

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 697

(Senator Smith, *et al.*)

Judicial Proceedings

Judiciary and Health and Government
Operations

Family Law - Parentage and Adoption

This bill makes numerous changes to statutory provisions regarding parentage and adoption to address the parental rights of same-sex couples and couples who conceive by means of assisted reproduction. To this end, it alters presumptions of parentage for purposes of inheritance and specified legal proceedings. The bill also establishes an expedited adoption process for an individual who (1) is married to the prospective adoptee's parent at the time of the prospective adoptee's birth or (2) consented to the conception of the prospective adoptee by means of assisted reproduction, as specified. **The bill takes effect June 1, 2019.**

Fiscal Summary

State Effect: The bill is not anticipated to materially affect the operations or finances of the Judiciary, the Maryland Department of Health, or the Department of Human Services.

Local Effect: The bill is not anticipated to materially affect the workload of the circuit courts.

Small Business Effect: None.

Analysis

Bill Summary:

Parentage – Presumptions

A child conceived by means of assisted reproduction during the marriage of the child's mother with the consent of the mother's spouse is the legitimate child of both spouses for

all purposes. “Assisted reproduction” means a method of causing pregnancy other than sexual intercourse, including specified methods. A child conceived by means of assisted reproduction after the death of the mother’s spouse and using the genetic material of the mother’s spouse is the legitimate child of both spouses if the child qualifies as a child of the mother’s spouse, as specified. A child born to parents who are not married to one another is the child of the parent who did not give birth to the child if (1) the parent has been judicially determined to be the child’s father in specified proceedings, and that determination has not been modified or set aside or (2) the parent and the child’s mother consented to the conception of the child by means of assisted reproduction with the shared express intent to be the parents of the child, subject to specified conditions if the child is conceived after the death of a parent.

There is a rebuttable presumption that a child born to parents who are unmarried to one another is the child of an individual who did not give birth to the child if the individual (1) has acknowledged himself or herself, in writing, to be a parent of the child; (2) has openly and notoriously recognized the child to be the individual’s child; or (3) has subsequently married the mother and has acknowledged himself or herself, orally or in writing, to be a parent of the child.

An individual who is the presumed parent of a child must be considered to be the child’s parent for all purposes, as specified, unless the presumption of parentage is rebutted. A presumption of parentage may be rebutted only if a court of competent jurisdiction determines in a written order that it is in the best interest of the child to receive and consider evidence that could rebut the presumption. A written order that it is not in the best interest of the child to rebut a presumption of parentage (1) conclusively establishes that the presumed parent is a parent of the child for all purposes and (2) may be modified or set aside only on the basis of fraud, mistake, or irregularity.

An individual who is the putative father of a child in specified proceedings may obtain and use evidence of blood or genetic testing in the proceeding to rebut a presumption of parentage as set forth above, regardless of whether it is in the best interest of the child. A presumption of parentage may be rebutted by (1) evidence of blood or genetic testing; (2) testimony of the mother, the presumed parent, or another individual, that the presumed parent did not have access to the mother at the time of conception; or (3) any other competent evidence that the presumed parent is not the father of the child.

The bill makes conforming changes to provisions regarding affidavits of parentage by repealing numerous references to “paternity” and “father” and authorizing individuals who did not give birth to a child to execute an affidavit of parentage, as specified.

The bill repeals various presumptions applicable to paternity proceedings under the Family Law Article and establishes that the presumptions of parentage specified above apply instead.

Birth Certificates

The bill also specifies that if a child's mother was married at the time of either the conception or birth or between conception and birth, the name of the mother's spouse must be entered on the certificate as the child's other parent. The bill also makes numerous clarifying and conforming changes regarding the inclusion of the names of parents on birth certificates.

Adoptions

The bill establishes provisions for adoptions by (1) an individual who is the spouse of the prospective adoptee's mother at the time of the prospective adoptee's conception or birth or (2) an individual who, together with the prospective adoptee's mother, consented to the conception of the prospective adoptee by means of assisted reproduction with the shared express intent of being parents of the prospective adoptee.

In a proceeding for a consensual adoption under the bill's provisions, a petitioner must file, together with the petition for adoption (1) a copy of the petitioner's marriage certificate or evidence of the parties' shared express intent to become parents of the child by means of assisted reproduction, as applicable and specified; (2) a copy of the prospective adoptee's birth certificate; and (3) a statement explaining the circumstances of the prospective adoptee's conception in detail sufficient to identify any individual who may be entitled to notice or whose consent may be required. The court may not require specified investigations or hearings, except for good cause. However, the court may hold a hearing to determine whether there are additional individuals who may be entitled to notice or whose consent may be required if the court is not satisfied from the pleadings that the appropriate notice or consent has been provided.

The court must enter an order for adoption on finding that (1) the petitioner was married to the prospective adoptee's parent at the time of the prospective adoptee's birth or the petitioner and the prospective adoptee's mother consent to the conception of the child by means of assisted reproduction with the shared express intent to be parents of the child; (2) each of the prospective adoptee's living parents and any known gamete donor have consented to the adoption in writing or by failure to file timely notice or objection, as specified; and (3) the adoption is in the best interest of the child. An order for adoption granted under these provisions is confirmation of parentage, as specified. The bill may not be construed to require an individual who is a parent of a child under specified provisions to adopt the child. Unless a prospective adoptee's living parent consents to the termination

of the parent's parental duties, obligations, or rights, an order for adoption granted under these provisions does not terminate the parental duties, obligations, or rights.

Applicability

The bill may not be interpreted to overturn or alter in any way the decision by the Court of Appeals in *In re: Roberto d.B.*, 399 Md. 267 (2007). It also may not be interpreted to authorize or prohibit an agreement between two or more parties wherein the parties agree that (1) one party will become pregnant by means of assisted reproduction; (2) the other party or parties are intended to be the parents of the child conceived by means of assisted reproduction; and (3) the party who gives birth to the child will not be a parent of the child. If such an agreement is found to be unenforceable under the laws of the State, the parentage of any child conceived in accordance with the agreement must be established as provided in the Estates and Trusts Article.

Current Law/Background: Pursuant to the Estates and Trusts Article, a child born or conceived during a marriage is presumed to be the legitimate child of both spouses. A child born to individuals who are not married to one another is considered to be the child of the mother. The child of individuals who are not married to one another is considered to be the child of the father only if the father (1) has been judicially determined to be the father in specified proceedings; (2) has acknowledged himself in writing to be the father; (3) has openly and notoriously recognized the child to be his; or (4) has subsequently married the mother and has acknowledged himself, orally or in writing, to be the father.

Statutory provisions set forth a process by which an unmarried father and mother must be provided an opportunity to execute an affidavit of parentage. An affidavit of parentage includes specified items, including a statement that the affidavit constitutes a legal finding of paternity, a statement by the mother consenting to the assertion of paternity and acknowledging that her cosignatory is the only possible father, and a statement by the father that he is the natural father. After the expiration of a 60-day period, an executed affidavit of parentage may be challenged in court only on the basis of fraud, duress, or material mistake of fact.

In a paternity proceeding under the Family Law Article, there is a rebuttable presumption that the child is the legitimate child of the man to whom the child's mother was married at the time of conception; additional provisions regarding the rebuttable presumption and testimony from an individual other than the mother or her husband are specified.

Maryland does not have a comprehensive statute on assisted reproduction. Artificial insemination is addressed in the Estates and Trusts Article, which establishes that a child conceived by artificial insemination of a married woman with the consent of her husband is the legitimate child of both of them for all purposes; consent of the husband is presumed.

Additionally, Chapter 649 of 2012 prohibits a person from using the sperm or eggs of a known donor after the donor's death for purposes of assisted reproduction without the prior written consent of the donor.

In *In re Roberto d.B.*, 399 Md. 267 (2007), the Court of Appeals held that the name of a genetically unrelated gestational host of a fetus, with whom the genetic father contracted to carry in vitro fertilized embryos to term, was not required to be listed on the birth certificate when a child is born as a result. The court also noted that "surrogacy contracts, that is, payment of money for a child, are illegal in Maryland" under § 3-603 of the Criminal Law Article, which prohibits the sale of a minor and § 5-3B-32 of the Family Law Article, which prohibits the payment of compensation in connection with an adoption.

Additional Information

Prior Introductions: None.

Cross File: HB 519 (Delegate Dumais) - Judiciary and Health and Government Operations.

Information Source(s): Montgomery County; Judiciary (Administrative Office of the Courts); Register of Wills; Maryland Department of Health; Department of Human Services; Department of Legislative Services

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