
HOUSE BILL 2612

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

Read first time 01/15/16. Referred to Committee on Judiciary.

1 AN ACT Relating to authorizing the termination of all legal
2 responsibilities of a nonparent if genetic testing shows by clear and
3 convincing evidence that a man is not the genetic father of a child;
4 amending RCW 26.26.310, 26.26.320, 26.26.335, 26.26.530, 26.26.535,
5 26.26.600, and 26.26.405; adding a new section to chapter 26.26 RCW;
6 and creating a new section.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** This act may be known and cited as the
9 Brandon Jones act.

10 NEW SECTION. **Sec. 2.** A new section is added to chapter 26.26
11 RCW to read as follows:

12 (1) A man may file a petition in superior court to rescind an
13 acknowledgment of paternity, challenge a presumption of paternity, or
14 contest an adjudication of paternity under this chapter at any time
15 within the limitations imposed under subsection (4) of this section
16 if genetic testing that complies with RCW 26.26.410 shows by clear
17 and convincing evidence that the man is not the genetic father of the
18 child.

19 (2) If the court enters an order pursuant to subsection (1) of
20 this section disestablishing a man as the father of the child based

1 on genetic testing that shows that he is not the genetic father, the
2 man is, as of the date of the order of disestablishment, discharged
3 from all of the rights and duties of a parent pursuant to subsections
4 (7) and (8) of this section.

5 (3) If the court enters an order disestablishing a man as the
6 father of a child, then the order must direct vital statistics to
7 remove his name from the child's birth certificate.

8 (4) This section does not apply if:

9 (a) The man is the child's adoptive father; or

10 (b) The child was conceived by assisted reproduction and the man
11 consented to assisted reproduction with the intent to be the parent
12 of the child born.

13 (5)(a) A petitioner seeking to rescind an acknowledgment of
14 paternity, challenge a presumption of paternity, or contest an
15 adjudication of paternity of a child born on or after the effective
16 date of this section must file the petition within two years of the
17 date on which the petitioner becomes aware of the facts alleged in
18 the petition indicating that the petitioner is not the child's
19 genetic father.

20 (b) A petitioner seeking to rescind an acknowledgment of
21 paternity, challenge a presumption of paternity, or contest an
22 adjudication of paternity of a child born before the effective date
23 of this section has two years from the effective date of this section
24 to file a petition, regardless of the date on which the petitioner
25 became aware of the facts alleged in the petition indicating that the
26 petitioner is not the child's genetic father.

27 (6) For purposes of this section, an acknowledgment of paternity
28 shall be deemed to have been executed on the basis of a material
29 mistake of fact or fraud perpetuated by the child's natural mother
30 pursuant to RCW 9A.60.030 where evidence and genetic testing in
31 accordance with RCW 26.26.410 and 26.26.420 shows that the man who is
32 the signatory of an acknowledgment of paternity is not identified as
33 the father of a child.

34 (7) An order of disestablishment entered under this section must
35 vacate all previous orders of child support if the court finds by
36 clear and convincing evidence that the moving party is not the
37 biological father of the child who is the subject of the support
38 order. The petitioner of the vacated order may bring an action in
39 court against the natural biological mother or natural biological

1 father of the child to obtain restitution for child support
2 previously paid pursuant to any previous or vacated orders.

3 (8) As of the date of the entry of the disestablishment order,
4 the man is not liable for any future child support amounts or other
5 future financial or legal obligations.

6 (9)(a) At any time before the court renders an order terminating
7 the parent-child relationship under this section, the petitioner may
8 request that the court also order periods of visitation of, or access
9 to the child by the petitioner following termination of the parent-
10 child relationship. If requested, the court may order periods of
11 visitation of, or access to, the child only if the court determines
12 that denial of periods of visitation of or access to the child would
13 significantly impair or harm the child's physical health or emotional
14 well-being.

15 (b) During any period of visitation of, or access to, the child
16 ordered under this subsection, the nonparent has the rights and
17 responsibilities of a third party under RCW 26.09.240, subject to any
18 limitation specified by the court in its order.

19 **Sec. 3.** RCW 26.26.310 and 2011 c 283 s 13 are each amended to
20 read as follows:

21 (1) A presumed father of a child may sign a denial of his
22 paternity. Except as provided in subsection (2) of this section, the
23 denial is valid only if:

24 ~~((1))~~ (a) An acknowledgment of paternity signed by another man
25 is filed under RCW 26.26.320;

26 ~~((2))~~ (b) The denial is in a record, and is signed under
27 penalty of perjury; and

28 ~~((3))~~ (c) The presumed father has not previously:

29 ~~((a))~~ (i) Acknowledged his paternity, unless the previous
30 acknowledgment has been rescinded under RCW 26.26.330 or successfully
31 challenged under RCW 26.26.335; or

32 ~~((b))~~ (ii) Been adjudicated to be the father of the child.

33 (2) A denial of paternity may be signed at any time and is valid
34 only if accompanied by a certified copy of a disestablishment order
35 entered pursuant to section 2 of this act.

36 **Sec. 4.** RCW 26.26.320 and 2011 c 283 s 15 are each amended to
37 read as follows:

1 (1) Except as otherwise provided in RCW 26.26.330 and 26.26.335,
2 a valid acknowledgment of paternity filed with the state registrar of
3 vital statistics is equivalent to an adjudication of parentage of a
4 child and confers upon the acknowledged father all of the rights and
5 duties of a parent.

6 (2) Except as otherwise provided in RCW 26.26.330 and 26.26.335,
7 a valid denial of paternity filed with the state registrar of vital
8 statistics ~~((in conjunction with a valid acknowledgment of
9 paternity))~~ is equivalent to an adjudication of the nonpaternity of
10 the presumed father and discharges the presumed father from all of
11 the rights and duties of a parent, including any obligation to pay
12 child support under any court order or administrative finding.

13 **Sec. 5.** RCW 26.26.335 and 2011 c 283 s 17 are each amended to
14 read as follows:

15 (1) After the period for rescission under RCW 26.26.330 has
16 expired, a signatory of an acknowledgment or denial of paternity may
17 commence a proceeding to challenge the acknowledgment or denial only:

18 (a) On the basis of fraud, duress, or material mistake of fact;
19 and

20 (b) Within ~~((four years after the acknowledgment or denial is
21 filed with the state registrar of vital statistics))~~ two years of
22 discovery of evidence of fraud, duress, or material mistake of fact,
23 and brought as an action under section 2 of this act.

24 (2) In actions commenced more than two years after the birth of
25 the child, the child must be made a party to the action.

26 ~~((+2))~~ (3) In a proceeding brought under section 2 of this act,
27 evidence of genetic testing demonstrating that the man who signed the
28 acknowledgment of paternity is not the father of a child constitutes
29 a material mistake of fact or fraud per RCW 9A.60.030 for the
30 purposes of this section.

31 (4) A party challenging an acknowledgment or denial of paternity
32 has the burden of proof.

33 **Sec. 6.** RCW 26.26.530 and 2011 c 283 s 32 are each amended to
34 read as follows:

35 (1) Except as otherwise provided in subsection (2) of this
36 section, a proceeding brought by a presumed, adjudicated,
37 acknowledged, or natural parent, the person with a parent-child
38 relationship with the child, or another individual to adjudicate the

1 parentage of a child having a presumed parent must be commenced not
2 later than ~~((four years after the birth of the child))~~ two years
3 after the discovery of new evidence showing material mistake of fact
4 or fraud in the determination of the child's parentage. If an action
5 is commenced more than two years after the birth of the child, the
6 child must be made a party to the action.

7 (2) A proceeding seeking to disprove the parent-child
8 relationship between a child and the child's presumed parent may be
9 maintained at any time if the court determines that:

10 (a) The presumed parent and the person who has a parent-child
11 relationship with the child neither cohabited nor engaged in sexual
12 intercourse with each other during the probable time of conception
13 and the presumed parent never held out the child as his or her own;
14 or

15 (b) Genetic testing that satisfies the requirements of RCW
16 26.26.410 excludes the presumed, acknowledged, or adjudicated father
17 as the genetic father of the child, regardless of whether the
18 presumed, acknowledged, or adjudicated father cohabited or engaged in
19 sexual intercourse with the person who has a parent-child
20 relationship with the child during the probable time of conception,
21 held out the child as his own, or provided financial support for the
22 child and the petition to challenge paternity is brought under
23 section 2 of this act. This subsection (2)(b) does not apply if the
24 man is the adoptive father of the child or consented to assisted
25 reproduction with another person with the intent to be the parent of
26 the child born.

27 **Sec. 7.** RCW 26.26.535 and 2011 c 283 s 33 are each amended to
28 read as follows:

29 (1) Except as provided in subsection (6) of this section, in a
30 proceeding to adjudicate parentage under circumstances described in
31 RCW 26.26.530 or in RCW 26.26.540, a court may deny a motion seeking
32 an order for genetic testing of the mother or father, the child, and
33 the presumed or acknowledged father if the court determines that:

34 (a) ~~((i))~~ The conduct of the mother or father or the presumed or
35 acknowledged parent estops that party from denying parentage; ~~((and~~
36 ~~((ii))~~ ~~It would be inequitable to disprove the parent-child~~
37 ~~relationship between the child and the presumed or acknowledged~~
38 ~~parent;))~~ or

39 (b) The child was conceived through assisted reproduction.

1 (2) In determining whether to deny a motion to seek an order for
2 genetic testing under subsection (1)(a) of this section, the court
3 shall ~~((consider the best interest of the child, including the~~
4 ~~following factors:~~

5 ~~(a) The length of time between the proceeding to adjudicate~~
6 ~~parentage and the time that the presumed or acknowledged parent was~~
7 ~~placed on notice that he or she might not be the genetic parent;~~

8 ~~(b) The length of time during which the presumed or acknowledged~~
9 ~~parent has assumed the role of parent of the child;~~

10 ~~(c) The facts surrounding the presumed or acknowledged parent's~~
11 ~~discovery of his or her possible nonparentage;~~

12 ~~(d) The nature of the relationship between the child and the~~
13 ~~presumed or acknowledged parent;~~

14 ~~(e) The age of the child;~~

15 ~~(f) The harm that may result to the child if parentage is~~
16 ~~successfully disproved;~~

17 ~~(g) The nature of the relationship between the child and any~~
18 ~~alleged parent;~~

19 ~~(h) The extent to which the passage of time reduces the chances~~
20 ~~of establishing the parentage of another person and a child support~~
21 ~~obligation in favor of the child; and~~

22 ~~(i) Other factors that may affect the equities arising from the~~
23 ~~disruption of the parent-child relationship between the child and the~~
24 ~~presumed or acknowledged parent or the chance of other harm to the~~
25 ~~child)) presume that it is in the best interest of the child to~~
26 ~~accurately determine the child's parentage as soon as possible.~~

27 (3) In a proceeding involving the application of this section, a
28 minor or incapacitated child must be represented by a guardian ad
29 litem.

30 (4) A denial of a motion seeking an order for genetic testing
31 under subsection (1)(a) of this section must be based on clear and
32 convincing evidence.

33 (5) If the court denies a motion seeking an order for genetic
34 testing under subsection (1)(a) of this section, it shall issue an
35 order adjudicating the presumed or acknowledged parent to be the
36 parent of the child supported by findings of fact and conclusions of
37 law.

38 (6) The court may not deny genetic testing if the presumed father
39 did not know that he was not the genetic father of the child and has
40 filed a petition to challenge paternity under section 2 of this act.

1 **Sec. 8.** RCW 26.26.600 and 2011 c 283 s 42 are each amended to
2 read as follows:

3 The court shall apply the following rules to adjudicate the
4 parentage of a child:

5 (1) Except as provided in subsection (5) of this section, the
6 parentage of a child having a presumed or adjudicated parent or an
7 acknowledged father may be disproved only by admissible results of
8 genetic testing excluding that person as the parent of the child or
9 identifying another man as the father of the child.

10 (2) Unless the results of genetic testing are admitted to rebut
11 other results of genetic testing, the man identified as the father of
12 the child under RCW 26.26.420 must be adjudicated the father of the
13 child.

14 (3) If the court finds that genetic testing under RCW 26.26.420
15 neither identifies nor excludes a man as the father of a child, the
16 court may not dismiss the proceeding. In that event, the results of
17 genetic testing, and other evidence, are admissible to adjudicate the
18 issue of paternity.

19 (4) (~~Unless the results of genetic testing are admitted to rebut~~
20 ~~other results of genetic testing,~~) A man excluded as the father of a
21 child by genetic testing must be adjudicated not to be the father of
22 the child.

23 (5) Subsections (1) through (4) of this section do not apply when
24 the child was conceived through assisted reproduction. The parentage
25 of a child conceived through assisted reproduction may be disproved
26 only by admissible evidence showing the intent of the presumed,
27 acknowledged, or adjudicated parent and the other parent.

28 **Sec. 9.** RCW 26.26.405 and 2011 c 283 s 22 are each amended to
29 read as follows:

30 (1) Except as otherwise provided in this section and RCW
31 26.26.410 through 26.26.630, the court shall order the child and
32 other designated individuals to submit to genetic testing if the
33 request for testing is supported by the sworn statement of a party to
34 the proceeding:

35 (a) Alleging paternity and stating facts establishing a
36 reasonable probability of the requisite sexual contact between the
37 individuals; or

38 (b) Denying paternity and stating facts establishing a
39 possibility that sexual contact between the individuals, if any, did

1 not result in the conception of the child, or stating facts that the
2 party denying paternity did not know he was not the genetic father of
3 the child.

4 (2) A support enforcement agency may order genetic testing only
5 if there is no presumed or adjudicated parent and no acknowledged
6 father.

7 (3) If a request for genetic testing of a child is made before
8 birth, the court or support enforcement agency may not order in utero
9 testing.

10 (4) If two or more persons are subject to court-ordered genetic
11 testing, the testing may be ordered concurrently or sequentially.

12 (5) This section does not apply when the child was conceived
13 through assisted reproduction.

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