

## **BILL ANALYSIS**

C.S.H.B. 5494  
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Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

According to the CDC, assisted reproductive technology (ART) refers to treatments or procedures that include the handling of human eggs or embryos to help achieve a pregnancy, and the National Institute of Child Health and Human Development indicates that these procedures may be an option for people who have already gone through various infertility treatment options without success. Historically, state law has recognized and regulated aspects of ART; however, as the bill author has informed the committee, its provisions have largely been structured around traditional family models and do not adequately address the evolving realities of modern families. C.S.H.B. 5494 seeks to address this issue by revising and updating statutory provisions relating to the determination of parentage of a child conceived through assisted reproduction under the Uniform Parentage Act.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 5494 amends the Family Code to revise and update statutory provisions relating to parentage resulting from assisted reproduction and gestational agreements under the Uniform Parentage Act.

C.S.H.B. 5494 revises the definitions for the terms "donor" and "intended parents" for purposes of that act, as follows:

- with respect to the term "donor":
  - replaces references regarding what is provided by an individual to be used for assisted reproduction from references to eggs or sperm provided to a licensed physician with references to gametes;
  - replaces references to a husband and to a wife with references to a spouse or a couple, as applicable;
  - excepts from a provision establishing that the term does not include a woman who gives birth to a child by means of assisted reproduction an applicable gestational agreement that provides otherwise; and
  - replaces a provision establishing that the term does not include an unmarried man who, with the intent to be the father of the resulting child, provides sperm to be used for assisted reproduction by an unmarried woman with a provision establishing that the term does not include a father or intended parent under

provisions of the act relating to a child of assisted reproduction or relating to gestational agreements, as applicable; and

- replaces the term "intended parents," defined as individuals who enter into an agreement providing that the individuals will be the parents of a child born to a gestational mother by means of assisted reproduction regardless of whether either individual has a genetic relationship with the child, with the term "intended parent" and defines that term as a married or unmarried individual who manifests an intent to be the legal parent of a child conceived by means of assisted reproduction.

C.S.H.B. 5494 revises provisions relating to an unmarried man's paternity of a child of assisted reproduction as follows:

- replaces a provision establishing that an unmarried man who intends to be the father of a resulting child, provides sperm to a licensed physician, and consents to the use of that sperm for assisted reproduction by an unmarried woman is the father of a resulting child with a provision establishing that an individual who intends to be a parent of a resulting child and consents to assisted reproduction under applicable state law is the parent of a resulting child, regardless of whether the individual provided gametes for the assisted reproduction; and
- removes the requirement that consent by an unmarried man who intends to be the father of a resulting child be in a record signed by the man and the unmarried woman and kept by a licensed physician.

C.S.H.B. 5494 replaces the provision requiring consent by a married woman to assisted reproduction to be in a record signed by the woman and her husband and kept by a licensed physician with a provision requiring consent to assisted reproduction under applicable state law to be in a record signed by the woman giving birth to a child by means of assisted reproduction and the father or intended parent of the resulting child, as applicable. The bill removes the provision establishing that the former consent requirement does not apply to the donation of eggs by a married woman for assisted reproduction by another woman. The bill clarifies the provision in current law establishing that the failure by the husband to sign a consent for assisted reproduction before or after the birth of a child does not preclude a finding that the husband is the father of a child born to his wife if the wife and husband openly treated the child as their own by specifying that the person to whom that provision refers is the husband of a woman giving birth to a child by means of assisted reproduction.

C.S.H.B. 5494 establishes that failure to provide consent for assisted reproduction before or after the birth of the child does not preclude the court from finding that an individual gave consent to be an intended parent of the child if one of the following conditions applies:

- a party proves by clear and convincing evidence the existence of an express agreement entered into before the child's conception between the woman who gave birth to the child by means of assisted reproduction and the individual that the individual was an intended parent of the child; or
- during the first two years of the child's life, the woman and the individual resided together in the household in which the child resided, including any periods of temporary absence, and represented to others that the child was the child of the woman and the individual.

The bill authorizes a court, if an intended parent dies or becomes incapacitated before the child reaches two years of age or the child dies before the child reaches two years of age, to find that the individual gave consent to parentage of the child if it is proven by clear and convincing evidence that the woman who gave birth to the child by means of assisted reproduction and the individual intended to reside together in the same household with the child and to represent to others that the child was the child of the woman and the individual.

C.S.H.B. 5494 removes references to a record kept by a licensed physician with respect to an individual's consent to assisted reproduction in statutory provisions relating to the effect of the

dissolution of a marriage and statutory provisions relating to the parental status of a deceased spouse.

C.S.H.B. 5494 updates the provisions relating to the establishment of the parent-child relationship under the Uniform Parentage Act by doing the following:

- replaces the reference to the mother-child relationship with a reference to a parent-child relationship;
- replaces references to a woman with references to an intended parent;
- removes the provision specifying that the validation or enforceability of a gestational agreement under applicable law is regardless of the fact that the gestational mother gave birth to the child; and
- removes the provision establishing that the father-child relationship exists between a child and a man by an adjudication confirming the man as a parent of the child born to a gestational mother under a gestational agreement if the gestational agreement is validated or enforceable under applicable law.

Additionally, the bill removes the requirement for intended parents that are parties to gestational agreement to be married to each other.

C.S.H.B. 5494 replaces references to a husband with references to a spouse in statutory provisions relating to the following:

- the authorization of a gestational agreement;
- a petition to validate a gestational agreement;
- the termination of a gestational agreement; and
- the effect of a gestational mother's marriage after validation of an agreement.

C.S.H.B. 5494 establishes that its provisions relating to a child of assisted reproduction apply only to a child conceived using assisted reproduction on or after the bill's effective date. A child conceived using assisted reproduction before the bill's effective date is governed by the law in effect on the date the child was conceived, and the former law is continued in effect for that purpose. The bill's provisions relating to gestational agreements apply only to a gestational agreement entered into on or after the bill's effective date. A gestational agreement entered into before the bill's effective date is governed by the law in effect on the date the gestational agreement was entered into, and the former law is continued in effect for that purpose.

### **EFFECTIVE DATE**

September 1, 2025.

### **COMPARISON OF INTRODUCED AND SUBSTITUTE**

While C.S.H.B. 5494 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Both the introduced and the substitute revise the definition of "donor" for purposes of the Uniform Parentage Act. However, while the introduced specified that the term does not include a parent or intended parent under certain law, the substitute specifies that the term does not include a father or intended parent under provisions of the act relating to a child of assisted reproduction or relating to gestational agreements, as applicable. The substitute includes a provision absent from the introduced that excepts from a provision establishing that the term does not include a woman who gives birth to a child by means of assisted reproduction an applicable gestational agreement that provides otherwise.

While both the introduced and the substitute revise provisions relating to an unmarried man's paternity of a child of assisted reproduction, the substitute includes a specification absent from

the introduced that establishes parentage of an applicable individual is regardless of whether the individual provided gametes for the assisted reproduction.

Whereas the introduced removed the provision establishing that the failure of a husband to sign a record of consent before or after the birth of the child does not preclude a finding that the husband is the father of a child born to his wife if the wife and husband openly treated the child as their own, the substitute instead specifies that person to whom that provision refers is the husband of a woman giving birth to a child by means of assisted reproduction. With respect to the bill's provisions establishing that failure to provide consent before or after the birth of the child does not preclude the court from finding that an individual gave consent to be an intended parent of the child if certain conditions apply, the substitute revises the conditions from the introduced as follows:

- changes from the woman or the individual proving by clear and convincing evidence the existence of an express agreement entered into before conception that the individual and the woman intended they both would be parents of the child, as in the introduced, to a party proving by clear and convincing evidence the existence of an express agreement entered into before the child's conception between the woman who gave birth to the child by means of assisted reproduction and the individual that the individual was an intended parent of the child; and
- omits a specification included in the introduced that an individual was prevented from carrying out certain intent by death or incapacity for purposes of a court finding consent to parentage.

The substitute includes provisions absent from the introduced updating provisions relating to the following:

- the effect of dissolution of a marriage;
- the establishment of a parent-child relationship;
- the authorization of a gestational agreement;
- a petition to validate a gestational agreement;
- the termination of a gestational agreement; and
- the effect of a gestational mother's marriage after validation of an agreement.

The substitute includes a provision absent from the introduced that removes the requirement for intended parents that are parties to a gestational agreement to be married to each other.

The substitute omits the provision of the introduced establishing that its provisions with respect to an order adjudicating paternity apply only to an order rendered on or after the bill's effective date, that an order adjudicating paternity rendered before the bill's effective date is governed by the law in effect on the date in the order is rendered, and that the former law is continued in effect for that purpose. Instead, the substitute sets out provisions relating to the applicability of the bill's provisions relating to a child of assisted reproduction and relating to gestational agreements, as applicable, whereas the introduced did not.