

HOUSE BILL REPORT

E2SHB 1267

As Amended by the Senate

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, Frockt, 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:

Committee Activity:

Judiciary: 1/24/11, 1/27/11 [DPS];

General Government Appropriations & Oversight: 2/15/11, 2/16/11 [DP2S(w/o sub JUDI)].

Floor Activity:

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

Senate Amended.

Passed Senate: 4/12/11, 27-21.

Brief Summary of Engrossed Second Substitute Bill

- Amends the Uniform Parentage Act to: (1) reference state-registered domestic partnerships in specific provisions; (2) adopt some of the changes made by the National Conference of Commissioners on Uniform State Laws; (3) extend the time under which a person can challenge parentage or rescind an acknowledgment under certain circumstances; and (4) use gender-neutral terms.
- Establishes standards for surrogacy contracts, including requirements that must be met by the intended parents and the woman acting as a surrogate.

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.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Eddy, Frockt, Kirby, Orwall and Roberts.

Minority Report: Do not pass. Signed by 6 members: Representatives Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Chandler, Klippert, Nealey and Rivers.

Staff: Trudes Tango (786-7384).

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS & OVERSIGHT

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Judiciary. Signed by 7 members: Representatives Hudgins, Chair; Blake, Fitzgibbon, Ladenburg, Moscoso, Pedersen and Van De Wege.

Minority Report: Do not pass. Signed by 5 members: Representatives Miloscia, Vice Chair; McCune, Ranking Minority Member; Taylor, Assistant Ranking Minority Member; Ahern and Wilcox.

Staff: Alex MacBain (786-7288).

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 their model act in 2002 and Washington has not yet adopted those changes. Washington's UPA also has provisions addressing assisted reproduction and surrogacy.

Establishing and Challenging Parentage.

Parentage may be established under the UPA based on a presumption, acknowledgment, 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 acknowledgment 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 procedures for challenging parentage vary 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 Engrossed Second Substitute Bill:

The UPA is amended to specifically reference state-registered domestic partnerships in various provisions, such as the provision establishing presumed parentage. However, acknowledgments 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 the 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 acknowledgment or denial of paternity when the person was a minor, the person may commence an action to rescind the acknowledgment 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 a mental illness.

Under a surrogacy contract, the woman acting as 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 woman acting as a surrogate, the intended parents, and the contract meet certain requirements.

The woman acting as a surrogate must:

- be at least 21 years old;
- have given birth to at least one child;
- not have previously acted as a surrogate for compensation more than once;
- have completed a medical and mental health evaluation;
- have given her 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 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 woman acting as a 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.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendments:

1. remove all provisions regarding surrogacy contracts, thereby restoring current law on surrogacy;
2. remove the "holding out" provision in the presumption of parentage section;

3. remove provisions that expand the time period (from two years to four years) in which a person may challenge parentage;
4. provide that in an action challenging parentage brought more than two years after the child's birth, the determination of parentage must take into account the child's best interest (Note: this amendment conflicts with the above amendment);
5. remove provisions that allowed a minor who signed an acknowledgment or denial of parentage to bring an action to rescind the acknowledgment or denial up to the person's nineteenth birthday;
6. allow a minor who signed an acknowledgment or denial of parentage to bring an action to rescind only an acknowledgement (not a denial) of parentage (Note: this amendment conflicts with the above amendment);
7. limit the application of the provision regarding consent to assisted reproduction to couples who are married or in domestic partnerships. A person who consents to assisted reproduction with a spouse or domestic partner (rather than with "another person") is the parent of the child.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Judiciary):

(In support) This bill affects every child born in the state and protects and ensures legal status of that child. There are open issues remaining from the domestic partnership laws that need to be resolved. There is legal uncertainty about how the UPA applies to domestic partners. Systematic discrimination in statute still exists. This bill also conforms the UPA with changes by the Uniform Law Commission. The surrogacy provisions provide protections for women acting as surrogates by addressing a practice that is currently occurring either out-of-state or underground. This bill makes clear that when a couple is in a domestic partnership, they are presumed to be the parents of the child; current law does not make that immediately apparent. The holding out provision is an important way to establish parentage in cases where a person acted as the parent in every respect. The bill provides strict protections for women acting as surrogates. This bill prevents exploitation of women, protects the rights and safety of women, and provides the right for women to make all health and welfare decisions during pregnancy. The bill limits the number of eggs that can be transplanted and the number of times a woman can be a surrogate. It would be worse to leave women not protected by not having clear state law on the subject. Having outdated laws leaves children vulnerable. Illinois has a similar law allowing compensation for surrogacy, but in California the law was developed in the courts. The bill presents a lot of compromise by various groups. Some women have medical and health issues and cannot give birth to their own children, and they travel out-of-state to enter into surrogacy agreements. Traveling to other states adds to the cost of surrogacy and prevents the parties from supporting and bonding with each other because of the distance. The current law places an undue burden on people with fertility issues. The bill would make it more convenient and less expensive for the surrogate and intended parents and would be conducive to them building a relationship with each other.

Regarding the holding out provision, that option existed in a prior version of the UPA in Washington but was taken out. The holding out provision was very well used, but since its removal, there have been horror stories. The time period for challenging paternity is too short. The bill covers what has been left out of the law.

(Opposed) The bill has technical issues and undefined terms. The holding out provision could result in a confusing number of parents in a household with multiple adults all holding out the child as their own. Children born out of wedlock should have parentage established through acknowledgments of paternity. There are concerns about the bill using gender neutral terms.

Staff Summary of Public Testimony (General Government Appropriations & Oversight):

(In support) None.

(Opposed) The bill requires people to go to court to prove something for which the facts are already very clear. There are concerns about the bill using gender-neutral terms. There are also concerns about paid surrogacy and its potential effect on the commercialization of children.

Persons Testifying (Judiciary): (In support) Representative Pedersen, prime sponsor; Lonnie Johns-Brown, National Organization for Women; David Ward, Legal Voice; Jen Estroff, Children's Alliance; John and JP Tammen; Jen and Erinn Havig; Tiffany Sparks-Keeney and Darrell Aaron Keeney; and Sharon LaMothe.

(Opposed) Rebecca Faust.

Persons Testifying (General Government Appropriations & Oversight): Rebecca Faust; and Maureen Richardson, Concerned Women for America of Washington.

Persons Signed In To Testify But Not Testifying (Judiciary): None.

Persons Signed In To Testify But Not Testifying (General Government Appropriations & Oversight): None.