
Judiciary Committee

HB 2612

Title: An act relating to authorizing the termination of all legal responsibilities of a nonparent if genetic testing shows by clear and convincing evidence that a man is not the genetic father of a child.

Brief Description: Authorizing the termination of all legal responsibilities of a nonparent if genetic testing shows by clear and convincing evidence that a man is not the genetic father of a child.

Sponsors: Representatives Shea, Young, Scott, Taylor, G. Hunt, Rodne, Caldier, Holy, McCaslin, Dent, MacEwen, Hayes, Condotta and Zeiger.

Brief Summary of Bill

- Establishes a process for a man to bring an action to challenge paternity, and remove all associated rights and responsibilities, if genetic testing demonstrates by clear and convincing evidence that the man is not the child's genetic parent.
- Creates a presumption in proceedings to adjudicate parentage that genetic testing is in the child's best interest, and prohibits the court from denying a genetic test if a presumed father did not know he was not the genetic father of a child and has filed a petition to challenge paternity.
- Makes changes to various current law provisions of the Uniform Parentage Act.

Hearing Date: 2/2/16

Staff: Omeara Harrington (786-7136).

Background:

Establishing Parentage.

Parentage may be established under the Uniform Parentage Act (UPA) based on presumption, acknowledgment, or adjudication. A person is a presumed parent if the child was born in the context of marriage or domestic partnership, or shortly thereafter, or if the person resided with

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the child and openly held the child out as his or her own for the first two years of the child's life. 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. A judgment and order establishing parentage may include terms requiring provision of child support and payment of birth-related costs, and requiring amendment of the child's birth certificate. It must also make residential provisions for minor children.

Challenging Parentage.

In general, a challenge to parentage must be brought within four years of parentage being established, and is only permitted on limited grounds. Beyond a 60-day rescission period, a signatory to a parentage acknowledgement may only challenge the acknowledgement on the basis of fraud, duress, or material mistake of fact. Disestablishment of presumed paternity is permitted only if another man has filed an acknowledgment of paternity and the presumed father has not signed an acknowledgment or been adjudicated to be the child's parent.

An exception to the four-year statute of limitations exists for a presumed parent who did not cohabitate or have sexual intercourse with the other parent during the probable time of conception and never treated the child as his or her own.

Genetic Testing.

In a parentage adjudication, parentage of a presumed, adjudicated, or acknowledged parent may be disproved only by admissible results of genetic testing. There are specific procedures for when genetic testing can be ordered in a parentage action and when a motion for genetic testing may be denied. With certain exceptions, genetic testing must be ordered when supported by a sworn statement of a party alleging or denying the requisite sexual contact between the parties for conception of a child.

A court may deny a motion for genetic testing if: (1) the conduct of the mother or father (or the presumed or acknowledged father) precludes that party from denying parentage and it would be inequitable to disprove the parent-child relationship; or (2) the child was conceived through assisted reproduction. The court must consider the best interest of the child in determining whether to deny a motion for genetic testing.

Summary of Bill:

Challenging Parentage.

A man may file a petition in superior court to rescind an acknowledgment of paternity, challenge a presumption of paternity, or contest an adjudication of paternity if genetic testing shows by clear and convincing evidence that the man is not the genetic father of the child. If the petitioner has acknowledged paternity, evidence of genetic testing demonstrating that he is not the genetic father of the child constitutes a material mistake of fact or criminal fraud perpetuated by the mother for purposes of disestablishment. A court entering an order disestablishing the man as the father must direct the State Registrar of Vital Statistics to remove his name from the child's birth certificate.

From the date of the order, the petitioner is discharged from all of the rights and duties of a parent, including any obligation to pay child support. The petitioner may bring an action in court

against the natural biological mother or father of the child for restitution for previously paid child support. Prior to entry of the final order disestablishing parentage, the petitioner may request that the court order periods of visitation or access to the child. The court may only order visitation or access if the denial of such would significantly impair or harm the child's physical health or emotional well-being.

A petitioner has two years to bring an action to disestablish parentage under the process outlined in the bill, regardless of whether or not current law timelines for disestablishing parentage have expired. The two years runs from the date on which the petitioner becomes aware of the facts alleged in the petition indicating that the petitioner is not the child's genetic father, or, if the child has already been born, from the effective date of the bill.

The process does not apply if the man is the adoptive father or the child was conceived by assisted reproduction with the man's consent and intent to be the parent of the child.

Genetic Testing.

The court's authority to deny genetic testing upon a determination that it would be inequitable to disprove the parent-child relationship is removed. It is presumed that it is in the child's best interest to accurately determine the child's parentage as soon as possible. Current statutory considerations for the court to use in determining whether or not genetic testing is in the child's best interest are removed.

The court may not deny genetic testing if the presumed father did not know he was not the genetic father of the child and has filed a petition to challenge paternity.

Other Changes to Current Statutes.

A number of other changes are made to provisions of the UPA, including the following:

- It is stated that a presumed father who files a valid denial of paternity is discharged from any obligation to pay child support under any court order or administrative finding (regardless of whether or not the denial is through the petition process provided for in the bill). Current law language referencing the valid denial being filed "in conjunction with a valid acknowledgment of paternity" is stricken.
- The four year statute of limitations for challenging acknowledged paternity past the rescission deadline is replaced with a limit of two years from discovery of fraud, duress, or material mistake of fact. The challenge must be brought under the new process created in the bill.
- The statute describing the statute of limitations to adjudicate parentage of a child having a presumed parent in an action by a presumed parent or other person is expanded to include proceedings brought by adjudicated, acknowledged, or natural parents. Instead of requiring that such a petition is brought within the first four years of the child's life, the petition must be brought no later than two years after the discovery of new evidence showing material mistake of fact or fraud in the determination of the child's parentage.
- In a parentage adjudication action, an adjudication of non-paternity must be made in any instance in which a man is excluded as the parent of the child, even if the results are admitted in the proceeding only for the purpose of rebutting other results of genetic testing.

Appropriation: None.

Fiscal Note: Requested on 1/27/16.

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