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SECOND SUBSTITUTE SENATE BILL 5006

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State of Washington                      64th Legislature                      2015 Regular Session

By Senate Ways & Means (originally sponsored by Senator Angel)

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

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

8            NEW SECTION.    **Sec. 1.**    A new section is added to chapter 26.26  
9 RCW to read as follows:

10            (1) A man may file a petition in superior court to rescind an  
11 acknowledgment of paternity, challenge a presumption of paternity, or  
12 contest an adjudication of paternity under this chapter at any time  
13 within the limitations imposed under subsection (4) of this section  
14 if genetic testing that complies with RCW 26.26.410 shows by clear  
15 and convincing evidence that the man is not the genetic father of the  
16 child.

17            (2) If the court enters an order pursuant to subsection (1) of  
18 this section disestablishing a man as the father of the child based  
19 on genetic testing that shows that he is not the genetic father, the  
20 man shall, as of the date of the order of disestablishment, be

1 discharged from all of the rights and duties of a parent pursuant to  
2 subsection (8) of this section.

3 (3) If the court enters an order disestablishing the man as the  
4 father, then the order must direct vital statistics to remove his  
5 name from the child's birth certificate.

6 (4) This section does not apply if:

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

8 (b) The child was conceived by assisted reproduction and the man  
9 consented to assisted reproduction with the intent to be the parent  
10 of the child born.

11 (5)(a) A petitioner seeking to rescind an acknowledgment of  
12 paternity, challenge a presumption of paternity, or contest an  
13 adjudication of paternity of a child born on or after the effective  
14 date of this section must file the petition within two years of the  
15 date on which the petitioner becomes aware of the facts alleged in  
16 the petition indicating that the petitioner is not the child's  
17 genetic father.

18 (b) A petitioner seeking to rescind an acknowledgment of  
19 paternity, challenge a presumption of paternity, or contest an  
20 adjudication of paternity of a child born before the effective date  
21 of this section has two years from the effective date of this section  
22 to file a petition, regardless of the date on which the petitioner  
23 became aware of the facts alleged in the petition indicating that the  
24 petitioner is not the child's genetic father.

25 (6) For purposes of this section, an acknowledgement of paternity  
26 shall be deemed to have been executed on the basis of a material  
27 mistake of fact where evidence shows, based on genetic testing in  
28 accordance with RCW 26.26.410 and 26.26.420, that the man who is the  
29 signatory of an acknowledgement of paternity is not rebuttably  
30 identified as the father of a child.

31 (7) An order of disestablishment entered under this section must  
32 provide prospective relief only, and there is no right of  
33 reimbursement for amounts paid under any prior order of child  
34 support.

35 (8) As of the date of the entry of the disestablishment order,  
36 the man is not liable for any future child support amounts or other  
37 future obligations. A man is liable for any prior court or  
38 administrative orders for unpaid child support amounts or other past  
39 obligations entered prior to the disestablishment order; however, the

1 prior court or administrative orders may not be retroactively  
2 modified after an order of disestablishment.

3 **Sec. 2.** RCW 26.26.310 and 2011 c 283 s 13 are each amended to  
4 read as follows:

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

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

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

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

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

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

17 (2) A denial of paternity may be signed at any time and is valid  
18 only if accompanied by a certified copy of a disestablishment order  
19 entered pursuant to section 1 of this act.

20 **Sec. 3.** RCW 26.26.320 and 2011 c 283 s 15 are each amended to  
21 read as follows:

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

27 (2) Except as otherwise provided in RCW 26.26.330 and 26.26.335,  
28 a valid denial of paternity filed with the state registrar of vital  
29 statistics ~~((in conjunction with a valid acknowledgment of~~  
30 ~~paternity))~~ is equivalent to an adjudication of the nonpaternity of  
31 the presumed father and discharges the presumed father from all of  
32 the rights and duties of a parent, including any obligation to pay  
33 child support under any court order or administrative finding as of  
34 the date of the filing of the order disestablishing paternity.

35 **Sec. 4.** RCW 26.26.335 and 2011 c 283 s 17 are each amended to  
36 read as follows:

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

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

6 (b) Within four years after the acknowledgment or denial is filed  
7 with the state registrar of vital statistics, unless the action is  
8 brought under section 1 of this act.

9 (2) In actions commenced more than two years after the birth of  
10 the child, the child must be made a party to the action.

11 ~~((+2))~~ (3) In a proceeding brought under section 1 of this act,  
12 evidence of genetic testing that the man who signed the  
13 acknowledgement of paternity is not rebuttably identified as the  
14 father of a child constitutes a material mistake of fact for the  
15 purposes of this section.

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

18 **Sec. 5.** RCW 26.26.530 and 2011 c 283 s 32 are each amended to  
19 read as follows:

20 (1) Except as otherwise provided in subsection (2) of this  
21 section, a proceeding brought by a presumed parent, the person with a  
22 parent-child relationship with the child, or another individual to  
23 adjudicate the parentage of a child having a presumed parent must be  
24 commenced not later than four years after the birth of the child. If  
25 an action is commenced more than two years after the birth of the  
26 child, the child must be made a party to the action.

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

30 (a) The presumed parent and the person who has a parent-child  
31 relationship with the child neither cohabited nor engaged in sexual  
32 intercourse with each other during the probable time of conception  
33 and the presumed parent never held out the child as his or her own;  
34 or

35 (b) Genetic testing that satisfies the requirements of RCW  
36 26.26.410 excludes the presumed father as the genetic father of the  
37 child, regardless of whether the presumed father cohabited or engaged  
38 in sexual intercourse with the person who has a parent-child  
39 relationship with the child during the probable time of conception,

1 held out the child as his own, or provided financial support for the  
2 child and the petition to challenge paternity is brought under  
3 section 1 of this act. This subsection (2)(b) does not apply if the  
4 man is the adoptive father of the child or consented to assisted  
5 reproduction with another person with the intent to be the parent of  
6 the child born.

7 **Sec. 6.** RCW 26.26.535 and 2011 c 283 s 33 are each amended to  
8 read as follows:

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

14 (a) ~~((i))~~ The conduct of the mother or father or the presumed or  
15 acknowledged parent estops that party from denying parentage; ~~((and~~  
16 ~~(ii) It would be inequitable to disprove the parent-child~~  
17 ~~relationship between the child and the presumed or acknowledged~~  
18 ~~parent;))~~ or

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

20 (2) In determining whether to deny a motion to seek an order for  
21 genetic testing under subsection (1)(a) of this section, the court  
22 shall ~~((consider the best interest of the child, including the~~  
23 ~~following factors:~~

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

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

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

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

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

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

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

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

4       ~~(i) Other factors that may affect the equities arising from the~~  
5 ~~disruption of the parent-child relationship between the child and the~~  
6 ~~presumed or acknowledged parent or the chance of other harm to the~~  
7 ~~child)) presume that it is in the best interest of the child to~~  
8 ~~accurately determine the child's parentage as soon as possible. A~~  
9 ~~party may rebut this presumption with a showing by clear and~~  
10 ~~convincing evidence that it is not in the child's best interest to~~  
11 ~~determine the child's parentage.~~

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

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

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

23       (6) The court may not deny genetic testing if the presumed father  
24 did not know that he was not the genetic father of the child and has  
25 filed a petition to challenge paternity under section 1 of this act.

26       **Sec. 7.** RCW 26.26.600 and 2011 c 283 s 42 are each amended to  
27 read as follows:

28       The court shall apply the following rules to adjudicate the  
29 parentage of a child:

30       (1) Except as provided in subsection (5) of this section, the  
31 parentage of a child having a presumed or adjudicated parent or an  
32 acknowledged father may be disproved only by admissible results of  
33 genetic testing excluding that person as the parent of the child or  
34 identifying another man as the father of the child.

35       (2) Unless the results of genetic testing are admitted to rebut  
36 other results of genetic testing, the man identified as the father of  
37 the child under RCW 26.26.420 must be adjudicated the father of the  
38 child.

1 (3) If the court finds that genetic testing under RCW 26.26.420  
2 neither identifies nor excludes a man as the father of a child, the  
3 court may not dismiss the proceeding. In that event, the results of  
4 genetic testing, and other evidence, are admissible to adjudicate the  
5 issue of paternity.

6 (4) (~~Unless the results of genetic testing are admitted to rebut~~  
7 ~~other results of genetic testing,~~) A man excluded as the father of a  
8 child by genetic testing must be adjudicated not to be the father of  
9 the child.

10 (5) Subsections (1) through (4) of this section do not apply when  
11 the child was conceived through assisted reproduction. The parentage  
12 of a child conceived through assisted reproduction may be disproved  
13 only by admissible evidence showing the intent of the presumed,  
14 acknowledged, or adjudicated parent and the other parent.

15 **Sec. 8.** RCW 26.26.405 and 2011 c 283 s 22 are each amended to  
16 read as follows:

17 (1) Except as otherwise provided in this section and RCW  
18 26.26.410 through 26.26.630, the court shall order the child and  
19 other designated individuals to submit to genetic testing if the  
20 request for testing is supported by the sworn statement of a party to  
21 the proceeding:

22 (a) Alleging paternity and stating facts establishing a  
23 reasonable probability of the requisite sexual contact between the  
24 individuals; or

25 (b) Denying paternity and stating facts establishing a  
26 possibility that sexual contact between the individuals, if any, did  
27 not result in the conception of the child, or stating facts that the  
28 party denying paternity did not know he was not the genetic father of  
29 the child.

30 (2) A support enforcement agency may order genetic testing only  
31 if there is no presumed or adjudicated parent and no acknowledged  
32 father.

33 (3) If a request for genetic testing of a child is made before  
34 birth, the court or support enforcement agency may not order in utero  
35 testing.

36 (4) If two or more persons are subject to court-ordered genetic  
37 testing, the testing may be ordered concurrently or sequentially.

38 (5) This section does not apply when the child was conceived  
39 through assisted reproduction.

1        NEW SECTION.    **Sec. 9.**    If any part of this act is found to be in  
2    conflict with federal requirements that are a prescribed condition to  
3    the allocation of federal funds to the state, the conflicting part of  
4    this act is inoperative solely to the extent of the conflict and with  
5    respect to the agencies directly affected, and this finding does not  
6    affect the operation of the remainder of this act in its application  
7    to the agencies concerned. Rules adopted under this act must meet  
8    federal requirements that are a necessary condition to the receipt of  
9    federal funds by the state.

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