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SENATE BILL 5461

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State of Washington                      65th Legislature                      2017 Regular Session

By Senators Rolfes, Pearson, Zeiger, Angel, Kuderer, and Mullet

Read first time 01/25/17. Referred to Committee on Law & Justice.

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

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

7            NEW SECTION.    **Sec. 1.** This act may be known and cited as the  
8 disestablishing paternity act.

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

11            (1) A party to a determination of parentage as defined in this  
12 chapter 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 acknowledged, presumed, or alleged  
18 father is not the genetic father of the child.

19            (2) If the court enters an order pursuant to subsection (1) of  
20 this section finding an acknowledged, presumed, or alleged father is

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

5 (3) If the court enters an order determining an acknowledged,  
6 presumed, or alleged father is not the genetic father of a child,  
7 then the order must direct vital statistics to remove his name from  
8 the child's birth certificate.

9 (4) This section does not apply if:

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

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

14 (c) Genetic testing that satisfies RCW 26.26.410 and 26.26.420  
15 was used as the basis to determine a prior adjudication of paternity;  
16 unless, sufficient evidence of material mistake of fact, or fraud,  
17 had occurred within the administration of such genetic testing can be  
18 shown.

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

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

33 (6) For purposes of this section, an acknowledgment of paternity  
34 shall be deemed to have been executed on the basis of a material  
35 mistake of fact where evidence and genetic testing in accordance with  
36 RCW 26.26.410 and 26.26.420 shows that the acknowledged father is not  
37 the genetic father of a child.

38 (7)(a) An order determining an acknowledged, presumed, or  
39 contested father is not the genetic father, entered under this  
40 section, shall relieve him from future obligations of paternity and

1 child support for the child who is the subject of the order or  
2 orders. The court must extinguish all or any part of an existing  
3 child support arrearage upon such terms as are just. There is no  
4 right of reimbursement for amounts paid under any prior order of  
5 child support, but a father who is not the genetic father maintains  
6 the right to bring a civil action seeking damages or other remedies  
7 except as provided in (b) of this subsection.

8 (b) The provisions of this section do not create a cause of  
9 action against the state to recover child support and do not create a  
10 state debt. The state of Washington is not required to refund or  
11 repay child support previously collected or retained under a court  
12 order that is set aside under this section.

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

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

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

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

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

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

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

27 (2) A denial of paternity may be signed at any time and is not  
28 valid unless accompanied by a certified copy of a final order  
29 determining an acknowledged, presumed, or contested father is not the  
30 genetic father of a child entered pursuant to section 2 of this act.

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

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

1 (2) Except as otherwise provided in RCW 26.26.330 and 26.26.335,  
2 a valid denial of paternity filed with the state registrar of vital  
3 statistics in conjunction with a valid acknowledgment of paternity is  
4 equivalent to an adjudication of the nonpaternity of the presumed  
5 father and discharges the presumed father from all of the rights and  
6 duties of a parent, including any obligation to pay child support  
7 under any court order or administrative finding set aside by the  
8 final order determining an acknowledged, presumed, or contested  
9 father is not the genetic father of a child entered pursuant to  
10 section 2 of this act.

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

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

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

18 (b) Within ~~((four years after the acknowledgment or denial is~~  
19 ~~filed with the state registrar of vital statistics.))~~ two years of  
20 the discovery of evidence of fraud, duress, or material mistake of  
21 fact, and brought as an action under section 2 of this act. In  
22 actions commenced more than two years after the birth of the child,  
23 the child must be made a party to the action.

24 ~~((+2))~~ (3) In a proceeding brought under section 2 of this act,  
25 the court may suspend a petitioner's financial obligation to pay  
26 child support for good cause shown. Genetic testing showing that the  
27 petitioner is not the genetic father creates a rebuttable presumption  
28 of good cause shown.

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

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

33 (1) Except as otherwise provided in subsection (2) of this  
34 section, a proceeding brought by a presumed, adjudicated,  
35 acknowledged, or natural parent, the person with a parent-child  
36 relationship with the child, or another individual to adjudicate the  
37 parentage of a child having a presumed parent must be commenced not  
38 later than ~~((four years after the birth of the child))~~ two years

1 after the discovery of new evidence showing fraud, duress, or  
2 material mistake of fact in the determination of the child's  
3 parentage. If an action is commenced more than two years after the  
4 birth of the child, the child must be made a party to the action.

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

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

13 (b) Genetic testing that satisfies the requirements of RCW  
14 26.26.410 excludes the presumed, acknowledged, or adjudicated father  
15 as the genetic father of the child, regardless of whether the  
16 presumed, acknowledged, or adjudicated father cohabited or engaged in  
17 sexual intercourse with the person who has a parent-child  
18 relationship with the child during the probable time of conception,  
19 held out the child as his own, or provided financial support for the  
20 child and the petition to challenge paternity is brought under  
21 section 2 of this act. This subsection (2)(b) does not apply if the  
22 man is the adoptive father of the child or consented to assisted  
23 reproduction with another person with the intent to be the parent of  
24 the child born.

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

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

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

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

38 (2) In determining whether to deny a motion to seek an order for  
39 genetic testing under subsection (1)(a) of this section, the court

1 shall (~~consider the best interest of the child, including the~~  
2 ~~following factors:~~

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

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

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

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

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

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

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

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

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

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

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

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

37 (6) The court may not deny genetic testing if the presumed father  
38 did not know that he was not the genetic father of the child and has  
39 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.

14 NEW SECTION. **Sec. 10.** Beginning in 2018 and ending in 2028, the  
15 department of social and health services division of child support  
16 shall track and report to the legislature the number of cases known  
17 to the division of child support in which a court, within the  
18 calendar year, disestablishes and sets aside a previous judgment of  
19 paternity and support, and orders of support, based on an  
20 acknowledgment of paternity under section 2 of this act. The  
21 department of social and health services division of child support  
22 shall submit this report by December 31st of each year.

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