



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

LATE

ON THE FOLLOWING MEASURE:

S.B. NO. 325, S.D. 1, RELATING TO PARENTAGE.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, March 14, 2019

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Clare E. Connors, Attorney General, or
Lynn K. Kashiwabara, Deputy Attorney General

Chair Lee and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purpose of this bill is to clarify that evidence of an alleged parent's non-consent to an artificial insemination procedure that resulted in the birth of a child may be considered as evidence relating to paternity in an action regarding the parentage of that child.

In LC vs. MG and Child Support Enforcement Agency, No. SCAP-16-0000837 (Oct. 4, 2018), the Hawaii Supreme Court reviewed the issue of whether section 584-4, Hawaii Revised Statutes (HRS), which presumes legal paternity in certain circumstances, applies equally to men and women. The Court unanimously agreed that the statute applies equally to men and women, but it split as to whether one of the circumstances applied.

The majority held that a spouse cannot rebut the marital presumption of parentage by demonstrating by clear and convincing evidence a lack of consent to the other spouse's artificial insemination procedure.

Both the majority and minority opinions noted that the Legislature can provide further guidance on establishing and rebutting the presumption of parentage in situations where children are born by artificial insemination. In LC vs. MG and Child Support Enforcement Agency the presumption of parentage existed by virtue of being

married; the spouse, however sought to rebut that presumption by proving a lack of consent to the artificial insemination procedure.

When a marital presumption of parentage exists pursuant to section 584-4, HRS, that presumption “may be rebutted in an appropriate action only by clear and convincing evidence” pursuant to subsection (b). In order to address the issue raised in LC vs. MG and Child Support Enforcement Agency, the original bill proposed to amend section 584-12, HRS, to clarify that evidence relating to paternity may include “evidence of non-consent to an artificial insemination procedure that resulted in the birth of the child” (emphasis added).

S.B. No. 325, S.D.1, page 3, line 15 and 16 now states, “evidence of consent to an artificial insemination procedure that resulted in the birth of the child” (emphasis added) is evidence relating to paternity. As written, consent to the procedure does not rebut the presumption of parentage, rather it would confirm parentage. If the Legislature seeks to clarify that the marital presumption of parentage can be rebutted by demonstrating a lack of consent to the other spouse’s artificial insemination procedure, the Department recommends that “or non-consent” be added in after the word “consent,” which would then include both contingencies as evidence relating to paternity.

The Department appreciates the opportunity to provide comments.