

1999 SENATE BILL 221

August 24, 1999 – Introduced by Senator BAUMGART, by request of Jerry McCabe.
Referred to Committee on Judiciary and Consumer Affairs.

1 **AN ACT to renumber and amend** 69.14 (1) (g), 69.14 (1) (h), 891.40 (1) and
2 891.40 (2); **to amend** 46.03 (7) (bm), 48.02 (13), 49.141 (1) (j) 2., 115.76 (12),
3 146.34 (1) (f), 767.47 (9), 891.40 (title), 891.41 (1) (intro.) and 938.02 (13); and
4 **to create** 69.14 (1) (g) 2., 69.14 (1) (h) 1. to 6., 891.40 (1d), 891.40 (2) (title),
5 891.40 (3), 891.403 and 891.41 (1m) of the statutes; **relating to:** presumption
6 of parenthood when the egg or sperm is donated or when a surrogate mother
7 gives birth to the child.

Analysis by the Legislative Reference Bureau

Under current law, the husband of a woman who is artificially inseminated with the semen of a man who is not her husband is presumed to be the natural father of a child conceived as a result of the procedure. This bill makes that presumption inapplicable to the husband of a woman who is artificially inseminated under a surrogate parenting agreement, which is defined in the bill as an agreement under which a surrogate mother agrees to become impregnated through other than natural means and to relinquish the custody of the child born as a result of the pregnancy to an intended father and an intended mother who are married to each other and who intend to have parental rights and responsibilities over the child. In that case, the natural father of the child is presumed to be the intended father under the agreement and not the husband of the surrogate mother.

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The bill also creates a presumption of maternity for when a woman is implanted with an egg donated by another woman. In that case, the woman who is implanted with the egg and who gives birth to the child is presumed to be the natural mother of the child, unless the child is born as a result of a surrogate parenting agreement, in which case the intended mother is presumed to be the natural mother of the child, notwithstanding that the surrogate mother gave birth to the child and regardless of who provided the egg.

Under current law, if a child is born to a surrogate mother, information about the surrogate mother must be entered on the child's birth certificate and information about the father must be omitted. If a court determines parental rights over the child, the state registrar of vital statistics must prepare and register a new birth certificate and impound the original birth certificate. This bill provides that if the intended parents of a child who is born to a surrogate mother submit to the state registrar within 365 days after the date of birth of the child a copy of the surrogate parenting agreement, together with affidavits sworn to by the surrogate mother, her husband, if any, the intended father and the intended mother indicating that each affiant consents to the preparation and registration of a new birth certificate, the state registrar must prepare and register a new birth certificate showing, among other things, the given name and surname of the registrant as requested by the intended parents and the names and personal information of the intended parents.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 46.03 (7) (bm) of the statutes is amended to read:
2 46.03 (7) (bm) Maintain a file containing records of artificial inseminations
3 under s. 891.40 (2) (a), egg donations under s. 891.40 (3) (a) and records of
4 declarations of paternal interest under s. 48.025 and of statements acknowledging
5 paternity under s. 69.15 (3) (b). The department shall release these records only
6 upon an order of the court except that the department may use nonidentifying
7 information concerning artificial inseminations and egg donations for the purpose
8 of compiling statistics and except that records relating to declarations of paternal
9 interest and statements acknowledging paternity shall be released to the
10 department of workforce development or a county child support agency under s.

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1 59.53 (5) without a court order upon the request of the department of workforce
2 development or a county child support agency under s. 59.53 (5) pursuant to the
3 program responsibilities under s. 49.22 or by any other person with a direct and
4 tangible interest in the record.

5 **SECTION 2.** 48.02 (13) of the statutes is amended to read:

6 48.02 (13) “Parent” means either a biological parent, a husband who has
7 consented to the artificial insemination of his wife under s. 891.40 (2) (a), a wife who
8 gives birth as a result of an egg donation under s. 891.40 (3) (a), or a parent by
9 adoption. If the child is a nonmarital child who is not adopted or whose parents do
10 not subsequently intermarry under s. 767.60, “parent” includes a person
11 acknowledged under s. 767.62 (1) or a substantially similar law of another state or
12 adjudicated to be the biological father. “Parent” does not include any person whose
13 parental rights have been terminated.

14 **SECTION 3.** 49.141 (1) (j) 2. of the statutes is amended to read:

15 49.141 (1) (j) 2. A person who has consented to the artificial insemination of his
16 wife under s. 891.40 (2) (a) or a wife who gives birth as a result of an egg donation
17 under s. 891.40 (3) (a).

18 **SECTION 4.** 69.14 (1) (g) of the statutes is renumbered 69.14 (1) (g) 1. and
19 amended to read:

20 69.14 (1) (g) 1. If Subject to subd. 2., if the registrant of a birth certificate under
21 this section is born as a result of artificial insemination under the requirements of
22 s. 891.40 (2) (a), the husband of the woman shall be considered the father of the
23 registrant on the birth certificate. If the registrant is born as a result of artificial
24 insemination which does not satisfy the requirements of s. 891.40 (2) (a), the

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1 information about the father of the registrant shall be omitted from the registrant's
2 birth certificate.

3 **SECTION 5.** 69.14 (1) (g) 2. of the statutes is created to read:

4 69.14 (1) (g) 2. If the registrant of a birth certificate under this section is born
5 as a result of artificial insemination under a surrogate parenting agreement, the
6 birth certificate shall be completed as provided under par. (h).

7 **SECTION 6.** 69.14 (1) (h) of the statutes is renumbered 69.14 (1) (h) (intro.) and
8 amended to read:

9 69.14 (1) (h) *Surrogate mother.* (intro.) If the registrant of a birth certificate
10 under this section is born to a surrogate mother, information about the surrogate
11 mother shall be entered on the birth certificate and the information about the father
12 shall be omitted from the birth certificate. ~~If a court determines parental rights over~~
13 ~~the registrant, the clerk of court shall report the court's determination to the state~~
14 ~~registrar on a form prescribed by the state registrar, along with the intended parents~~
15 ~~under a surrogate parenting agreement submit to the state registrar within 365 days~~
16 ~~after the date of birth of the child a copy of the surrogate parenting agreement and~~
17 ~~the fee required under s. 69.22. Upon receipt of the report, together with affidavits~~
18 ~~sworn to by the surrogate mother, her husband, if any, the intended mother and the~~
19 ~~intended father on a form prescribed by the state registrar indicating that each~~
20 ~~affiant consents to the preparation and registration of a new birth certificate,~~ the
21 state registrar shall prepare and register a new birth certificate for the registrant
22 under s. 69.15 (6) and send a copy of the new certificate to the local registrar who filed
23 the original certificate. Upon receipt of the copy, the local registrar shall destroy his
24 or her copy of the replaced certificate and file the new certificate. The new birth
25 certificate shall show all of the following:

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1 **SECTION 7.** 69.14 (1) (h) 1. to 6. of the statutes are created to read:

2 69.14 (1) (h) 1. The given name and surname of the registrant as requested by
3 the intended parents.

4 2. The date and place of birth as transcribed from the original certificate.

5 3. The names and personal information of the intended parents.

6 4. The hospital and time of birth as unknown.

7 5. The filing date on the original certificate.

8 6. Any other information necessary to complete the new certificate.

9 **SECTION 8.** 115.76 (12) of the statutes is amended to read:

10 115.76 (12) “Parent” means a biological parent; a husband who has consented
11 to the artificial insemination of his wife under s. 891.40 (2) (a); a wife who gives birth
12 as a result of an egg donation under s. 891.40 (3) (a); a male who is presumed to be
13 the child’s father under s. 891.41; a male who has been adjudicated the child’s father
14 under subch. VIII of ch. 48, under ss. 767.45 to 767.51, by final order or judgment of
15 an Indian tribal court of competent jurisdiction or by final order or judgment of a
16 court of competent jurisdiction in another state; an adoptive parent; a legal guardian;
17 a person acting as a parent of a child; a person appointed as a sustaining parent
18 under s. 48.428; or a person assigned as a surrogate parent under s. 115.792 (1) (a)
19 2. “Parent” does not include any person whose parental rights have been terminated;
20 the state or a county or a child welfare agency if a child was made a ward of the state
21 or a county or child welfare agency under ch. 880 or if a child has been placed in the
22 legal custody or guardianship of the state or a county or a child welfare agency under
23 ch. 48 or ch. 767; or an American Indian tribal agency if the child was made a ward
24 of the agency or placed in the legal custody or guardianship of the agency.

25 **SECTION 9.** 146.34 (1) (f) of the statutes is amended to read:

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1 146.34 (1) (f) “Parent” means a biological parent, a husband who has consented
2 to the artificial insemination of his wife under s. 891.40 (2) (a), a wife who gives birth
3 as a result of an egg donation under s. 891.40 (3) (a) or a parent by adoption. If the
4 minor is a nonmarital child who is not adopted or whose parents do not subsequently
5 intermarry under s. 767.60, “parent” includes a person adjudged in a judicial
6 proceeding under ch. 48 to be the biological father of the minor. “Parent” does not
7 include any person whose parental rights have been terminated.

8 **SECTION 10.** 767.47 (9) of the statutes is amended to read:

9 767.47 (9) Where a child is conceived by artificial insemination, the husband
10 of the mother of the child at the time of the conception of the child is the natural father
11 of the child, as provided in s. 891.40 (2) (a).

12 **SECTION 11.** 891.40 (title) of the statutes is amended to read:

13 **891.40 (title) Artificial insemination and egg donation.**

14 **SECTION 12.** 891.40 (1) of the statutes is renumbered 891.40 (2) (a) and
15 amended to read:

16 891.40 (2) (a) If, by or under the direction or supervision of a licensed physician
17 and with the consent of her husband, a wife is inseminated artificially with semen
18 donated by a man not her husband, the husband of the mother at the time of the
19 conception of the child shall be the natural father of a child conceived, unless the wife
20 is inseminated artificially under a surrogate parenting agreement, in which case the
21 intended father under the surrogate parenting agreement shall be the natural father
22 of a child conceived. The husband’s consent must be in writing and signed by him
23 and his wife. The physician shall certify their signatures and the date of the
24 insemination, and shall file the husband’s consent with the department of health and
25 family services, where it shall be kept confidential and in a sealed file except as

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1 provided in s. 46.03 (7) (bm). However, the physician's failure to file the consent form
2 does not affect the legal status of father and child. All papers and records pertaining
3 to the insemination, whether part of the permanent record of a court or of a file held
4 by the supervising physician or elsewhere, may be inspected only upon an order of
5 the court for good cause shown.

6 **SECTION 13.** 891.40 (1d) of the statutes is created to read:

7 **891.40 (1d) DEFINITIONS.** In this section and s. 891.403:

8 (a) "Intended father" means a man who is married to an intended mother and
9 who intends to have the parental rights and responsibilities for a child born as a
10 result of a surrogate parenting agreement.

11 (b) "Intended mother" means a woman who is married to an intended father
12 and who intends to have the parental rights and responsibilities for a child born as
13 a result of a surrogate parenting agreement.

14 (c) "Intended parents" mean an intended father and an intended mother who
15 are married to each other and who enter into a surrogate parenting agreement.

16 (d) "Surrogate mother" means a woman who enters into a surrogate parenting
17 agreement.

18 (e) "Surrogate parenting agreement" means an agreement under which a
19 surrogate mother agrees to become impregnated through other than natural means
20 and to relinquish to the intended parents the custody of the child born as a result of
21 the pregnancy.

22 **SECTION 14.** 891.40 (2) (title) of the statutes is created to read:

23 **891.40 (2) (title) ARTIFICIAL INSEMINATION.**

24 **SECTION 15.** 891.40 (2) of the statutes is renumbered 891.40 (2) (b) and
25 amended to read:

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1 891.40 (2) (b) The donor of semen provided to a licensed physician for use in
2 artificial insemination of a woman other than the donor's wife is not the natural
3 father of a child conceived, bears no liability for the support of the child and has no
4 parental rights with regard to the child, unless the donor is the intended father and
5 the woman is a surrogate mother, in which case the donor is the natural father of a
6 child conceived, is liable for the support of the child and otherwise has all parental
7 rights and responsibilities with regard to the child.

8 **SECTION 16.** 891.40 (3) of the statutes is created to read:

9 891.40 (3) EGG DONATION. (a) If, by or under the direction or supervision of a
10 licensed physician and with the consent of her husband, a wife is implanted with an
11 egg donated by another woman, the wife shall be the natural mother of a child
12 conceived, unless the wife is implanted under a surrogate parenting agreement, in
13 which case the intended mother under the surrogate parenting agreement shall be
14 the natural mother of a child conceived. The husband's consent must be in writing
15 and signed by him and his wife. The physician shall certify their signatures and the
16 date of the implantation, and shall file the husband's consent with the department
17 of health and family services, where it shall be kept confidential and in a sealed file
18 except as provided in s. 46.03 (7) (bm). However, the physician's failure to file the
19 consent form does not affect the legal status of mother and child. All papers and
20 records pertaining to the implantation, whether part of the permanent record of a
21 court or of a file held by the physician or elsewhere, may be inspected only upon an
22 order of the court for good cause shown.

23 (b) The donor of an egg provided to a licensed physician for implantation in a
24 woman other than the donor is not the natural mother of a child conceived, bears no
25 liability for the support of the child and has no parental rights with regard to the

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1 child, unless the donor is the intended mother and the woman is a surrogate mother
2 in which case the donor is the natural mother of a child conceived, is liable for the
3 support of the child and otherwise has all parental rights and responsibilities with
4 regard to the child.

5 **SECTION 17.** 891.403 of the statutes is created to read:

6 **891.403 Presumption of maternity based on giving birth; surrogate**
7 **mother exception. (1)** Subject to sub. (2), a woman is presumed to be the natural
8 mother of a child if she gives birth to the child, notwithstanding that another woman
9 may have donated the egg.

10 **(2)** If a child is born to a surrogate mother, the intended mother is presumed
11 to be the natural mother of the child, notwithstanding that the surrogate mother
12 gave birth to the child and regardless of whether the egg came from the intended
13 mother, the surrogate mother or a donor who is not the intended mother or surrogate
14 mother. The surrogate mother is not presumed to be the natural mother of the child,
15 bears no liability for the support of the child and has no parental rights with regard
16 to the child.

17 **SECTION 18.** 891.41 (1) (intro.) of the statutes is amended to read:

18 891.41 **(1)** (intro.) ~~A- Subject to sub. (1m),~~ a man is presumed to be the natural
19 father of a child if any of the following applies:

20 **SECTION 19.** 891.41 (1m) of the statutes is created to read:

21 891.41 **(1m)** The husband of a surrogate mother who bears a child under a
22 surrogate parenting agreement is not presumed to be the natural father of the child,
23 bears no liability for the support of the child and has no parental rights with regard
24 to the child.

25 **SECTION 20.** 938.02 (13) of the statutes is amended to read:

