

HOUSE BILL REPORT

ESSB 6037

As Reported by House Committee On:
Judiciary

Title: An act relating to the uniform parentage act.

Brief Description: Concerning the uniform parentage act.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Pedersen, Walsh, Takko, Fain, Rivers, Billig, Ranker, Cleveland, Kuderer, Van De Wege, Hobbs, Liias, Palumbo, Frockt, Hasegawa, Mullet, Hunt, Saldaña, Rolfes, Dhingra, Carlyle, Darneille, Chase, Conway, Nelson, Wellman, McCoy and Keiser; by request of Uniform Law Commission).

Brief History:

Committee Activity:

Judiciary: 2/21/18, 2/22/18 [DP].

Brief Summary of Engrossed Substitute Bill

- Revises various provisions regarding establishing and challenging parentage under the Uniform Parentage Act.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 9 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Graves, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Orwall and Valdez.

Minority Report: Do not pass. Signed by 4 members: Representatives Rodne, Ranking Minority Member; Klippert, Muri and Shea.

Staff: Edie Adams (786-7180).

Background:

Washington's Uniform Parentage Act (UPA) establishes standards and procedures for both establishing and challenging the legal parent-child relationship. Parentage may be

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established under the UPA based on a presumption, acknowledgment, or adjudication, or based on a consent to assisted reproduction or a valid surrogate parentage contract. 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 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.

Acknowledgment of Paternity. The mother of a child and a man claiming to be the father may sign in a record an acknowledgement of paternity. A valid acknowledgement of paternity filed with the State Registrar of Vital Statistics is equivalent to a judicial adjudication of paternity. A presumed father may sign a denial of paternity only if another man has filed an acknowledgement of paternity and the presumed father has not signed an acknowledgment or been adjudicated to be the child's parent. A signatory may rescind an acknowledgement or denial of paternity by filing an action within 60 days of acknowledgement or denial, or by the next court hearing concerning the child.

Genetic Testing. There are specific procedures for when genetic testing may 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: 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 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.

Adjudicating Parentage. The procedures and timelines for challenging parentage vary depending on whether the parentage is presumed, acknowledged, or adjudicated. In general, a challenge must be brought within a maximum of four years of the child's birth or establishment of parentage. After the 60-day rescission period, a signatory to an acknowledgement or denial of paternity may challenge the acknowledgement or denial only on the basis of fraud, duress, or material mistake of fact. A proceeding to challenge a presumption of parentage may be brought after the four-year time limit only if the presumed parent did not cohabit or have sexual intercourse with the other parent during the probable time of conception and never held out the child as his or her own.

Parentage of a presumed, acknowledged, or adjudicated parent may be disproved only by admissible results of genetic testing. A man identified as the father based on results of genetic testing must be adjudicated the father, and a man excluded by genetic testing must be adjudicated not to be the father, unless the results of other genetic testing are admitted to rebut the genetic testing. If genetic testing neither identifies nor excludes a person as a parent, the court may not dismiss the proceeding; the genetic testing results and other evidence are admissible to adjudicate paternity.

A judgment and order establishing parentage may include terms requiring provision of child support and payment of birth-related costs, establishing residential provisions for the child,

and requiring amendment of the child's birth certificate. Temporary orders may be issued while the action is pending.

Assisted Reproduction. A person who consents in a signed record to assisted reproduction with another person, with the intent to be the parent of the child born, is a parent of the resulting child. Failure to sign a consent in a record does not preclude a finding of parentage if the persons resided together in the same household with the child and openly held out the child as their own. A donor is not a parent of a child conceived by assisted reproduction unless otherwise agreed in a signed record between the donor and intended parents.

A person who gives birth to a child by assisted reproduction and that person's spouse or domestic partner may not challenge his or her parentage unless the person commences a proceeding within four years after learning of the birth of the child and the court finds that the person did not consent to the assisted reproduction. A proceeding may be brought at any time if the court determines that: the spouse or domestic partner did not provide gametes for or consent to assisted reproduction; the parties have not cohabitated since the probable time of assisted reproduction; and the spouse or domestic partner never openly held out the child as his or her own.

Surrogacy. A parent-child relationship is established under a valid surrogacy contract where the person asserting parentage is an intended parent of the child. A surrogate parentage contract is a contract or agreement in which a female who is not married to the sperm contributor agrees to conceive a child through natural or artificial insemination, or in which a female agrees to a surrogate gestation, and to voluntarily relinquish her parental rights to the child.

A person may not enter into a surrogate parentage contract under which the surrogate mother is an unemancipated minor or a person with a mental illness, developmental disability, or intellectual disability. A person may not enter into a surrogate parentage contract for compensation, and any such contract is void as against public policy. A person who violates these prohibitions is guilty of a gross misdemeanor.

A intended parent under a surrogate parentage contract has standing to bring a proceeding to adjudicate parentage and must be joined in a proceeding to adjudicate parentage.

Information About Donor. A fertility clinic must maintain a donor's identifying information and medical history information. A child conceived through assisted reproduction who is at least 18 years old must be provided, upon the child's request, access to medical history information of the donor. The child may also obtain access to the identifying information of the donor unless the donor has signed an affidavit of nondisclosure with the fertility clinic.

Uniform Law Commission. The Uniform Law Commission (ULC) originally promulgated a Uniform Parentage Act in 1973 and revised the act in 2000 and 2002. The ULC adopted further revisions to the Uniform Parentage Act in 2017 with a stated purpose of updating its provisions to apply equally to same-gender couples and to address other developments in the law, technology, and society since 2002.

Summary of Bill:

The Uniform Parentage Act (UPA) is revised and codified as a new chapter in Title 26 RCW. Components of the UPA are restructured and revised to include changes based on the revisions in the Uniform Law Commission's 2017 UPA. Main areas of change include changing acknowledgement of paternity to acknowledgment of parentage, updating standards regarding genetic testing, revising standards and procedures for adjudication of parentage, and establishing more detailed regulations governing surrogacy agreements.

Acknowledgement of Parentage. The current provisions regarding acknowledgement or denial of paternity are revised to allow an acknowledgement of parentage or denial of parentage. The following persons may sign an acknowledgement of parentage: a woman who gave birth to a child and an alleged genetic father of the child; a presumed parent; or an intended parent under a consent to assisted reproduction. The signatures of persons signing an acknowledgment of parentage must be attested by a notarial officer or witnessed. A rescission of an acknowledgement or denial of parentage must be filed with the State Registrar of Vital Statistics.

Genetic Testing. Genetic testing must be ordered when supported by a sworn statement of a party alleging a reasonable possibility the person is a genetic parent of the child or denying genetic parentage and stating facts establishing a reasonable possibility the person is not a genetic parent. In a proceeding to adjudicate parentage of a child with a presumed parent or an individual claiming de facto parentage, or to challenge an acknowledgement of parentage, the court may deny genetic testing after considering the best interests of the child and circumstances surrounding the discovery that a person might not be a genetic parent. Genetic testing may not be used to challenge the parentage of an individual who is a parent under provisions governing assisted reproduction and surrogacy agreements.

Adjudication of Parentage. Separate statutes are established with rules governing the adjudication of parentage of a child where there is an alleged genetic parent, a presumed parent, an acknowledged parent, or an adjudicated parent, or where the child was conceived through assisted reproduction. The rules under these provisions apply where the woman who gave birth to the child is the only other individual with a claim to parentage. If another person asserts a claim to parentage of the child, the court must adjudicate parentage under a separate statute governing competing claims to parentage.

A presumption of parentage cannot be overcome after the child attains four years of age unless the court determines: the presumed parent is not a genetic parent, never resided with the child, and never held out the child as the presumed parent's child; or the child has more than one presumed parent. If a presumed parent is not identified through genetic testing to be a genetic parent, the court must adjudicate parentage in the best interest of the child considering specified factors.

In a proceeding where there are competing claims of parentage, or in cases adjudicating parentage where there is an acknowledged or adjudicated parent, the court must adjudicate parentage in the best interest of the child, considering: the child's age; the length of time each person assumed a parental role; the nature of the relationship of each person with the child; the harm to the child if the relationship is not recognized; the basis for each person's

claim; and other equitable factors. If a person challenges parentage on the basis of genetic testing, the court also considers facts surrounding discovery that person may not be a genetic parent and the length of time between the discovery and the commencement of the proceeding. The court may adjudicate a child to have more than two parents if it finds failure to recognize more than two parents would be detrimental to the child.

Provisions are established governing adjudication of a claim of de facto parentage of a child. The proceeding may be commenced only by a person who is alive when the proceeding is commenced and claims to be a de facto parent of the child and must be commenced before the child attains 18 years of age and while the child is still alive. A person may be adjudicated a de facto parent of the child if:

- the person resided with the child as a member of the household for a significant period of time;
- the person engaged in consistent caretaking of the child;
- the person undertook full and permanent responsibilities of a parent without expectation of financial compensation;
- the person held out the child as the person's child;
- the person established a bonded and dependent relationship with the child that is parental in nature;
- another parent fostered or supported that relationship; and
- continuing the relationship is in the best interest of the child.

Assisted Reproduction. Two new ways to establish parentage of a child born through assisted reproduction are provided. Failure to consent in a record to assisted reproduction does not preclude the court from finding consent to parentage if clear and convincing evidence shows the parties entered into an express agreement prior to conception that they intended to be parents of the child. In addition, in cases where the requirement for holding out the child as one's own is not fulfilled because of the death or incapacity of the person or death of the child, a court may find consent to parentage if there is clear and convincing evidence the parties intended to reside together and intended for the person to hold out the child as the person's child.

A person who consents to assisted reproduction may withdraw consent any time before a transfer that results in a pregnancy by giving notice in a record to the woman who agreed to give birth to a child conceived by assisted reproduction and to any clinic or health care provider facilitating the assisted reproduction. A person who withdraws consent is not a parent of the child.

If a person who intends to be a parent of a child conceived by assisted reproduction dies after transfer of the gamete or embryo and before birth of the child, the death does not preclude the establishment of parentage of the child. If the intended parent dies before transfer of the gamete or embryo, the person is a parent only under certain conditions.

Surrogacy Agreements. New provisions are established governing both gestational surrogacy agreements and genetic surrogacy agreements. A gestational surrogate is a woman who agrees to become pregnant through assisted reproduction using gametes that are not her own, while a genetic surrogate is a woman who agrees to become pregnant through assisted reproduction using her own gamete.

In order to act as a surrogate, a woman must:

- be at least 21 years of age;
- have previously given birth to at least one child but not enter into more than two surrogacy agreements that result in the birth of a child;
- complete a medical evaluation and mental health consultation; and
- have independent legal representation of her choice throughout the surrogacy arrangement.

Each intended parent under a surrogacy agreement must be at least 21 years of age, complete a medical evaluation and mental health consultation, and have independent legal representation throughout the surrogacy arrangement.

A surrogacy agreement must comply with the following requirements:

- at least one party must be a resident of the state, or at least one medical evaluation or procedure or mental health consultation must occur in the state;
- the agreement must be in a record, signed by each party, and attested by a notarial officer or witnessed;
- counsel for the woman acting as a surrogate and the intended parent or parents must be identified in the surrogacy agreement;
- the intended parents must pay for legal representation for the woman acting as a surrogate; and
- the agreement must be executed before the occurrence of a medical procedure related to the agreement.

A surrogacy agreement must also comply with other requirements, including that: each intended parent immediately upon birth will be the parents of the child and assume financial responsibility for the child, regardless of the number of children born or the gender or mental or physical condition of each child; and the woman acting as a surrogate must be permitted to make all health and welfare decisions regarding herself and the pregnancy. A surrogacy agreement may provide for payment of consideration, reasonable expenses, and reimbursement of expenses if the agreement is terminated.

Genetic surrogacy agreements must be validated by the superior court in a proceeding commenced before the assisted reproduction. A party may terminate a surrogacy agreement at any time before a gamete or embryo transfer. Under a genetic surrogacy agreement, the woman acting as a surrogate may withdraw consent to the agreement at any time before 48 hours after the birth of the child by providing each intended parent with notice. A woman acting as a surrogate is not liable for a penalty or liquidated damages for terminating the agreement except in a case involving fraud.

Upon birth of a child under a gestational surrogacy agreement, each intended parent is by operation of law a parent of the child and neither the woman acting as a surrogate nor her spouse or former spouse is a parent of the child. Each intended parent under a court-validated genetic surrogacy agreement is a parent of a child conceived under the agreement.

Where an intended parent dies before the gamete or embryo transfer, the intended parent is not a parent of the child unless the agreement provides otherwise and the transfer occurs not

later than 36 months after the death of the intended parent or the birth occurs not later than 45 months after the death of the intended parent.

A party may institute a proceeding for an order or judgment regarding parentage under a surrogacy agreement. Provisions are established governing the effect and enforceability of surrogacy agreements, including the effect of nonvalidated genetic surrogacy agreements and remedies available for breach of an agreement. Unless otherwise ordered by a court, a petition and other documents related to a surrogacy agreement are not open to inspection except by the parties to the proceeding, a child conceived by assisted reproduction under the agreement, their attorneys, and the State Registrar for Vital Statistics.

Information About Donor. More specific standards are established regarding the requirement for a gamete bank or fertility clinic to collect and maintain records of a donor's identifying information and medical history. A gamete bank or fertility clinic must obtain a declaration from the donor regarding whether or not the donor agrees to disclose the donor's identity to a child conceived with the donor's gametes once the child turns 18 years of age. Upon request, a gamete bank or fertility clinic must make a good faith effort to provide a child conceived by assisted reproduction access to nonidentifying medical history of the donor and identifying information of the donor unless the donor signed a declaration stating that the donor does not agree to disclosure of identifying information.

Other Provisions. The act applies to a pending proceeding to adjudicate parentage commenced before the effective date of the act for an issue on which a judgment has not been entered.

Regulations are established governing a surrogacy broker that arranges or facilitates surrogacy transactions if: the surrogacy broker does business in Washington; a surrogate who is a party to a surrogacy agreement resides in Washington during the term of the agreement; or any medical procedures under the agreement are performed in Washington.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on January 1, 2019.

Staff Summary of Public Testimony:

(In support) This bill is the result of significant effort from people across country. The Uniform Parentage Act (UPA) was originally promulgated by the Uniform Law Commission (ULC) in 1973. The ULC has spent the last two years rewriting the UPA, in part to address constitutional issues due to the lack of equal treatment for same sex couples.

The change to the acknowledgment process will have a significant impact for same sex couples. Marital rights do not transfer into parental rights nationwide. Currently, when a lesbian couple has a child through assisted reproduction, the nongenetic mother must go

through an expensive and time-consuming second-parent adoption to establish parentage that will be recognized in other states. The bill codifies the de facto parentage law, which will be important for many families. It also strengthens provisions allowing a child of assisted reproduction to access information about the donor when the child turns 18 years old.

The surrogacy provisions are an important component of the bill and are based on best practices from around the United States. The bill will put important safeguards in place to protect all parties under a surrogacy agreement. The bill provides protections for women acting as surrogates, including medical screening, mental health evaluations, and independent legal representation. It provides a streamlined process for determining parentage if all requirements are met and contains specific protections for genetic surrogacy, including court oversight. The bill safeguards against potential exploitation and safety of children. The bad cases that are brought up are from jurisdictions that have no protections in place to govern surrogacy agreements. The regulation of third-party brokers is important to ensure that the lawyers and health professionals participating in a surrogacy arrangement are not a part of a surrogacy broker business.

A couple who could not have a child due to medical issues was able to have a child through surrogacy. There were many protections in place, and the child and family have a wonderful and continuing relationship with the surrogate. Being a surrogate and helping a family have a child is a rewarding experience. There are protections that give surrogates a voice in the process.

(Opposed) The bill will allow people to create children for exploitation. People who would never be allowed to adopt a child are able to purchase a child under surrogacy laws. There are no protections to prevent the production of children for abuse and exploitation. There is only one reference in the bill to the best interests of the child. It is not uncommon for children of assisted reproduction to have unstable and unhealthy family situations.

Surrogate parenting puts both the surrogates and the children at risk. Studies show that children conceived by assistive reproductive technology are at higher risk of leukemia and sterility and that both the mothers and infants are more likely to require intensive care at birth. There are multiple stories of women surrogates and their infants suffering serious health problems, including death. A surrogate learned one of the twins she was carrying was her biological child.

Paid surrogacy is exploitative of women and makes children a commodity. It makes it easier to separate children from their parents. Wealthy men have paid women so they can be the parent of large numbers of children; for example, a man paid for 17 children in Thailand. No citizenship or welfare checks were made in these cases. Washington residency should be required to keep Washington from becoming a destination for transactional births.

Persons Testifying: (In support) Senator Pedersen, prime sponsor; Jessica Martinson; Sara Ainsworth, Legal Voice; JP Tammen; Jon Tammen; Melissa Flaherty; Mark Demaray, American Academy of Adoption and Assisted Reproduction Attorneys; and Raegen Rasnic.

(Opposed) Maria Lancaster, Embryo Adoption Services of Cedar Park; Stacy Manning, Them Before Us; Nicholas Isel; Jennifer Lahl, Center for Bio-Ethics and Culture; Eileen Savoy; and Joseph Backholm, Family Policy Institute of Washington.

Persons Signed In To Testify But Not Testifying: Beth Daranciang.