

SENATE BILL REPORT

E2SHB 2793

As Reported by Senate Committee On:
Government Operations & Elections, February 18, 2010

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 Ways & Means (originally sponsored by Representatives Kessler, Walsh, Pedersen, Chase, Williams, Kagi, Moeller, Haigh, Nelson and Simpson).

Brief History: Passed House: 2/15/10, 59-39.

Committee Activity: Government Operations & Elections: 2/18/10 [DP].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: Do pass.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; McDermott and Pridemore.

Staff: Sharon Swanson (786-7447)

Background: Washington's Uniform Parentage Act (UPA) is based on the model legislation (Act) from the National Conference of Commissioners on Uniform State Laws (NCCUSL). The NCCUSL amended the 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, acknowledgement, 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 acknowledgement 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 person is a presumed, acknowledged, or adjudicated parent. The challenge usually must be brought within two years of the child's birth, and parentage may be disproved by admissible results of

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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. Generally, a donor is not considered a parent of the child. 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 Partners. In 2009 the Legislature added language to the UPA stating that the terms such as spouse, marriage, husband, and wife must be interpreted to apply equally to domestic partnerships and to marital relationships, to the extent that such interpretation does not conflict with federal law and, where necessary, gender-specific terms must be construed to be gender neutral.

Summary of Bill: The UPA is amended to specifically reference state-registered domestic partnerships in various provisions, such as the provision establishing presumed parentage. Language is added stating that the UPA applies to same-sex couples who have children together. However, acknowledgements of paternity apply only when there is a mother and a man claiming to be the father of the child. Gender-specific terms are replaced with gender-neutral terms in numerous provisions. Some of the changes made by the NCCUSL are adopted, including a presumption of parentage that can arise outside the context of marriage or domestic partnership. 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.

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 only by admissible evidence showing the intent of the parents.

Gestational Surrogacy Contracts. The surrogacy statutes are replaced with provisions for gestational surrogacy contracts. In a gestational surrogacy, the woman acting as the gestational surrogate does not make any genetic contributions and the intended parents are the parents immediately upon the birth of the child. For a gestational surrogacy contract to be valid, the woman acting as a gestational surrogate, the intended parents, and the contract must meet certain requirements.

The woman acting as a gestational 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 evaluation;
- have given her written, informed consent to the procedures;
- have completed a mental health evaluation;
- have consulted with independent counsel; and

- have obtained a health insurance policy that covers major medical treatments for the duration of the pregnancy and eight weeks after the birth. The coverage cannot be financed through Medicaid or the Children's Health Insurance Program.

The intended parents must:

- have a medical need for gestational surrogacy, as evidence 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 gestational surrogacy contract must:

- be in writing, witnessed by two competent adults;
- be executed prior to the commencement of any medical procedures (other than the evaluations);
- provide that both the woman acting as a gestational surrogate and the intended parents have signed an acknowledgement that they have received information about the legal, financial, and contractual rights and obligations under the contract; and
- provide that compensation, if any, to the woman acting as a gestational surrogate has been placed in escrow.

In addition, the contract must have: (1) an express agreement by the woman acting as a gestational surrogate to surrender the child to the intended parents and of the intended parents to assume sole responsibility for the support of the child; and (2) provisions for the right of the woman acting as a gestational surrogate to utilize the services of a doctor of her choosing. A contract is presumed enforceable even if it contains an agreement of the intended parents to pay compensation to the woman acting as a gestational surrogate. Nothing in the Act may be construed to limit or constrain the right of the woman acting as a gestational surrogate to make all health and welfare decisions regarding herself and her pregnancy, including the right whether or not to terminate the pregnancy. Remedies for breach of contract by the woman acting as a gestational surrogate may not include requiring the woman to be impregnated.

The parent-child relationship is established effective immediately upon the birth of the child pursuant to a gestational surrogacy contract if the requirements are satisfied and the parties' attorneys file a certification in superior court stating the parties entered into a gestational surrogacy contract intended to meet all the requirements. The court must issue an order stating that the intended parents are the child's parents, and the attorneys must provide a copy of the order to the Department of Health. All court records related to the gestational surrogacy contract must be sealed and may not be open to inspection except upon court order for good cause.

If the requirements are not met, a court must determine parentage based on evidence of the parties' intent. No action to invalidate a gestational 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. In the absence of rules, such evaluations and procedures for informed consent must be conducted in accordance with recommended guidelines from certain associations.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill makes the Uniform Parentage Act consistent with R. 71 and the previous bills passed that relate to domestic partners. This bill allows same and opposite sex couples to utilize gestational surrogacy in Washington for compensation. Currently, couples unable to have children must travel to other states or even Canada to expand their families. It has long been my dream to have a baby for someone who cannot have their child. Surrogates should be compensated for the service they provide. When my husband and I decided to utilize a surrogate we had to travel to California for both pregnancies. This is a burden on us to travel so far and so often to experience the pregnancy that will result in our children. Many times I missed the chance to feel my baby kick and move. This legislation will allow surrogacy to happen in our state and allow people to fully participate in the pregnancy and birth of their children.

CON: The presumptions of parentage should not be extended to same sex couples. It is scientifically impossible for two women or two men to produce a child. How can we extend a presumption to a same sex couple that they are both the parents of a child born during their domestic partnership? It is an impossibility that they can both be the parents. The bill creates confusion and creates a legal recognition of facts that are impossible. The reason presumptions are extended to heterosexual couples is because heterosexual couples can create children naturally. Same sex couples cannot. This bill does not create good policy.

Persons Testifying: PRO: Representative Kessler, prime sponsor; Sharon LaMothe, Nancy Ritzenthaw, Laura Yockey, Sumer Thurston-Evans, citizens.

CON: Rebecca Foust, citizen.