Faust; Pastor Roy E. Hartwell, Pastor Valarie Hartwell, Rivers of Glory Christian Church.