

HOUSE BILL NO. HB0190

Codification of marital rights.

Sponsored by: Representative(s) Connolly, Brown, Freeman,
Pelkey, Sweeney and Zwonitzer and Senator(s)
Burns, 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; providing for a review of rules and
8 regulations potentially impacted by this act; and providing
9 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
 2 paragraph (iv), (b) (intro), (v) and by creating a new
 3 subsection (c), 14-2-504(b) and by creating a new
 4 subsection (c), 14-2-802(a) (ii), 14-2-803(a) (i),
 5 14-2-808(b) (vii), 14-2-809(b), 14-2-816(a) (vi), 14-2-818,
 6 14-2-822(a), 14-2-823(c) (i), (ii), (f) (iii), (g) (intro),
 7 (ii), (iv), (vi), (vii), (ix), (j) (iii), (v) and (m),
 8 14-2-904, 14-2-905(a) and (b), 14-3-402(a) (xiii),
 9 14-6-201(a) (xvii), 14-6-402(a) (xiv), 20-1-101, 20-1-106(b),
 10 20-2-102, 20-2-201(a) (intro), 20-3-104, 20-4-166(j),
 11 20-4-170(b) (vii), 20-5-410(d), 35-1-410(c) (iii),
 12 35-1-411(a) and (c) and 35-1-422(a) are 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
 17 right 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:

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5

14-1-201. Definitions.

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7

(a) As used in this article:

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14-2-308. Definitions.

17

18

(a) As used in this act:

19

20

21

22

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

(iii) "Parent" means the legal guardian or custodian of the minor, his natural parent, ~~or~~ if the minor has been legally adopted, the adoptive parent, a person adjudged the parent of the child in judicial proceedings or a person established as the parent under title 14, chapter 2, article 5 of the Wyoming statutes;

(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 established as

1 the parent under title 14, chapter 2, article 5 of the
2 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
10 not 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 the marriage;

15
16 (xiii) "Parent-child relationship" means the
17 legal relationship between a child and a parent of the
18 child. The term includes ~~the~~ a mother-child relationship
19 and ~~the~~ a 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 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
 7 a birth results under such an agreement and the agreement
 8 is 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;

18 ~~or~~

19

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

21

22 (iv) The woman's having consented in writing to
 23 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
9 under article 9 of this act which resulted in the birth of
10 the 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 established to be
15 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
21 established under this section may be rebutted only by an
22 adjudication under article 8 of this act.

23

1 (c) A spouse is presumed to be the parent of a child
2 if the spouses are married to each other and the child is
3 born 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
8 W.S. 14-2-807 and 14-2-809, a proceeding to adjudicate
9 parentage may be 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**
21 **testing.**
22

1 (b) In determining whether to deny a motion seeking
2 an order for genetic testing under this section, the court
3 shall consider the best interest of the child, including
4 the following factors:

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

8
9 **14-2-809. Limitation; child having acknowledged or**
10 **adjudicated parent.**

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

19
20 **14-2-816. Temporary order.**

21
22 (a) In a proceeding under this article, the court
23 shall issue a temporary order for support of a child if the

1 order is appropriate and the individual ordered to pay
2 support is:

3

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

5

6 **14-2-818. Jury prohibited.**

7

8 The court, without a jury, shall adjudicate ~~paternity~~
9 parentage of a child.

10

11 **14-2-822. Order adjudicating parentage.**

12

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

16

17 **14-2-823. Binding effect of determination of**
18 **parentage.**

19

20 (c) In a proceeding to dissolve a marriage, the court
21 is deemed to have made an adjudication of the parentage of
22 a child if the court acts under circumstances that satisfy

1 the jurisdictional requirements of W.S. 20-4-142, and the
2 final order:

3
4 (i) Expressly identifies a child as a "child of
5 the marriage," "issue of the marriage," or similar words
6 indicating that the ~~husband is the father~~ parties are the
7 parents of the child; or

8
9 (ii) Provides for support of the child by ~~the~~
10 ~~husband~~ one (1) parent to the other unless ~~paternity~~
11 parentage is specifically disclaimed in the order.

12
13 (f) A petition for disestablishment of paternity
14 shall be filed:

15
16 (iii) In the case of an adjudication issued by a
17 court of this state, the petition shall be filed only by
18 ~~the~~ a mother of the child, the adjudicated ~~father~~ parent of
19 the child, the child, if the child was a party to the
20 adjudication, or the legal representative of any of these
21 parties. A petition filed by an individual who is not a
22 party to the adjudication shall be filed pursuant to W.S.
23 14-2-809. The petition under this paragraph shall be filed

1 no later than two (2) years after the petitioner knew or
2 should have known that the paternity of the child was at
3 issue.

4

5 (g) The court shall appoint an attorney to represent
6 the best interests of a child if the court finds that the
7 best interests of the child is not adequately represented.
8 In cases concerning an adjudication of ~~paternity~~parentage
9 pursuant to subsection (c) of this section, the court shall
10 appoint an attorney to represent the best interests of the
11 child. In determining the best interests of the child, the
12 court shall consider the following factors:

13

14 (ii) The length of time during which the
15 adjudicated ~~father~~parent has assumed the role of the
16 ~~father~~parent of the child;

17

18 (iv) The nature of the relationship between the
19 child and the adjudicated ~~father~~parent;

20

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

23

1 (vii) The nature of the relationship between the
2 child and any alleged ~~father~~parent;

3

4 (ix) Other factors that may affect the equities
5 arising from the disruption of the ~~father~~child
6 parent-child relationship between the child and the
7 adjudicated ~~father~~parent or the chance of other harm to
8 the child.

9

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

13

14 (iii) The adjudicated ~~father~~parent has not
15 adopted the child;

16

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

20

21 (m) If the court finds that the adjudication of
22 ~~paternity~~parentage should be vacated, in accordance with

1 all of the conditions prescribed, the court shall enter an
2 order which provides all of the following:

3

4 (i) That the disestablishment of ~~paternity~~the
5 adjudicated parentage is in the best interests of the child
6 pursuant to the factors in this section;

7

8 (ii) That the adjudicated ~~father~~parent is not
9 ~~the~~a biological ~~father~~parent of the child;

10

11 (iii) That the adjudicated ~~father's~~parent's
12 parental rights and responsibilities are terminated as of
13 the date of the filing of the order;

14

15 (iv) That the birth records agency shall amend
16 the child's birth certificate by removing the adjudicated
17 ~~father's~~parent's name, if it appears thereon, and issue a
18 new birth certificate for the child;

19

20 (v) That the adjudicated ~~father~~parent is
21 relieved of any and all future support obligations owed on
22 behalf of the child from the date that the order

1 determining that the established ~~father~~parent is not ~~the~~a
2 biological ~~father~~parent is filed;

3

4 (vi) That any unpaid support due ~~prior to~~before
5 the date the order determining that the adjudicated ~~father~~
6 parent is not ~~the~~a biological ~~father~~parent is filed, is
7 due and owing;

8

9 (vii) That the adjudicated ~~father~~parent has no
10 right to reimbursement of past child support paid to ~~the~~
11 ~~mother~~another parent, the state of Wyoming or any other
12 assignee of child support.

13

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

15

16 (a) Consent by a woman and a ~~man~~person who intends
17 to be the parent of a child born to the woman by assisted
18 reproduction shall be in a record signed by the woman and
19 the ~~man~~intended parent. This requirement shall not apply
20 to a donor.

21

22 (b) Failure to sign a consent required by subsection
23 (a) of this section, before or after birth of the child,

1 does not preclude a finding of ~~paternity~~parentage if the
2 woman and the ~~man~~intended parent, during the first two (2)
3 years of the child's life resided together in the same
4 household with the child and openly held out the child as
5 their own.

6

7 **14-2-905. Limitation on spouse's dispute of**
8 **parentage.**

9

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

14

15 (i) Within two (2) years after learning of the
16 birth of the child ~~he~~the spouse commences a proceeding to
17 adjudicate ~~his paternity~~the parentage; and

18

19 (ii) The court finds that ~~he~~the spouse did not
20 consent to the assisted reproduction, before or after birth
21 of the child.

22

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

3
4 (i) ~~The~~ Any of the following has occurred:

5
6 (A) A husband did not provide sperm for, ~~or~~
7 ~~before or after the birth of the child consent to,~~ assisted
8 reproduction by ~~his wife~~ the spouse or a surrogate;

9
10 (B) A wife did not provide the egg for
11 assisted reproduction by the spouse or a surrogate;

12
13 (C) Before or after the birth of the child
14 a spouse did not consent to assisted reproduction by the
15 other spouse or a surrogate.

16
17 (ii) The ~~husband and the mother of the child~~
18 married couple have not cohabited since the probable time
19 of assisted reproduction; and

20
21 (iii) The ~~husband~~ spouse never openly held out
22 the child as ~~his~~ that spouse's own.

23

1 **14-3-402. Definitions.**

2

3 (a) As used in this act:

4

5 (xiii) "Parent" means either a natural or
6 adoptive parent of the child, a person adjudged the parent
7 of the child in judicial proceedings or a ~~man presumed to~~
8 ~~be the father under W.S. 14-2-504~~ person established as the
9 parent under title 14, chapter 2, article 5 of the Wyoming
10 statutes;

11

12 **14-6-201. Definitions; short title; statement of**
13 **purpose and interpretation.**

14

15 (a) As used in this act:

16

17 (xvii) "Parent" means either a natural or
18 adoptive parent of the child, a person adjudged the parent
19 of the child in judicial proceedings or a ~~man presumed to~~
20 ~~be the father under W.S. 14-2-504~~ person established as the
21 parent under title 14, chapter 2, article 5 of the Wyoming
22 statutes;

23

1 **14-6-402. Definitions.**

2

3 (a) As used in this act:

4

5 (xiv) "Parent" means either a natural or
6 adoptive parent of the child, a person adjudged the parent
7 of the child in judicial proceedings or a ~~man presumed to~~
8 ~~be the father under W.S. 14-2-504~~ person established as the
9 parent under title 14, chapter 2, article 5 of the Wyoming
10 statutes;

11

12

CHAPTER 1

13

MARRIED PERSONS

14

15 **20-1-101. Marriage a civil contract.**

16

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

20

21 **20-1-106. Who may solemnize marriage; form of**
22 **ceremony.**

23

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

6

7 **20-2-102. Petition by spouse for support.**

8

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

1 attachment of the property. Upon completion of constructive
2 service the court may grant relief as if personal service
3 was had.

4

5 **20-2-201. Disposition and maintenance of children in**
6 **decree or order; access to records.**

7

8 (a) In granting a divorce, separation or annulment of
9 a marriage or upon the establishment of paternity or
10 parentage pursuant to W.S. 14-2-401 through 14-2-907, the
11 court may make by decree or order any disposition of the
12 children that appears most expedient and in the best
13 interests of the children. In determining the best
14 interests of the child, the court shall consider, but is
15 not limited to, the following factors:

16

17 **20-3-104. Proving marriage, parenthood; spouses as**
18 **witnesses; disclosure of confidential communications;**
19 **desertion, neglect or refusal to support.**

20

21 No other or greater evidence is required to prove ~~the a~~
22 marriage ~~of a husband and wife~~ or that the defendant is the
23 father or mother of a child or children than is required to

1 prove such facts in a civil action. In a prosecution under
2 this act no statute or rule of law prohibiting the
3 disclosure of confidential communications between ~~husband~~
4 ~~and wife~~ a married couple shall apply. Both ~~husband and~~
5 ~~wife~~ spouses are competent witnesses to testify against
6 each other to any relevant matters including the fact of
7 marriage and the parentage of the child or children but
8 neither shall be compelled to give evidence incriminating
9 himself or herself. Proof of the desertion of the ~~wife~~
10 other spouse, child or children in destitute or necessitous
11 circumstances, or of the neglect or refusal to provide for
12 the support and maintenance of the ~~wife~~ other spouse, child
13 or children is prima facie evidence that the desertion,
14 neglect or refusal is willful.

15

16 **20-4-166. Special rules of evidence and procedure.**

17

18 (j) The defense of immunity based on ~~the~~ a marital
19 relationship ~~of husband and wife~~ or ~~parent and child~~ a
20 parent-child relationship does not apply in a proceeding
21 under this act.

22

23 **20-4-170. Establishment of support order.**

1

2 (b) The tribunal may issue a temporary child support
3 order if the tribunal determines that the order is
4 appropriate and the individual ordered to pay is:

5

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

7

8 **20-5-410. Hearing and order.**

9

10 (d) A privilege against disclosure of communications
11 between spouses and a defense of immunity based on ~~the a~~
12 marital relationship ~~of husband and wife~~ or ~~parent and~~
13 ~~child a parent-child relationship~~ may not be invoked in a
14 proceeding under this article.

15

16 **35-1-410. Birth registration.**

17

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

21

22 (iii) ~~The father, the mother~~ Either parent, or
23 in the absence ~~of the father and the~~ or inability of ~~the~~

1 ~~mother~~ both parents, the person in charge of the premises
2 where the birth occurred.

3

4 **35-1-411. Name of father or parent on birth**
5 **certificate.**

6

7 (a) If the mother was married either at the time of
8 conception or birth of child, or between conception and
9 birth, the name of the ~~husband~~ spouse shall be entered on
10 the certificate as the ~~father~~ other parent of the child,
11 unless:

12

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

15

16 (ii) The ~~husband~~ other parent signs an affidavit
17 denying that he or she is ~~the father~~ a parent of the child
18 and the mother and the person to be named as the father
19 sign an affidavit of paternity under this section.
20 Affidavits may be joint or individual or a combination
21 thereof, and each signature shall be individually
22 notarized. The name of the person signing the affidavit of

1 paternity shall be entered as the father on the certificate
2 of birth.

3

4 (c) In any case in which paternity or parentage of a
5 child is determined by a court of competent jurisdiction,
6 the name of the ~~father~~parents and surname of the child
7 shall be entered on the certificate of birth in accordance
8 with the finding and order of the court.

9

10 **35-1-422. Marriage registration.**

11

12 (a) A record of each marriage performed in the state
13 shall be filed with the state registrar of vital records as
14 provided in this section. The officer who issues the
15 marriage license shall prepare the certificate on the form
16 furnished by the state registrar of vital records upon the
17 basis of information obtained from the parties to be
18 married, as provided by W.S. 20-1-103 and signed by the
19 ~~bride and groom~~parties to be married.

20

21 **Section 2.** Any board, commission, agency or authority
22 of the state of Wyoming affected by the statutes amended by

1 this act shall review its rules for consistency with this
2 act.

3

4 **Section 3.** This act is effective immediately upon
5 completion of all acts necessary for a bill to become law
6 as provided by Article 4, Section 8 of the Wyoming
7 Constitution.

8

9

(END)