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## Judiciary Committee

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### HB 1267

**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:** Representatives Pedersen, Walsh, Jinkins, Eddy, Roberts, Kagi, Sullivan, Van De Wege, Hurst, Goodman, Orwall, Moeller, Kirby, Frockt, Carlyle, Lias, Kenney, Clibborn, Seaquist, Blake, Hudgins, Fitzgibbon, Darneille, Dunshee, Morris, Takko, Pettigrew, Finn, Billig, Hunter, Cody, Dickerson, Stanford, Springer, Reykdal, Haigh, Rolfes, Sells, Jacks, Appleton, Hunt, Maxwell, Ryu, Ormsby, Ladenburg, McCoy, Santos, Lytton, Moscoso, Upthegrove, Green, Hasegawa and Tharinger; by request of Washington State Bar Association.

#### Brief Summary of Bill

- Amends the Uniform Parentage Act to: (1) reference state-registered domestic partnerships in specific provisions; (2) adopt some of the changes made by the National Conference of Commissioners on Uniform State Laws; (3) extend the time under which a person can challenge parentage under certain circumstances; and (4) use gender-neutral terms.
- Establishes standards for surrogacy contracts, including requirements that must be met by the intended parents and the woman acting as a surrogate.

**Hearing Date:** 1/24/11

**Staff:** Trudes Tango (786-7384).

#### Background:

Washington's Uniform Parentage Act (UPA) is based on model legislation from the National Conference of Commissioners on Uniform State Laws (NCCUSL). The NCCUSL amended

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their model 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, acknowledgment, 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 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.

The procedures for challenging parentage vary depending on whether the child has a presumed, acknowledged, or adjudicated parent. Generally, a challenge must be brought within two years from the child's birth, and parentage may be disproved by admissible results of 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. 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 Partnerships.

In 2009 the Legislature added language to the UPA stating that terms such as spouse, marriage, husband, and wife used in the chapter must be interpreted to apply equally to domestic partners, to the extent that such interpretation does not conflict with federal law. In addition, 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. However, acknowledgments of paternity apply only when there is a mother and a man claiming to be the genetic father of the child. Gender-specific terms are replaced with gender-neutral terms. Some of the changes made by the NCCUSL are adopted, including a new provision for the presumption of parentage. 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.

#### Challenging Parentage.

The time period under which a person can challenge parentage is extended from two years to four years. If an action to challenge parentage is commenced more than two years after the child's birth, the child must be made a party to the action.

#### Assisted Reproduction and Disclosure of Medical History Information.

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 by admissible evidence showing the intent of the parents.

A child conceived through assisted reproduction who is at least 18 years old must be provided, upon request, access to medical history information of the donor and, in some cases, access to identifying information of the donor.

#### Surrogacy Contracts.

The surrogacy statutes are replaced with provisions for surrogacy contracts that apply to both gestational and traditional surrogacy. Surrogacy for compensation is allowed. Under a surrogacy contract, the woman acting as the surrogate does not intend to be the parent of the child, and immediately upon the birth of the child, the intended parents are the child's legal parents. A surrogacy contract is enforceable under the UPA if the woman acting as a surrogate, the intended parents, and the contract meet certain requirements.

The woman acting as a 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 and mental health evaluation;
- have given her written, informed consent to the procedures;
- have consulted with independent counsel; and
- have obtained health, life, and long-term disability insurance policies. The health insurance coverage cannot be financed through Medicaid or the Children's Health Insurance Program.

The intended parents must:

- have a medical need for surrogacy, as evidenced 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 surrogacy contract must also meet certain requirements. For example, the contract must be executed prior to commencing any medical procedures, other than the medical and mental health evaluations. The contract must also contain certain provisions, such as an express agreement that the number of embryos transferred not exceed what is recommended by certain reproductive health organizations.

Nothing in the act may be construed to limit or constrain the right of the woman acting as a surrogate to make all health and welfare decisions regarding herself and her pregnancy, and she may not be held liable in a tort action for her decisions.

The parent-child relationship is established effective immediately upon the birth of the child if, among other things, the parties' attorneys file in court a certification stating that the parties entered into a surrogacy contract that is intended to meet all the requirements.

No action to invalidate a 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.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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