

OFFICE OF POLICY AND LEGAL ANALYSIS
Bill Analysis

To: Joint Standing Committee on Judiciary

From: Peggy Reinsch, Legislative Analyst

LD 222 An Act To Update the Maine Parentage Act

Public Hearing Date: February 18, 2021

SUMMARY

This bill amends the Maine Parentage Act to include two provisions that are part of the Uniform Parentage Act adopted by the Uniform Law Commission in 2017.

The bill amends the acknowledgment of paternity provision to broaden the process to be an acknowledgment of parentage and allows intended parents participating in assisted reproduction, as well as presumed parents, to sign the acknowledgment of parentage.

The bill adds a new subchapter 9 to the Maine Parentage Act to apply to the collection and sharing of information about donors who donate gametes used in assisted reproduction. It requires gamete banks and fertility clinics to collect information from donors and requires a donor to sign a declaration allowing the sharing of identifying information about the donor or prohibiting the sharing of identifying information about the donor. A person conceived by assisted reproduction who has attained 18 years of age or, if the person is a minor, the parent or guardian may request identifying information about the donor from the gamete bank or fertility clinic. If the donor signed a declaration prohibiting the sharing of identifying information about the donor, the gamete bank or fertility clinic may share only nonidentifying information. If the donor did not agree to the sharing of identifying information, the gamete bank or fertility clinic must make a good faith effort to contact the donor, who may then authorize the sharing of the information. Otherwise, the gamete bank or fertility clinic may share the identifying information upon request. The person or, if the person is a minor, the parent or guardian may request nonidentifying information about the donor, and the gamete bank or fertility clinic is required to make a good faith effort to provide the information.

TESTIMONY

Proponents

- Representative Thom Harnett, for sponsor (written testimony)
- Debby Willis, AAG, for FLAC (written testimony)
- Mary Bonauto, GLAD (written testimony, VT and RI acknowledgment forms)
- Family Law Advisory Commission (written report only)
 - The Maine Parentage Act (MPA) was enacted in 2015 and took effect in July of 2016. At that time FLAC was directed by the Judiciary Committee to study the Uniform Parentage Act of 2002 and suggest language for Maine. Then only minor amendments were made to Maine's voluntary acknowledgment of paternity statute, at my request, out of concern the changes might impede compliance with federal child support regulations regarding the establishment of paternity.
 - We now have guidance from the federal office of child support that it will not.

- The Uniform Parentage Act was created by the Uniform Law Commission, a non-partisan organization established in 1892 that prepares model legislation for states to consider in order to promote uniformity, clarity and stability in critical areas of state law across the country.
- In 2017 the Uniform Law Commission revised the Uniform Parentage Act. In 2019, Rep. Barbara Cardone introduced LD 1291, the precursor to LD 222, as a concept bill so that certain portions of the revised Uniform Parentage Act of 2017 could be considered for potential adoption in Maine.
- The administrative mechanism called voluntary acknowledgment of paternity is already part of Maine law, but the new version of the Uniform Parentage Act expands acknowledgment to be of parentage. The change ensures that more people would have access to this simple, administrative route to establishing parentage.
- FLAC reviewed the 2017 UPA and drafted proposed amendments to the MPA to expand the voluntary acknowledgment of parentage mechanism so that it is not limited to biological fathers. Rather, the acknowledgment process should be available to more persons who already have parentage rights under the MPA law.
- An "acknowledgment" is done on a voluntary basis using forms available from the Maine DHHS that can be submitted at the hospital, a town office or DHHS to establish that the person is a legal parent of a child.
- The mother who gave birth to the child must also sign the form.
- This form serves as an official acknowledgment that the parents are legally responsible to support the child until at least the age of 18.
- It is a simple, inexpensive procedure that, in certain circumstances, can be used instead of going to court and seeking a court order.
- This administrative mechanism has been part of Maine law for many years. It is equivalent to adjudication by a court and is recognized in all states.
- At present, however, the acknowledgment form can be submitted in Maine only by a man who wishes to establish paternity and state under oath that he is the biological father.
- The voluntary acknowledgment procedure already exists because it is required by federal law to facilitate collection of child support.
- The proposed amendments to Subchapter 3 of the MPA would allow certain other parents to submit the acknowledgment form voluntarily too as a way to establish parentage, without having to go to court.
- The form could still be used by men to declare that they are the biological fathers, but the acknowledgment procedure would be opened up to:
 - a genetic parent of a child, not just a genetic father;
 - a presumed parent of a child (an unmarried partner or spouse of the parent who gave birth); and
 - parents who use assisted reproduction technology to get pregnant and create a family.
- It is important to note that the proposed amendments in LD 222 would not change or expand the scope of legal parentage under Maine law. That is already determined by the MPA.
- The proposed amendments would simply make the voluntary acknowledgment forms available to parents other than the biological father.
- An acknowledgment can be used only if a father isn't listed on the birth certificate.
- The 2017 version of the Uniform Parentage Act also added a new section about information concerning donors in assisted reproduction that is not presently part of Maine law, and LD 222 would add this new section to the MPA as Subchapter 9.
- This would assist children conceived with the aid of assisted reproduction technology to obtain information about their donors.
- The proposed amendments to the MPA would require fertility clinics or gamete banks operating in Maine to collect and maintain information about donors, as well as

- information about fertility clinics or gamete banks when gametes used here were collected outside of Maine.
- The information would include a donor’s name, date of birth, address, and medical history, as well as the identity of the gamete bank or fertility clinic if gametes were received from out of state.
 - The donor could choose whether the donor’s identity can be disclosed to a child conceived by assisted reproduction with the donor’s gametes once the child turns 18 years of age.
 - The proposed new Subchapter 9 would also require that fertility clinics or gamete banks operating in Maine make a good faith effort to provide the information upon request of a child conceived by assisted reproduction once the child attains the age of 18.
 - These requirements would not apply to people who are providing gametes for a spouse or have a written agreement to be a parent of the resulting child with the person who gives birth to the child.
 - By passing these amendments regarding acknowledgments and donor information, Maine will move toward greater consistency and uniformity in family law with other states. Given how frequently families move from state to state, it is helpful to have commonalities in family law.
 - GLAD supports this bill because it updates the MPA (1) by increasing access to an existing administrative route to parentage, and (2) by providing donor-conceived children access to information about gamete donors when they are adults and when the donor consents.
 - By way of brief background, the Maine Parentage Act (“MPA”) is an important statutory scheme that promotes the security of children and families. It does so by providing clear routes to legally establish a parent-child relationship, and without regard to the circumstances of a child’s birth or whether their parents were unmarried or used medical assistance to have a child.
 - By bringing clarity to a heavily litigated issue, the MPA creates judicial efficiencies and improves access to justice for families.
 - All children need the legal parent or parents who both love their child and assume responsibilities such as care and custody of the child, medical and educational decision making, child support, and health insurance coverage.
 - The 2015 Maine Parentage Act set the tone nationally. The Uniform Law Commission and its representatives from all states, as well as other states’ legislatures, have used the MPA as a basis for updating their own laws to protect all children and respect people’s family choices.
 - Recent examples include the updated Uniform Parentage Act of 2017, which has now been adopted by other states, as well as the Vermont Parentage Act of 2018, and the Rhode Island Uniform Parentage Act of 2020.
 - This bill addresses two updates to the MPA to enhance the protections it provides, both of which are based on provisions from the Uniform Parentage Act of 2017.
 - LD 222 clarifies and expands access to Voluntary Acknowledgments of Parentage (“VAP”) to more people who are considered parents under the MPA. These include
 - the birth parent,
 - alleged genetic parents who are not gamete donors,
 - married and unmarried persons who intentionally bring a child into their family by using assisted reproduction, and
 - married parents and unmarried parents who have been raising a child for two years, holding out the child as their own, and have been assuming the personal, custodial or financial responsibilities for the child. (sec. 4 of bill).

- Bear in mind that a VAP is a simple form that is usually signed at the hospital asserting that these two people are the parents of the child, and when signed, secures the parent relationship immediately.
- For some people, it will have to be signed after two years of holding out the child, as described above, but for them, the VAP can substitute for a court proceeding which can involve delay and considerable expense.
- Also, under longstanding federal law, signing this form is the legal equivalent of a court decree, but without the litigation. Upon signing a VAP, parents assume all the rights and responsibilities of parentage, including the vital responsibility of child support.
- This provision does not change who can be a parent in Maine. What it changes is that some parents who would have had to go to court to prove they were parents because they had raised the child together and held the child out as their own, or who used assisted reproduction to have a child, will have a simpler process available to allow them to establish parentage and accept parental responsibilities administratively.
- Allowing more children's parents access to this procedural route to clarify their parentage also promotes the security and best interests of Maine's children, especially in this health crisis, and ensures that families can avoid unnecessary litigation in court.
- There are bills pending around the nation to extend access to VAPs as recommended here. Those states who have already expanded access to VAPs include Vermont, Rhode Island, Massachusetts, California, Maryland, Nevada, New York, and Washington.
- LD 222 will add Article 9 of the Uniform Parentage Act to Maine law. This Article does not change who is a parent under Maine law or how to establish parentage. It does allow adult children conceived through gamete donation, and in some instances their legal parents while the child is a minor, to obtain information about their gamete providers when those providers choose to share it.
- What is mandatory for gamete banks and fertility clinics operating in Maine is basic recordkeeping: the name, date of birth and permanent address of the donor, and also a medical history: past and present illnesses and a social, genetic and family history of the donor.
- When Maine providers obtain gametes from other states, they must endeavor to collect this same information.
- The donor has the option to allow their identity to be disclosed or not, and can change position in a written declaration. Then, if person who was conceived by assisted reproduction, when they turn 18, wants the identifying information, the bank must make a good faith effort to provide the information as long as the donor has consented to this release.
- Separate from identity disclosure is non-identifying medical history information. That information can be released to an adult child conceived by assisted reproduction, and when that person is a minor, to their parents.
- The statute requires a "good faith effort" of the provider to provide information.
- Maine (paternity), Vermont (parentage) and Rhode Island (parentage) current forms included

Opponents

- None

Neither for nor against

- Kathleen Ayers, Maine Association of Probate Registers (written testimony only)
 - Willing to provide information and assistance at the work session

INFORMATION REQUESTED

- Current Maine Voluntary Acknowledgment of Paternity Form is posted on the Judiciary Committee Materials LD webpage
- Vermont and Rhode Island Acknowledgment of Parentage forms are at the end of Mary Bonauto's written testimony
- How long do clinics need to keep the information about donors?

FISCAL IMPACT:

Not determined as of February 21, 2021