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HOUSE BILL 1306

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State of Washington

65th Legislature

2017 Regular Session

By Representatives Shea, Taylor, Koster, Caldier, Buys, Volz, Young, Harris, Muri, McCaslin, Kirby, and Stambaugh

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 new sections 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.** This act may be known and cited as the  
9 Evans family relief act.

10 NEW SECTION. **Sec. 2.** A new section is added to chapter 26.26  
11 RCW to read as follows:

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

19 (2) If the court enters an order pursuant to subsection (1) of  
20 this section disestablishing a man as the father of the child based

1 on genetic testing that shows that he is not the genetic father, the  
2 man is, as of the date of the order of disestablishment, discharged  
3 from all of the rights and duties of a parent pursuant to subsections  
4 (7) and (8) of this section.

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

8 (4) This section does not apply if:

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

10 (b) The child was conceived by assisted reproduction and the man  
11 consented to assisted reproduction with the intent to be the parent  
12 of the child born; or

13 (c) Genetic testing that satisfies RCW 26.26.410 and 26.26.420  
14 was used as the basis to determine a prior adjudication of paternity,  
15 unless it is shown by sufficient evidence that material mistake of  
16 fact or fraud occurred within the administration of such genetic  
17 testing.

18 (5)(a) 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 on or after the effective  
21 date of this section must file the petition within two years of the  
22 date on which the petitioner becomes aware of the facts alleged in  
23 the petition indicating that the petitioner is not the child's  
24 genetic father.

25 (b) A petitioner seeking to rescind an acknowledgment of  
26 paternity, challenge a presumption of paternity, or contest an  
27 adjudication of paternity of a child born before the effective date  
28 of this section has two years from the effective date of this section  
29 to file a petition, regardless of the date on which the petitioner  
30 became aware of the facts alleged in the petition indicating that the  
31 petitioner is not the child's genetic father.

32 (6) For purposes of this section, an acknowledgment of paternity  
33 shall be deemed to have been executed on the basis of a material  
34 mistake of fact where evidence and genetic testing in accordance with  
35 RCW 26.26.410 and 26.26.420 shows that the man who is the signatory  
36 of an acknowledgment of paternity is not identified as the father of  
37 a child.

38 (7)(a) An order of disestablishment entered under this section  
39 must set aside all previous orders of paternity and child support,  
40 including any previous acknowledgment of paternity, and extinguish

1 any existing child support arrearage if the court finds by clear and  
2 convincing evidence that the acknowledged, presumed, or adjudicated  
3 father is not the biological father of the child who is the subject  
4 of the orders.

5 (b) The provisions of this section may not be construed to create  
6 a cause of action against the state to recover child support or  
7 create a state debt. The state of Washington is not required to  
8 refund or repay child support previously collected or retained under  
9 a court order that is set aside under this section.

10 (8) As of the date of the entry of the disestablishment order,  
11 the man is not liable for any future child support or any other  
12 future financial or legal obligations.

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

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

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

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

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

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

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

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

30 **Sec. 4.** RCW 26.26.320 and 2011 c 283 s 15 are each amended to  
31 read as follows:

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

37 (2) Except as otherwise provided in RCW 26.26.330 and 26.26.335,  
38 a valid denial of paternity filed with the state registrar of vital

1 statistics (~~in conjunction with a valid acknowledgment of~~  
2 ~~paternity~~) is equivalent to an adjudication of the nonpaternity of  
3 the presumed father and discharges the presumed father from all of  
4 the rights and duties of a parent, including any obligation to pay  
5 child support under any court order or administrative finding set  
6 aside by the disestablishment order entered pursuant to section 2 of  
7 this act.

8 **Sec. 5.** RCW 26.26.335 and 2011 c 283 s 17 are each amended to  
9 read as follows:

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

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

15 (b) Within (~~four years after the acknowledgment or denial is~~  
16 ~~filed with the state registrar of vital statistics~~) two years of the  
17 discovery of evidence of fraud, duress, or material mistake of fact,  
18 and brought as an action under section 2 of this act.

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

21 (~~(+2)~~) (3) In a proceeding brought under section 2 of this act,  
22 the court shall suspend a petitioner's financial obligation to pay  
23 child support for good cause shown. Genetic testing showing that the  
24 petitioner is not the genetic father is considered good cause shown.

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

27 **Sec. 6.** RCW 26.26.530 and 2011 c 283 s 32 are each amended to  
28 read as follows:

29 (1) Except as otherwise provided in subsection (2) of this  
30 section, a proceeding brought by a presumed, adjudicated,  
31 acknowledged, or natural parent, the person with a parent-child  
32 relationship with the child, or another individual to adjudicate the  
33 parentage of a child having a presumed parent must be commenced not  
34 later than (~~four years after the birth of the child~~) two years  
35 after the discovery of new evidence showing material mistake of fact  
36 or fraud in the determination of the child's parentage. If an action  
37 is commenced more than two years after the birth of the child, the  
38 child must be made a party to the action.

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

4 (a) The presumed parent and the person who has a parent-child  
5 relationship with the child neither cohabited nor engaged in sexual  
6 intercourse with each other during the probable time of conception  
7 and the presumed parent never held out the child as his or her own;  
8 or

9 (b) Genetic testing that satisfies the requirements of RCW  
10 26.26.410 excludes the presumed, acknowledged, or adjudicated father  
11 as the genetic father of the child, regardless of whether the  
12 presumed, acknowledged, or adjudicated father cohabited or engaged in  
13 sexual intercourse with the person who has a parent-child  
14 relationship with the child during the probable time of conception,  
15 held out the child as his own, or provided financial support for the  
16 child and the petition to challenge paternity is brought under  
17 section 2 of this act. This subsection (2)(b) does not apply if the  
18 man is the adoptive father of the child or consented to assisted  
19 reproduction with another person with the intent to be the parent of  
20 the child born.

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

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

28 (a) ~~((i))~~ The conduct of the mother or father or the presumed or  
29 acknowledged parent estops that party from denying parentage; ~~((and~~  
30 ~~(ii) It would be inequitable to disprove the parent-child~~  
31 ~~relationship between the child and the presumed or acknowledged~~  
32 ~~parent;)) or~~

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

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

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

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

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

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

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

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

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

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

18       ~~(i) Other factors that may affect the equities arising from the~~  
19 ~~disruption of the parent-child relationship between the child and the~~  
20 ~~presumed or acknowledged parent or the chance of other harm to the~~  
21 ~~child)) presume that it is in the best interest of the child to~~  
22 ~~accurately determine the child's parentage as soon as possible.~~

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

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

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

34       (6) The court may not deny genetic testing if the presumed father  
35 did not know that he was not the genetic father of the child and has  
36 filed a petition to challenge paternity under section 2 of this act.

37       **Sec. 8.** RCW 26.26.600 and 2011 c 283 s 42 are each amended to  
38 read as follows:

1 The court shall apply the following rules to adjudicate the  
2 parentage of a child:

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

8 (2) Unless the results of genetic testing are admitted to rebut  
9 other results of genetic testing, the man identified as the father of  
10 the child under RCW 26.26.420 must be adjudicated the father of the  
11 child.

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

17 (4) (~~Unless the results of genetic testing are admitted to rebut~~  
18 ~~other results of genetic testing,~~) A man excluded as the father of a  
19 child by genetic testing must be adjudicated not to be the father of  
20 the child.

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

26 **Sec. 9.** RCW 26.26.405 and 2011 c 283 s 22 are each amended to  
27 read as follows:

28 (1) Except as otherwise provided in this section and RCW  
29 26.26.410 through 26.26.630, the court shall order the child and  
30 other designated individuals to submit to genetic testing if the  
31 request for testing is supported by the sworn statement of a party to  
32 the proceeding:

33 (a) Alleging paternity and stating facts establishing a  
34 reasonable probability of the requisite sexual contact between the  
35 individuals; or

36 (b) Denying paternity and stating facts establishing a  
37 possibility that sexual contact between the individuals, if any, did  
38 not result in the conception of the child, or stating facts that the

1 party denying paternity did not know he was not the genetic father of  
2 the child.

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

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

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

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

13 NEW SECTION. Sec. 10. A new section is added to chapter 26.26  
14 RCW to read as follows:

15 Beginning in 2018 the department of social and health services  
16 shall track and report to the legislature the number of cases known  
17 to the department in which a court, within the calendar year,  
18 disestablished and set aside a previous judgment of paternity and  
19 support under section 2 of this act. The department of social and  
20 health services shall submit the report annually by December 31st.

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