

# HOUSE BILL REPORT

## E2SHB 2793

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### As Passed House:

February 15, 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:

#### Committee Activity:

Judiciary: 1/18/10, 1/21/10 [DPS];

Ways & Means: 2/1/10, 2/8/10 [DP2S(w/o sub JUDI)].

#### Floor Activity:

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

### Brief Summary of Engrossed Second Substitute Bill

- Amends the Uniform Parentage Act to: (1) reference state-registered domestic partnerships and same-sex couples in specific provisions; (2) adopt some of the changes made by the National Conference of Commissioners on Uniform State Laws; and (3) use gender-neutral terms.
- Establishes standards for gestational surrogacy contracts, establishes requirements for intended parents and the woman acting as a gestational surrogate to satisfy under a gestational surrogacy contract, and allows surrogacy for compensation.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Flannigan, Kelley, Kirby, Ormsby and Roberts.

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*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.*

**Minority Report:** Do not pass. Signed by 3 members: Representatives Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Ross.

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

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## HOUSE COMMITTEE ON WAYS & MEANS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Judiciary. Signed by 14 members: Representatives Linville, Chair; Ericks, Vice Chair; Sullivan, Vice Chair; Cody, Conway, Darneille, Haigh, Hunt, Hunter, Kagi, Kenney, Kessler, Pettigrew and Seaquist.

**Minority Report:** Do not pass. Signed by 8 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Chandler, Hinkle, Priest, Ross and Schmick.

**Staff:** Chris Blake (786-7392).

### **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, 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 person is a presumed, acknowledged, or adjudicated parent. The challenge usually 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. 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 Partnerships.

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 as well as 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 Engrossed Second Substitute 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, 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 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 contribution 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 acknowledgment 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 a 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.

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

**Staff Summary of Public Testimony (Judiciary):**

(In support) The bill adds language to the act regarding domestic partnerships and the domestic partnership law was already approved by the people. The major piece in the bill is surrogacy. People who need to use surrogates to start a family go to other states because of Washington's surrogacy laws. The current law makes it very expensive for families and makes it difficult for the parents to develop a relationship with the surrogate. The bill puts legal measures in place for people who want to start a family. It is reasonable and fair. Washington currently allows surrogacy but not for compensation, which makes it difficult for intended parents to help the surrogate out financially. Allowing compensation will mean greater access for Washington residents. The interests between the surrogate and the intended parents must be balanced and this bill does that. There are safeguards for both the surrogate and the parents. The current definition of gestational surrogacy rules out options for embryo donation, and that should be changed.

(Neutral with suggested amendments) The act should be amended to help parties get a parenting plan or residential schedule. Allowing the parent to motion the court for a parenting plan and requiring that a copy of the birth certificate issued by the state where the child was born will help parents get a parenting plan or residential schedule faster and will result in greater stability for the child.

(Opposed) None.

**Staff Summary of Public Testimony (Ways & Means):**

(In support) This bill is necessary to assure that the Legislature, rather than litigation, is making the policy decisions around how domestic partners and spouses are treated equally in parentage cases. This bill protects the rights of intended parents and women serving as surrogates and assures that there is a good medical and legal structure in place for them. Withdrawing certain gender-neutral language will eliminate the bill's fiscal impact.

(With concerns) The bill creates a fiscal impact as it is currently written. Several sections of this version of the bill conflict with federal law.

(Opposed) None.

**Persons Testifying (Judiciary):** (In support) Representative Kessler, prime sponsor; Representative Walsh; Mark Demaray; Raegan Rasnic; Jen Mohr; Josh Friedes, Equal Rights Washington; and Lonnie Johns-Brown, National Organization for Women.

(Neutral with suggested amendments) Janet Skreen, Administrative Office of the Courts and Superior Court Judges Association.

**Persons Testifying (Ways & Means):** (In support) Representative Pedersen.

(With concerns) Dennis Dennis, Department of Health; and David Stillman, Division of Child Support, Department of Social and Health Services.

**Persons Signed In To Testify But Not Testifying (Judiciary):** None.

**Persons Signed In To Testify But Not Testifying (Ways & Means): None.**