

HOUSE BILL NO. HB0289

Codification of marital rights.

Sponsored by: Representative(s) Connolly, Yin and Zwonitzer
and Senator(s) Rothfuss and Von Flatern

A BILL

for

1 AN ACT relating to marital rights; amending statutory
2 language to reflect United States supreme court precedent
3 concerning same sex marriages and the rights of same sex
4 married couples; codifying rights of parties legally
5 authorized to marry in Wyoming; providing for parentage
6 determinations for all marital couples; providing
7 definitions; making conforming amendments; providing for a
8 review of rules and regulations potentially impacted by this
9 act; and providing for an effective date.

10

11 *Be It Enacted by the Legislature of the State of Wyoming:*

12

13 **Section 1.** W.S. 2-4-106, 8-1-102(a) by creating a new
14 paragraph (xvii), 14-1-201(a)(iii), 14-2-308(a)(vii),
15 14-2-402(a)(viii)(A) and (xiii), 14-2-403(d),

1 14-2-501(a)(intro), (ii), (iii), by creating a new paragraph
 2 (iv), (b)(intro), (v) and by creating a new subsection (c),
 3 14-2-504(b) and by creating a new subsection (c),
 4 14-2-802(a)(ii), 14-2-803(a)(i), 14-2-808(b)(vii),
 5 14-2-809(b), 14-2-816(a)(vi), 14-2-818, 14-2-822(a),
 6 14-2-823(c)(i), (ii), (f)(iii), (g)(intro), (ii), (iv), (vi),
 7 (vii), (ix), (j)(iii), (v) and (m), 14-2-904, 14-2-905(a) and
 8 (b), 14-3-402(a)(xiii), 14-6-201(a)(xvii), 14-6-402(a)(xiv),
 9 20-1-101, 20-1-106(b), 20-2-102, 20-2-201(a)(intro),
 10 20-3-104, 20-4-166(j), 20-4-170(b)(vii), 20-5-410(d),
 11 35-1-410(c)(iii), 35-1-411(a) and (c) and 35-1-422(a) are
 12 amended to read:

13

14 **2-4-106. Divorce not to affect children's rights.**

15

16 Divorces of ~~husband and wife~~ parents do not affect the right
 17 of children to inherit their parents' property.

18

19 **8-1-102. Definitions.**

20

21 (a) As used in the statutes unless the legislature
 22 clearly specifies a different meaning or interpretation or
 23 the context clearly requires a different meaning:

1

2

3

(xvii) "Spouse" means a marriage partner, a husband or a wife.

4

5

14-1-201. Definitions.

6

7

(a) As used in this article:

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14-2-308. Definitions.

18

19

(a) As used in this act:

20

21

22

23

(vii) "Parent" means a natural parent, ~~or~~ a parent by adoption, a person adjudged the parent of the child in judicial proceedings or a person who has established a

1 parent-child relationship under title 14, chapter 2, article
2 5 of the Wyoming statutes;

3

4 **14-2-402. Definitions.**

5

6 (a) As used in this act:

7

8 (viii) "Donor" means an individual who produces
9 eggs or sperm used for assisted reproduction, whether or not
10 for consideration. The term does not include:

11

12 (A) A husband who provides sperm, or a wife
13 who provides eggs, to be used for assisted reproduction ~~by~~
14 ~~the wife~~ within a marriage;

15

16 (xiii) "Parent-child relationship" means the
17 legal relationship between a child and a parent of the child.
18 The term includes ~~the a~~ mother-child relationship and ~~the a~~
19 father-child relationship;

20

21 **14-2-403. Scope of act; choice of law.**

22

1 (d) This act does not authorize or prohibit an
2 agreement between a ~~woman and a man~~ person or couple and
3 ~~another~~ a woman in which the woman relinquishes all rights as
4 a parent of a child conceived by means of assisted
5 reproduction, and which provides that the ~~man and the other~~
6 ~~woman~~ person or couple become the parents of the child. If a
7 birth results under such an agreement and the agreement is
8 unenforceable under Wyoming law, the parent-child
9 relationship is determined as provided in article 4 of this
10 act.

11

12 **14-2-501. Establishment of parent-child relationship.**

13

14 (a) ~~The~~ A mother-child relationship is established
15 between a woman and a child by:

16

17 (ii) An adjudication of the woman's maternity; ~~or~~

18

19 (iii) Adoption of the child by the woman; ~~or~~ or

20

21 (iv) The woman's having consented in writing to
22 assisted reproduction by her spouse or a surrogate under

1 article 9 of this act, which resulted in the birth of the
2 child.

3

4 (b) ~~The~~^A father-child relationship is established
5 between a man and a child by:

6

7 (v) The man's having consented in writing to
8 assisted reproduction by his ~~wife~~spouse or a surrogate under
9 article 9 of this act which resulted in the birth of the
10 child.

11

12 (c) Unless otherwise established in this article or
13 through proceedings to adjudicate parentage, the parents
14 named on a child's birth certificate are hereby established
15 to be the parents of a child.

16

17 **14-2-504. Presumption of parentage in context of**
18 **marriage.**

19

20 (b) A presumption of paternity or parentage established
21 under this section may be rebutted only by an adjudication
22 under article 8 of this act.

23

1 (c) A spouse is presumed to be the parent of a child if
2 the spouses are married to each other and the child is born
3 to the other spouse during the marriage.

4
5 **14-2-802. Standing to maintain proceeding.**

6
7 (a) Subject to article 5 of this act and W.S. 14-2-807
8 and 14-2-809, a proceeding to adjudicate parentage may be
9 maintained by:

10
11 (ii) ~~The A~~ mother or father of the child;

12
13 **14-2-803. Parties to proceeding.**

14
15 (a) The following individuals shall be joined as
16 parties in a proceeding to adjudicate parentage:

17
18 (i) ~~The A~~ mother or father of the child; and

19
20 **14-2-808. Authority to deny motion for genetic testing.**

21
22 (b) In determining whether to deny a motion seeking an
23 order for genetic testing under this section, the court shall

1 consider the best interest of the child, including the
2 following factors:

3

4 (vii) The nature of the relationship between the
5 child and any alleged father or other parent;

6

7 **14-2-809. Limitation; child having acknowledged or**
8 **adjudicated parent.**

9

10 (b) If a child has an acknowledged ~~father~~-parent or an
11 adjudicated ~~father~~-parent, an individual, other than the
12 child, who is neither a signatory to the acknowledgment of
13 paternity nor a party to the adjudication and who seeks an
14 adjudication of ~~paternity~~-parentage of the child shall
15 commence a proceeding not later than two (2) years after the
16 effective date of the acknowledgment or adjudication.

17

18 **14-2-816. Temporary order.**

19

20 (a) In a proceeding under this article, the court shall
21 issue a temporary order for support of a child if the order
22 is appropriate and the individual ordered to pay support is:

23

1 (vi) ~~The~~A mother of the child.

2

3 **14-2-818. Jury prohibited.**

4

5 The court, without a jury, shall adjudicate paternity
6 parentage of a child.

7

8 **14-2-822. Order adjudicating parentage.**

9

10 (a) The court shall issue an order adjudicating whether
11 a ~~man~~person alleged or claiming to be ~~the father~~a parent is
12 ~~the~~a parent of the child.

13

14 **14-2-823. Binding effect of determination of parentage.**

15

16 (c) In a proceeding to dissolve a marriage, the court
17 is deemed to have made an adjudication of the parentage of a
18 child if the court acts under circumstances that satisfy the
19 jurisdictional requirements of W.S. 20-4-142, and the final
20 order:

21

22 (i) Expressly identifies a child as a "child of
23 the marriage," "issue of the marriage," or similar words

1 indicating that the ~~husband is the father~~ parties are the
2 parents of the child; or

3

4 (ii) Provides for support of the child by ~~the~~
5 ~~husband~~ one (1) parent to the other unless ~~paternity parentage~~
6 is specifically disclaimed in the order.

7

8 (f) A petition for disestablishment of paternity shall
9 be filed:

10

11 (iii) In the case of an adjudication issued by a
12 court of this state, the petition shall be filed only by ~~the~~
13 a mother of the child, the adjudicated ~~father~~ parent of the
14 child, the child, if the child was a party to the
15 adjudication, or the legal representative of any of these
16 parties. A petition filed by an individual who is not a party
17 to the adjudication shall be filed pursuant to W.S. 14-2-809.
18 The petition under this paragraph shall be filed no later
19 than two (2) years after the petitioner knew or should have
20 known that the paternity of the child was at issue.

21

22 (g) The court shall appoint an attorney to represent
23 the best interests of a child if the court finds that the

1 best interests of the child is not adequately represented.
2 In cases concerning an adjudication of ~~paternity-parentage~~
3 pursuant to subsection (c) of this section, the court shall
4 appoint an attorney to represent the best interests of the
5 child. In determining the best interests of the child, the
6 court shall consider the following factors:

7

8 (ii) The length of time during which the
9 adjudicated ~~father-parent~~ has assumed the role of the ~~father~~
10 ~~parent~~ of the child;

11

12 (iv) The nature of the relationship between the
13 child and the adjudicated ~~father-parent~~;

14

15 (vi) The harm that may result to the child if
16 adjudicated ~~paternity-parentage~~ is successfully disproved;

17

18 (vii) The nature of the relationship between the
19 child and any alleged ~~father-parent~~;

20

21 (ix) Other factors that may affect the equities
22 arising from the disruption of the ~~father-child-parent-child~~

1 relationship between the child and the adjudicated ~~father~~
2 parent or the chance of other harm to the child.

3

4 (j) The court may grant relief on the petition filed in
5 accordance with this section upon a finding by the court of
6 all of the following:

7

8 (iii) The adjudicated ~~father~~parent has not
9 adopted the child;

10

11 (v) The adjudicated ~~father~~parent did not act to
12 prevent the biological father of the child from asserting his
13 paternal rights with respect to the child.

14

15 (m) If the court finds that the adjudication of
16 ~~paternity~~parentage should be vacated, in accordance with all
17 of the conditions prescribed, the court shall enter an order
18 which provides all of the following:

19

20 (i) That the disestablishment of ~~paternity~~the
21 adjudicated parentage is in the best interests of the child
22 pursuant to the factors in this section;

23

1 (ii) That the adjudicated ~~father-parent~~ is not ~~the~~
2 ~~a~~ biological ~~father-parent~~ of the child;

3

4 (iii) That the adjudicated ~~father's-parent's~~
5 parental rights and responsibilities are terminated as of the
6 date of the filing of the order;

7

8 (iv) That the birth records agency shall amend the
9 child's birth certificate by removing the adjudicated
10 ~~father's-parent's~~ name, if it appears thereon, and issue a
11 new birth certificate for the child;

12

13 (v) That the adjudicated ~~father-parent~~ is relieved
14 of any and all future support obligations owed on behalf of
15 the child from the date that the order determining that the
16 established ~~father-parent~~ is not ~~the-a~~ biological ~~father~~
17 ~~parent~~ is filed;

18

19 (vi) That any unpaid support due ~~prior-to-before~~
20 the date the order determining that the adjudicated ~~father~~
21 ~~parent~~ is not ~~the-a~~ biological ~~father-parent~~ is filed, is due
22 and owing;

23

1 (vii) That the adjudicated ~~father~~parent has no
2 right to reimbursement of past child support paid to ~~the~~
3 ~~mother~~another parent, the state of Wyoming or any other
4 assignee of child support.

5

6 **14-2-904. Consent to assisted reproduction.**

7

8 (a) Consent by a woman and a ~~man~~person who intends to
9 be the parent of a child born to the woman by assisted
10 reproduction shall be in a record signed by the woman and the
11 ~~man~~intended parent. This requirement shall not apply to a
12 donor.

13

14 (b) Failure to sign a consent required by subsection
15 (a) of this section, before or after birth of the child, does
16 not preclude a finding of ~~paternity~~parentage if the woman
17 and the ~~man~~intended parent, during the first two (2) years
18 of the child's life resided together in the same household
19 with the child and openly held out the child as their own.

20

21 **14-2-905. Limitation on spouse's dispute of parentage.**

22

1 (a) Except as otherwise provided in subsection (b) of
2 this section, the ~~husband~~spouse of a wife who gives birth to
3 a child by means of assisted reproduction may not challenge
4 ~~his paternity~~the parentage of the child unless:

5
6 (i) Within two (2) years after learning of the
7 birth of the child ~~he~~the spouse commences a proceeding to
8 adjudicate ~~his paternity~~the parentage; and

9
10 (ii) The court finds that ~~he~~the spouse did not
11 consent to the assisted reproduction, before or after birth
12 of the child.

13
14 (b) A proceeding to adjudicate ~~paternity~~parentage may
15 be maintained at any time if the court determines that:

16
17 (i) ~~The~~Any of the following has occurred:

18
19 (A) A husband did not provide sperm for, ~~or~~
20 ~~before or after the birth of the child consent to,~~ assisted
21 reproduction by ~~his wife~~the spouse or a surrogate;

22

1 (B) A wife did not provide the egg for
2 assisted reproduction by the spouse or a surrogate;

3
4 (C) Before or after the birth of the child a
5 spouse did not consent to assisted reproduction by the other
6 spouse or a surrogate.

7
8 (ii) The ~~husband and the mother of the child~~
9 married couple have not cohabited since the probable time of
10 assisted reproduction; and

11
12 (iii) The ~~husband-spouse~~ never openly held out the
13 child as ~~his~~ that spouse's own.

14
15 **14-3-402. Definitions.**

16
17 (a) As used in this act:

18
19 (xiii) "Parent" means either a natural or adoptive
20 parent of the child, a person adjudged the parent of the child
21 in judicial proceedings or a ~~man presumed to be the father~~
22 under W.S. 14-2-504 person who has established a parent-child

1 relationship under title 14, chapter 2, article 5 of the
2 Wyoming statutes;

3

4 **14-6-201. Definitions; short title; statement of**
5 **purpose and interpretation.**

6

7 (a) As used in this act:

8

9 (xvii) "Parent" means either a natural or adoptive
10 parent of the child, a person adjudged the parent of the child
11 in judicial proceedings or a ~~man presumed to be the father~~
12 under W.S. 14-2-504 person who has established a parent-child
13 relationship under title 14, chapter 2, article 5 of the
14 Wyoming statutes;

15

16 **14-6-402. Definitions.**

17

18 (a) As used in this act:

19

20 (xiv) "Parent" means either a natural or adoptive
21 parent of the child, a person adjudged the parent of the child
22 in judicial proceedings or a ~~man presumed to be the father~~
23 under W.S. 14-2-504 person who has established a parent-child

1 relationship under title 14, chapter 2, article 5 of the
2 Wyoming statutes;

3

4

CHAPTER 1

5

MARRIED PERSONS

6

7

20-1-101. Marriage a civil contract.

8

9 Marriage is a civil contract between ~~a male and a female~~
10 ~~person~~ two (2) persons to which the consent of the parties
11 capable of contracting is essential.

12

13

20-1-106. Who may solemnize marriage; form of ceremony.

14

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18

19

(b) In the solemnization of marriage no particular form
is required, except that the parties shall solemnly declare
in the presence of the person performing the ceremony and at
least two (2) attending witnesses that they take each other
as ~~husband and wife~~ spouses.

20

21

20-2-102. Petition by spouse for support.

22

1 When the ~~husband and wife~~ spouses are living separately, or
2 when they are living together but one (1) spouse does not
3 support the other spouse or children within ~~his~~ the spouse's
4 means, and no proceeding for divorce is pending, the other
5 spouse or the department of family services may institute a
6 proceeding for support. No less than five (5) days after
7 notice is personally served upon the nonsupporting spouse,
8 the court may hear the petition and grant such order
9 concerning the support of the spouse or children as it might
10 grant were it based on a proceeding for divorce. If the
11 nonsupporting spouse cannot be personally served within this
12 state but has property within the jurisdiction of the court,
13 or debts owing to ~~him~~ the nonsupporting spouse, the court may
14 order such constructive service as appears sufficient and
15 proper and may cause an attachment of the property. Upon
16 completion of constructive service the court may grant relief
17 as if personal service was had.

18

19 **20-2-201. Disposition and maintenance of children in**
20 **decree or order; access to records.**

21

22 (a) In granting a divorce, separation or annulment of
23 a marriage or upon the establishment of paternity or parentage

1 pursuant to W.S. 14-2-401 through 14-2-907, the court may
2 make by decree or order any disposition of the children that
3 appears most expedient and in the best interests of the
4 children. In determining the best interests of the child, the
5 court shall consider, but is not limited to, the following
6 factors:

7

8 **20-3-104. Proving marriage, parenthood; spouses as**
9 **witnesses; disclosure of confidential communications;**
10 **desertion, neglect or refusal to support.**

11

12 No other or greater evidence is required to prove ~~the a~~
13 marriage ~~of a husband and wife~~ or that the defendant is the
14 father or mother of a child or children than is required to
15 prove such facts in a civil action. In a prosecution under
16 this act no statute or rule of law prohibiting the disclosure
17 of confidential communications between ~~husband and wife a~~
18 married couple shall apply. Both ~~husband and wife~~ spouses are
19 competent witnesses to testify against each other to any
20 relevant matters including the fact of marriage and the
21 parentage of the child or children but neither shall be
22 compelled to give evidence incriminating himself or herself.
23 Proof of the desertion of the ~~wife other~~ spouse, child or

1 children in destitute or necessitous circumstances, or of the
2 neglect or refusal to provide for the support and maintenance
3 of the ~~wife~~ other spouse, child or children is prima facie
4 evidence that the desertion, neglect or refusal is willful.

5
6 **20-4-166. Special rules of evidence and procedure.**

7
8 (j) The defense of immunity based on ~~the~~ a marital
9 relationship ~~of husband and wife~~ or ~~parent and child~~ a
10 parent-child relationship does not apply in a proceeding
11 under this act.

12
13 **20-4-170. Establishment of support order.**

14
15 (b) The tribunal may issue a temporary child support
16 order if the tribunal determines that the order is appropriate
17 and the individual ordered to pay is:

18
19 (vii) ~~The~~ A mother of the child; or

20
21 **20-5-410. Hearing and order.**

22

1 (d) A privilege against disclosure of communications
2 between spouses and a defense of immunity based on ~~the a~~
3 marital relationship ~~of husband and wife~~ or ~~parent and child~~
4 a parent-child relationship may not be invoked in a proceeding
5 under this article.

6

7 **35-1-410. Birth registration.**

8

9 (c) When a birth occurs outside an institution, the
10 certificate shall be prepared and filed by one (1) of the
11 following in the indicated order of priority:

12

13 (iii) ~~The father, the mother~~ Either parent, or in
14 the absence ~~of the father and the~~ or inability of ~~the mother~~
15 both parents, the person in charge of the premises where the
16 birth occurred.

17

18 **35-1-411. Name of father or parent on birth**
19 **certificate.**

20

21 (a) If the mother was married either at the time of
22 conception or birth of child, or between conception and birth,

1 the name of the ~~husband~~spouse shall be entered on the
2 certificate as the ~~father~~other parent of the child, unless:

3

4 (i) Paternity or parentage has been determined
5 otherwise by a court of competent jurisdiction; or

6

7 (ii) The ~~husband~~other parent signs an affidavit
8 denying that he or she is ~~the father~~a parent of the child
9 and the mother and the person to be named as the father sign
10 an affidavit of paternity under this section. Affidavits may
11 be joint or individual or a combination thereof, and each
12 signature shall be individually notarized. The name of the
13 person signing the affidavit of paternity shall be entered as
14 the father on the certificate of birth.

15

16 (c) In any case in which paternity or parentage of a
17 child is determined by a court of competent jurisdiction, the
18 name of the ~~father~~parents and surname of the child shall be
19 entered on the certificate of birth in accordance with the
20 finding and order of the court.

21

22 **35-1-422. Marriage registration.**

23

