

SENATE BILL REPORT

SB 5006

As Reported by Senate Committee On:
Law & Justice, February 5, 2015
Ways & Means, February 27, 2015

Title: An act relating to authorizing the termination of all legal responsibilities of a nonparent if genetic testing shows by clear and convincing evidence that a man is not the genetic father of a child.

Brief Description: Authorizing the termination of all legal responsibilities of a nonparent if genetic testing shows by clear and convincing evidence that a man is not the genetic father of a child.

Sponsors: Senator Angel.

Brief History:

Committee Activity: Law & Justice: 1/19/15, 2/05/15 [DPS-WM, DNP].
Ways & Means: 2/26/15, 2/27/15 [DP2S, DNP, w/oRec].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5006 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pearson and Roach.

Minority Report: Do not pass.

Signed by Senators Pedersen, Ranking Minority Member; Darneille and Kohl-Welles.

Staff: Tim Ford (786-7423)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5006 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Hill, Chair; Braun, Vice Chair; Dammeier, Vice Chair; Honeyford, Vice Chair, Capital Budget Chair; Hargrove, Ranking Member; Bailey, Becker, Brown, Conway, Hewitt, O'Ban, Padden, Parlette, Rolfes, Schoesler and Warnick.

Minority Report: Do not pass.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Signed by Senators Keiser, Assistant Ranking Member on the Capital Budget; Kohl-Welles.

Minority Report: That it be referred without recommendation.

Signed by Senators Ranker, Ranking Minority Member, Operating; Billig, Fraser, Hasegawa and Hatfield.

Staff: Breann Boggs (786-7433)

Background: Washington's Uniform Parentage Act (UPA) provides for how a legal parent-child relationship may be established or challenged, and how a determination of parentage may be used by courts in other proceedings including child support.

Parentage between a person and a child may be established under UPA based on:

- an un rebutted presumption;
- acknowledgement of paternity;
- adoption;
- a valid surrogate contract;
- consent to assisted reproduction; or
- an adjudication.

A person is a presumed parent if the child was born in or shortly after 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.

Under UPA the procedure for challenging parentage varies depending on whether the child has a presumed, acknowledged, or adjudicated parent. Generally a challenge must be brought within four years after the child's birth or within four years after an acknowledgment or adjudication of parentage.

In a proceeding to challenge parentage, genetic testing may be ordered or alternately denied by the court where it is not in the best interest of the child. In most cases, genetic testing by an expert is admissible in court. A man excluded as the father by genetic testing must be adjudicated not to be the father of the child, except when the man adopted the child or the man consented to assisted reproduction with the intent to be a parent.

Summary of Bill (Recommended Second Substitute): A man may file a petition in court to rescind an acknowledgment of paternity, challenge a presumption of paternity, or contest an adjudication of paternity if genetic testing shows by clear and convincing evidence that the man is not the genetic father of the child. If the court enters an order of disestablishment of paternity, the man must, as of the date of the order, be discharged of all rights and duties of paternity and the court must order the registrar of vital statistics to remove his name from the birth certificate. Relief from the legal obligations of parentage is solely prospective upon a court order disestablishing paternity. A man is liable for any unpaid child support or other obligations prior to the entry of a court order disestablishing paternity. Any prior acknowledgement of paternity is a material mistake of fact where DNA testing shows the

man is not the father. The right to challenge paternity does not apply if the man is the adoptive father or if the man consented to assisted reproduction with the intent to be a parent.

A petition must be filed within two years after knowledge of facts indicating the man is not the child's genetic father, or for children born before this act, within two years of the effective date of this act. A denial of paternity may be signed at any time and filed with the state registrar of vital statistics, and is valid if accompanied by a certified copy of an order disestablishing paternity.

A court may no longer deny a motion for genetic testing on the basis that testing is inequitable and not in the best interest of the child. Genetic testing is presumed to be in the best interest of the child. A court may not deny testing if the petitioner and presumed father did not know he was not the genetic father, regardless of whether the presumed father cohabited or engaged in sexual intercourse with the person who has a parent-child relationship with the child during the probable time of conception, held out the child as his own, or provided financial support for the child. A federal severability clause provides that the provisions in the act are inoperative to the extent that the provisions conflict with the receipt of federal funds.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Second Substitute): A denial of paternity may be signed at any time and filed with the state registrar of vital statistics, and is valid if accompanied by a certified copy of an order disestablishing paternity. A federal severability clause provides that the provisions in the bill are inoperative to the extent that the provisions conflict with the receipt of federal funds.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (Recommended First Substitute): Relief from the legal obligations of parentage is solely prospective upon a court order disestablishing paternity. A man is liable for any unpaid child support or other obligations prior to the entry of a court order disestablishing paternity. Any prior acknowledgement of paternity is a material mistake of fact where DNA testing shows the man is not the father.

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 on Original Bill (Law & Justice): PRO: This is a matter of fairness and equity. In many cases there is no legal recourse for a man when he discovers through DNA testing that he is not the biological father but is paying child support. The discovery may happen long after the limitations allowed by law. Paying child support for someone else's child is very burdensome and affects the ability to support your own biological children. Failure to pay a legal obligation such as child support may result in being unable to be hired for a job, or an arrest. Paternity fraud may lead to financial slavery.

CON: A person already has up to four years to challenge paternity. We should keep a child-centered approach. Applying the best interests of the child is the correct balance which provides certainty for the child. Parentage does not require a person to be the biological father.

OTHER: The Department of Health needs time to develop rules and would like the implementation delayed.

Persons Testifying (Law & Justice): PRO: Senator Angel, prime sponsor; Kingsley Morse, Brandon Jones, Eric Johnson, Cedric Day, Naomi Evans, Andrew Evans, Allen Knight, Shawn West, Abbey Burlingame, citizens.

CON: David Ward, Legal Voice.

OTHER: Drew Boyton, Dept. of Health.

Staff Summary of Public Testimony on Substitute (Ways & Means): PRO: The Department of Social and Health Services (DSHS) indicated in a 2003 memorandum that there would be no impact on Title VI-D from this bill. It mirrors bills in 14 other states.

OTHER: State plan parameters are outlined in U.S. Code and are not flexible. DSHS has one concern left with section 2, related to filing and removing names from birth certificates at the Department of Health. If that is fixed, the state plan concerns are satisfied.

Persons Testifying (Ways & Means): PRO: Brandon Jones, Naomi Evans, citizens.

OTHER: Wally McClure, DSHS Child Support.