

## **SB 163 -2 STAFF MEASURE SUMMARY**

### **Senate Committee On Judiciary**

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**Meeting Dates:** 3/17, 3/31, 4/7, 4/8

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#### **WHAT THE MEASURE DOES:**

The measure requires the Judicial Department to study the judicial and administrative procedures to establish parentage and changes that would be necessary to implement the Uniform Parentage Act in this state.

#### **ISSUES DISCUSSED:**

- Court ordered genetic testing of deceased individual
- Access to donor records to establish medical history and heritage
- Proactive versus retroactive access to donor records

#### **EFFECT OF AMENDMENT:**

-2 The amendment replaces the measure. It modifies Oregon's parentage laws by incorporating provisions from the Uniform Parentage Act (UPA) and modifying existing statutes. It revises and adds definitions, establishes and refines parentage presumptions, updates procedures for adjudicating parentage, and addresses parentage in cases involving assisted reproduction and surrogacy. Additionally, it amends provisions related to child support, adoption, intestate succession, and judicial procedures to conform with these changes.

#### Detailed Summary:

The amendment introduces and revises the following definitions as used in ORS chapter 109:

- "Acknowledged parent" – An individual who has signed an effective acknowledgment of parentage.
- "Adjudicated parent" – A person whose parentage has been established by a court.
- "Alleged genetic parent" – A person who is alleged to be, or who claims to be, a genetic parent but has not been adjudicated as such.
- "Assisted reproduction" – Expands the definition to include specific reproductive procedures such as intrauterine insemination, embryo transfer, and intracytoplasmic sperm injection.
- "Determination of parentage" – The legal establishment of a parent-child relationship through a judicial or administrative proceeding or a valid acknowledgment of parentage. This definition clarifies that determinations under juvenile dependency proceedings do not fall under this category.
- "Donor" – An individual who provides gametes for use in assisted reproduction but does not intend to be a parent, unless otherwise agreed upon.
- "Gamete" – sperm, egg, or any part of a sperm or egg used for assisted reproduction.
- "Genetic testing" means an analysis of genetic markers to identify or exclude a genetic relationship.
- "Gestational surrogate" – A person who agrees to become pregnant through assisted reproduction using an embryo that is not their own under a gestational surrogacy agreement.
- "Intended parent" – A person, married or unmarried, who manifests intent to be a legal parent of a child conceived by assisted reproduction or surrogacy.
- "Presumed parent" – An individual presumed to be a parent under the law (e.g., married to the birthing parent at the time of the child's birth).
- "Surrogacy agreement" – A contract in which one or more intended parents and an individual who is not an intended parent agree that the intended parents will be the child's legal parents.
- "Transfer" – Defines the process in assisted reproduction where an embryo or sperm is placed into the body of the person who will give birth.

#### **Sec. 3: Establishment of Parentage**

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*This summary has not been adopted or officially endorsed by action of the committee.*

- Adds a gestational surrogacy agreement exception that a person who gives birth may not establish parentage if the child was conceived through assisted reproduction under a gestational surrogacy agreement.
- Updates statutory references for an un rebutted presumption of parentage.
- Provides that parentage may be established by judicial proceeding, assisted reproduction, and gestational surrogacy agreement.

**Sec. 5: Child as a party**

- Requires the court to appoint an attorney to represent a child under 18 in a proceeding to adjudicate parentage as required by law, requested by the child, or on the court's own motion if the court finds that the interests of the child are not accurately represented.
- Clarifies that a child is a permissive party in a parentage proceeding, except when the proceeding is brought under ORS chapter 419B.

**Sec. 6 and 7: Presumption of Parentage**

- Adds a gestational surrogacy agreement exception that an individual is not rebuttably presumed to be a parent if the child was conceived by assisted reproduction under a gestational surrogacy agreement.
- Creates a rebuttable presumption of parentage if the individual is not married to the parent who gave birth to the child at the time of the child's birth but the individual and parent who gave birth intended to be married and the individual agrees to be and is named as a parent of the child on the child's record of live birth.
- Adds procedural requirements for challenging the presumption of parentage such as:
  - Requires action to be initiated before the child turns 18 unless the child initiates the action.
  - Requires court to admit evidence to rebut presumption so long as consideration is given to the interest of the parties, and the court finds it is just and equitable.
  - Prohibits challenges to presumption after the child reaches four years old unless:
    - Presumed parent is not a genetic parent, never resided with the child, and never held the child out as their own.
    - Child has more than one presumed parent; or
    - Presumption arose due to fraud, duress, or a material mistake of fact.
  - Adds an exception to the four-year statute of limitations if presumed parentage is being challenged based on:
    - A claim that the presumed parent conceived the child through rape, as defined in the bill; or
    - The child was conceived through assisted reproduction, except when the conception occurred under a surrogacy agreement.
- Allows the presumption of parentage to be rebutted after four years if it arose from the presumed parent's intent to marry the person who gave birth to the child, but the marriage did not occur.
- Requires the court to establish adjudicated parentage if no party to the proceeding challenges the presumption, if the presumed parent is identified and not successfully challenged to be a genetic parent under section 45 of this amendment, or the parentage is in the best interest of the child based on the factors in section 54 of this amendment if:
  - The presumed parent is not identified as the genetic parent under section 45 and the parent who gave birth to the child challenges the presumed parent's parentage; or
  - A person other than the presumed parent or person who gave birth to the child, asserts a claim to parentage of the child.
- Allows the court to enter judgement under this section before the child's birth but requires the court to stay enforcement until the child's birth and order one or more of the parties to notify the court of the child's birth.

**Sec. 8 and 9: Acknowledgment and denial of parentage; rescission; challenge**

- Revises ORS 109.070 to ensure consistent language for purposes of filing a voluntary acknowledgment of parentage (VAP), rescinding a VAP, and challenging a VAP.

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- Establishes that parentage may be established through a VAP by a parent who gave, or will give, birth to a child and the child's alleged genetic parent, presumed parent, or intended parent if the child was not conceived under a surrogacy agreement only if:
  - The child does not have a presumed parent, except for the individual seeking to establish parentage; or
  - If the child has a presumed parent, that parent's denial of parentage is filed simultaneously with the acknowledgement; and
  - Does not have another acknowledged parent, adjudicated parent, or intended parent other than the parent who gave or will give birth to the child.
- Adds requirements that the voluntary acknowledgment of parentage form under ORS 432.098 must contain:
  - A statement that the child does not have a presumed, acknowledged, adjudicated, or intended parent other than the parent who gave birth to the child.
  - A statement that the parties understand that the acknowledgement is equivalent to an adjudication of parentage and that challenge is only permitted under limited circumstances.
  - A place for the signature of the parent who gave birth to the child and the individual whose parentage is being acknowledged to be notarized or witnessed by a staff member of the health care facility in accordance with ORS 432.098.
- Establishes that a presumed parent or alleged genetic parent may deny parentage by signing a written denial of parentage effective only if:
  - An acknowledgment of parentage by another individual is filed with the state registrar before, concurrently, or after the denial of parentage is filed.
  - The signature is notarized; and
  - The presumed parent or alleged genetic parent has not previously been adjudicated to be a parent of the child or signed a VAP unless:
    - Previous acknowledgment of parentage was rescinded or challenged successfully.
- Declares that an acknowledgment of parentage and a denial of parentage that complies with this section and ORS 432.098 is equivalent to an adjudication of parentage.
- Requires a VAP rescission to be written, signed, notarized, and filed with the state registrar within 60 days after the acknowledgment becomes effective or the date of the first hearing before the court in a proceeding relating to the child.
- Clarifies that if an acknowledgment or denial of parentage is rescinded, the corresponding denial or acknowledgment is also invalidated.
- Notwithstanding ORS 109.070(6)(b), Senate Bill 163 limits who can challenge a VAP or denial, to only a spouse as long as the spouses are married and cohabitating, unless both spouses consent to the challenge.
- Adds a provision stating that an unchallenged acknowledgment of parentage may not be ratified by a court or administrative agency.

### Sec. 10-15 and 17-21:

- Amends language to align with the definitions of the measure and avoid conflict.
- Amends 109.112 to include the child's presumed parent, adjudicated parent, or alleged genetic parent.

### Sec. 16 Temporary Child Support Pending Determination:

- Allows parentage of temporary child support to be presumed if the person whose parentage is being established is:
  - A presumed parent;
  - Petitioning to be adjudicated a parent;
  - Identified as a genetic parent under section 45 of this 2025 Act;
  - An alleged genetic parent who has declined to submit to genetic testing;
  - Shown by clear and convincing evidence to be a parent of the child;

- An intended parent of the child and the child was conceived by assisted reproduction, including under a surrogacy agreement.
- Removes the requirement that the genetic testing must result in a cumulative paternity index of 99 or greater.

**Sec 22:**

- Requires any health care facility as defined in ORS 442.015 to make available to a presumed parent or intended parent a voluntary acknowledgment of parentage form when the facility has reason to believe:
  - The parent who gave birth to the child is married but the alleged genetic parent of the child is not the spouse of the parent who gave birth to the child; or
  - The child was conceived by assisted reproduction, other than under a surrogacy agreement.

**Sec 23 -24:**

- Amends ORS 432.098 to require the State Registrar of the Center for Health Statistics to adopt forms for the voluntary acknowledgment, and denial, of parentage that is consistent with ORS 109.070 as amended.
- Allows the state registrar to release information relating to an acknowledgement of parentage to:
  - A party to the acknowledgment;
  - A court; or
  - Subject to ORS 432.350, a government agency.
- Requires the state registrar, upon receipt of rescission, to notify:
  - The parent who gave birth to the child; and
  - The Department of Human Services if the child is in the care and custody of the department and the department has requested such notification.
- Amends ORS 432.098 to align with ORS 109.070 as amended.

**Sec. 25 and 26:**

- Amends ORS 432.245 to align with the definitions of the measure.
- Requires the State Registrar of the Center for Health Statistics to amend a record of live birth and establish a replacement for the record of live birth if the state registrar receives a written and notarized request that a replacement be prepared if the request includes an acknowledgment or denial signed by the parent who gave birth to the child, alleged genetic parent, presumed parent, or, if the child was conceived by assisted reproduction other than a surrogacy agreement, intended parents.

**Sec. 28 Adjudication of Parentage:**

- Allows a court with jurisdiction to adjudicate an individual's nonparentage of the child if:
  - The parent who gave birth to the child petitions the court for an adjudication of nonparentage under this section;
  - The parent who gave birth to the child alleges that the child was conceived in the course of an act committed by the individual constituting rape; and
  - The court finds that the child was conceived as a result of an act that led to the individual's conviction for rape; or
  - If criminal charges have not been filed against the individual for the act resulting in the child's conception, the court determines by clear and convincing evidence that the child was conceived as a result of an act constituting rape that was committed by the individual when the individual was at least 18 years of age unless:
    - The court determines by clear and convincing evidence that the individual is less than three years older than the parent who gave

birth to the child and the child was conceived as a result of an act constituting third degree rape as defined in ORS 163.355 or second degree rape as defined in ORS 163.365, or comparable law of another jurisdiction;

- The individual is an adjudicated parent of the child; or
- The court finds, by clear and convincing evidence, that after the birth of the child, the individual established a bonded and dependent relationship with the child that is parental in nature.
- Requires the court to order, if it adjudicates an individual's nonparentage:
  - The State Registrar for the Center for Health Statistics to amend the record of live birth if requested by the parent who gave birth to the child and the court determines that amendment is in the child's best interest taking into consideration the factors in section 54 of this act; and
  - The individual to pay child support during the child's minority and while the child is a child attending school, as defined in ORS 107.108, the reasonable and necessary expenses incurred or to be incurred in connection with prenatal care and expenses attendant with the birth and postnatal care unless, at the request of the parent who gave birth to the child, the court determines that requiring the individual to pay such amounts is not in the child's best interests, taking into consideration the factors described in section 54 of this 2025 Act.

**Sec. 29**

- Expands the definition of "respondent" to include a child's alleged genetic parent, presumed parent, person who gave, or will give birth, to the child if conceived by assisted reproduction under a gestational surrogacy agreement, the parent who gave, or will give birth, to the child, and the child's intended parent, if the child was conceived by assisted reproduction, other than under a gestational surrogacy agreement.

**Sec. 30 Initiation of Judicial Proceeding:**

- Aligns ORS 109.125 with the definitions of the measure and expands who can initiate a judicial proceeding to adjudicate parentage to the child, the child's presumed parent, acknowledged parent, intended parent if the child was conceived by assisted reproduction, other than under a gestational surrogacy agreement.
- Limits the initiation of proceeding if the parent who gave or will give birth to the child is married to and cohabitating with the child's presumed or acknowledged parent to only:
  - The parent who gave or will give birth to the child or the child's presumed parent or acknowledged parent; or
  - With the consent of both the parent who gave or will give birth to the child and the child's presumed parent or acknowledged parent.
- Requires the proceeding to be initiated before the child attains 18 years of age unless the child initiates the proceeding.
- Requires the petition to contain specific requirements to initiate the proceeding and requires the petitioner to serve a true copy of the petition by mail or personal delivery on:
  - The person who gave birth to the child if the child is alleged to be the genetic parent of the person under section 70 (3) of this 2025 Act;
  - Each individual whose parentage of the child has been established under ORS 109.065; and
  - The individual whose parentage of the child is to be adjudicated.

**Sec. 31:**

- Updates terminology to align with the measure.
- Allows parentage proceedings to be consolidated with other legal actions under SB 163 or ORS 419B.806.

- Expands venue options to include:
  - The petitioner's choice of county if the child was conceived through assisted reproduction, including surrogacy.
  - The county where the estate is administered if a relevant parent is deceased.
  - The county where a juvenile court proceeding is pending if the child is in DHS custody.
- Mandates staying multiple parentage proceedings if filed in different counties, except where the first case was filed.
- Allows courts to transfer proceedings to another county if it serves the child's best interests.
- Grants exclusive jurisdiction to the receiving court once a transfer is ordered.

**Sec. 33:**

- Requires that if the parent who gave birth to the child is the only other individual with a claim to parentage of the child, the court shall adjudicate an alleged genetic parent to be a parent of the child if the alleged genetic parent:
  - Is identified under section 45 of this 2025 Act as a genetic parent of the child and the identification has not been successfully challenged under section 45 of this 2025 Act;
  - Admits parentage in a pleading, during the hearing as provided in subsection (1) of this section, when making an appearance or in a settlement agreement in the proceeding, and the court accepts the admission;
  - Declines to submit to genetic testing ordered by the court or the administrator, even if the alleged genetic parent denies a genetic relationship with the child;
  - Is in default after service of process and the court determines the alleged genetic parent to be a parent of the child as provided in ORS 109.145; or
  - Is neither identified nor excluded as a genetic parent by genetic testing and, based on other evidence, the court determines the alleged genetic parent to be a parent of the child.
- Prohibits the court from adjudicating an alleged genetic parent to be a parent of the child if a person other than the parent who gave birth to the child or alleged genetic parent has a claim to parentage and the person's parentage was not disestablished before the proceeding was commenced unless the court also disestablishes the person's parentage as provided under ORS 109.070, 109.072 or 419B.609 or sections 6 or 54 of this 2025 Act.
- Allows the court to make a judgment before the child's birth but requires the judgment be stayed until after the birth of the child and the court order one or more parties to notify the court of the child's birth.

**Sec 41:**

- Allows the court or the administrator to order the child and any other individual to submit to genetic testing:
  - Upon the court's or administrator's own initiative;
  - At the request of or on behalf of any person whose genetic material is involved;
  - At the request of the Department of Human Services if the child is in the care and custody of the department under ORS chapter 419B; or
  - At the request of a party to the action if the request is made at a time so as not to unduly delay the proceedings.
- Requires the court to order genetic testing if a request for testing is supported by the sworn statement of a party alleging or denying a reasonable possibility that the individual, is, or is not, a genetic parent.
- Prohibits court or administrator agency from ordering genetic testing if:

- Two or more individuals are subject to court-ordered genetic testing, the court may order that testing be completed concurrently or sequentially
- Genetic testing of the person who gave birth to the child is not a condition precedent to testing of the child and an individual whose genetic parentage of the child is being determined. If the person who gave birth to the child is unavailable or declines to submit to genetic testing, the court may order genetic testing of the child and each individual whose genetic parentage of the child is being adjudicated.
- Allows the court to deny a motion for genetic testing of the child after considering the factors in section 54 of this measure if the genetic testing is requested in a proceeding to:
  - Adjudicate the parentage of a child having a presumed parent;
  - Challenge an acknowledgment of parentage; or
  - Determine whether a gestational surrogate is the genetic parent of a child believed to have been conceived by assisted reproduction under a gestational surrogacy agreement except as provided in section 70(3) of this measure.
- Requires that the individual requesting genetic testing must have standing for the court to approve the request.

**Sec. 42:**

- Requires all genetic tests to be performed by an accredited laboratory that must determine the databases from which to select frequencies for use in calculating a relationship index and its own statistical estimate if there is a question about which ethnic or racial group is appropriate.
- Allows for an individual or the administrator to object to the laboratory's database determination no later than 30 days after receipt of report.
- Requires the individual or administrator objecting to the database to provide the requested frequencies compiled in a manner recognized by accrediting bodies or engage another laboratory to perform the calculations.
- Defines acceptable biological samples as:
  - Blood, buccal cells (cheek swabs), bone, hair, or other body fluids/tissue.
  - Specifies that different types of samples may be used for different individuals.

**Sec. 43 Report of Genetic Testing:**

- Requires genetic testing reports to be in writing and signed under penalty of perjury by a laboratory designee.
- Provides that reports meeting the standards in sections 39 to 51 are self-authenticating.
- Establishes chain of custody requirements for genetic testing results to be admissible without testimony.
- Requires documentation from the testing laboratory to include:
  - Name and photograph of each individual tested.
  - Name of the collector of each specimen.
  - Place and date of specimen collection.
  - Name of the recipient of each specimen at the testing laboratory.
  - Date the laboratory received each specimen.

**Sec. 44**

- Requires courts to admit genetic testing reports ordered under section 41 as evidence, except as provided in Section 40(2).
- Allows a party to object to the admission of a genetic testing report within 14 days of receiving it, citing specific grounds for exclusion.
- Permits a party to challenge genetic test results by calling a genetic testing expert to testify in person or through another court-approved method.

- Requires the party offering expert testimony to pay for the expert's appearance, unless the court orders otherwise.
- Clarifies that the admissibility of genetic testing reports is not affected by whether the test was:
  - Conducted voluntarily or court ordered.
  - Performed before, during, or after the legal proceeding began.

**Sec. 45:**

- Creates a rebuttable presumption that an individual is genetic parent if genetic testing complies with Sections 39-51 and shows:
  - At least a 99% probability of parentage (using a prior probability of 0.50).
  - A combined relationship index of at least 100:1.
- Limits challenges to the genetic parentage presumption by the individual presumed to be a genetic parent to cases where new genetic testing:
  - Excludes the individual as a genetic parent.
  - Identifies another possible genetic parent, other than:
    - The person who gave birth.
    - The individual originally presumed to be the genetic parent.
- Requires courts to order further genetic testing if multiple individuals (other than the birth parent) are identified as possible genetic parents, except as provided in Section 50 of this measure.

**Sec. 46:**

- Requires payment for initial genetic testing to be made by:
  - The Child Support Program if child support enforcement services are involved.
  - The individual or agency requesting the genetic test.
  - The parties, based on mutual agreement.
  - As ordered by the court.
- Allows the Child Support Program to seek reimbursement from the requesting person or agency if it covers the cost.
- Requires requesting party to pay for additional genetic testing if the original result is contested before a parentage order is issued.

**Sec. 47:**

- Requires the court or administrator to order additional genetic testing upon request if an individual contests the initial results under **Section 45** of this Act. However, if the initial test identified the individual as a genetic parent, the court or administrator cannot order additional testing unless the contesting party pays for the test in advance.

**Sec. 48:**

- Allows the court to order relatives of an alleged genetic parent to submit specimens for testing if:
  - The alleged genetic parent's specimen is unavailable.
  - The requesting party shows good cause, and the court finds the request justified.
  - The need for testing outweighs the rights or interests of the individual being tested.
- Permits the court to order genetic testing from the following relatives:
  - A parent of the alleged genetic parent.
  - A sibling of the alleged genetic parent.
  - Another child of the alleged genetic parent, along with that child's birth parent.
  - Any other necessary relative to complete the genetic testing process.

**Sec. 49:**

- Allows the court to order genetic testing of a deceased individual if the individual seeking genetic testing demonstrates good cause.



**Sec. 50**

- Allows the court to order genetic testing of an identical sibling of an alleged genetic parent if there is reason to believe the sibling may also be a genetic parent of the child.
- Allows the court to rely on non-genetic evidence to determine which sibling is the genetic parent if multiple siblings are identified as possible genetic parents under Section 45 of this Act.

**Sec. 52 and 53:**

- Amends 109.260 to align with the provisions of this measure.
- Repeals ORS 109.250, 109.251, 109.252, 109.254, 109.256, 109.258, 109.262 and 109.264.

**Sec. 54:**

- Requires courts to adjudicate parentage in the best interest of the child when multiple individuals assert or challenge parentage under ORS 109.070, 109.072, or Section 6(3) of SB 163.
- Mandates consideration of, at a minimum:
  - The child's age.
  - The length of time each individual has acted as a parent.
  - The nature of each individual's relationship with the child.
  - Potential harm to the child if a relationship is not legally recognized.
  - The legal or factual basis for each individual's parentage claim.
  - Other equitable factors related to the disruption of relationships or risk of harm to the child.
- Adds additional considerations for challenges to parentage based on genetic testing:
  - The circumstances under which the individual discovered they might not be a genetic parent.
  - The time between when the individual learned of possible non-parentage and when they initiated the challenge.

**Sec. 55:**

- Allows a proceeding to adjudicate parentage of a child conceived by assisted reproduction, excluding surrogacy, to be initiated by an alleged intended parent, the parent who gave birth, or the child's presumed parent.
- Permits challenges to the parentage of a presumed parent if initiated by the birth parent and presumed parent together.
- Allows a third party with standing to challenge parentage if the birth parent and presumed parent are married and cohabiting, but only with both parents' consent.
- Allows a third party with standing to challenge parentage if the birth parent and presumed parent are no longer married or cohabiting.
- Requires courts to adjudicate parentage under sections 55 to 62 of the bill.
- Directs courts to apply section 54 if a person other than the birth parent or the presumed parent is determined to be a legal parent.
- Clarifies that individuals may also assert a parentage claim under section 6 of the bill or existing laws ORS 109.070 and ORS 109.072.

**Sec. 56-58:**

- Allows the child's acknowledged parent to commence a proceeding under sections 55 to 62 of this measure to adjudicate the parentage of a child conceived by assisted reproduction, other than under a surrogacy agreement.
- Clarifies that a donor is not a parent of a child conceived by assisted reproduction.
- Establishes parentage of a child conceived by assisted reproduction other than under a surrogacy agreement, if an individual provides written consent before, during, or after birth, stating their intent to be a parent, and both the individual and the birth parent sign the document.

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- Allows courts to adjudicate parentage if no written consent exists but clear and convincing evidence shows:
  - An express agreement existed between the individual and the birth parent before conception to be parents.
  - The individual and the birth parent lived together with the child and openly held the child out as their own for at least two years or until death or incapacity prevented them from doing so.
- Recognizes parentage if the child or the individual dies or becomes incapacitated before the child turns two, provided clear and convincing evidence shows both parents intended for the individual to openly hold out the child as their own.
- Requires courts to consider the totality of the circumstances, including military service, when determining whether an absence was temporary.

### Sec. 59:

- Requires the court to find that the presumed parent of a child conceived by assisted reproduction is not the parent and that the presumption is rebutted:
  - If the individual provided gametes used in the assisted reproduction:
    - Challenges the presumption within two years of the child's birth; and
    - Did not consent to the assisted reproduction before, during, or after the child's birth or withdrew consent as provided in section 61.
  - If the individual did not provide gametes used in the assisted reproduction:
    - Did not consent to the assisted reproduction; and
    - Has not cohabited with the parent who gave birth since the date of the embryo transfer; and
    - Never openly held the child out as their own.

### Sec. 60:

- Requires the court to find that the former spouse of a parent who gave birth to a child conceived by assisted reproduction, other than under a surrogacy agreement, is not a parent if the marriage was terminated through dissolution, annulment, or legal separation before the transfer that resulted in pregnancy.
- Requires the court to find that the former spouse is a parent if they consented in writing to being a parent of the child in the event of a post-dissolution, annulment, or legal separation transfer resulting in pregnancy and did not withdraw consent as provided in section 61.

### Sec. 61

- Requires the court to find that an individual who consents to assisted reproduction, other than under a surrogacy agreement, may withdraw consent at any time before a transfer that results in pregnancy by providing written notice to the person who agreed to give birth.
- Requires the court to find that an individual who withdraws consent before a transfer that results in pregnancy is not a parent of a child conceived by the assisted reproduction under sections 55 to 62 and is considered a donor if they provided the gametes used in the pregnancy.
- Requires an individual who withdraws consent to provide a copy of the withdrawal to the clinic or health care provider facilitating the assisted reproduction but clarifies that failure to do so does not affect the validity of the withdrawal.

### Sec. 62:

- Establishes that if an individual who intended to be a parent of a child conceived by assisted reproduction, other than under a surrogacy agreement, dies after the transfer but before birth, their death does not prevent the establishment of their parentage as if they had died after the child's birth.
- Establishes that if an individual who consented in writing to assisted reproduction dies before a transfer that results in pregnancy, they are a parent only if they provided written consent to be a parent of a posthumously conceived child or if clear and convincing evidence establishes their intent to be a parent after death.

- Establishes that an individual who consented to posthumous assisted reproduction is a parent only if the embryo is implanted in utero within 24 months of their death.

**Sec. 63:**

- Allows an individual to act as a gestational surrogate only if they are at least 21 years old, have previously given birth to at least one child, and have completed a medical evaluation related to the surrogacy arrangement conducted by a licensed health care provider, has completed a mental health consultation conducted by a licensed mental health care provider, and has retained independent legal representation, paid for by the intended parent or parents, to provide representation throughout the surrogacy arrangement.
- Allows an individual intending to be a parent through a gestational surrogacy arrangement to enter into an agreement if they are at least 21 years old, complete a medical evaluation conducted by a licensed health care provider, and undergo a mental health consultation with a licensed mental health care provider, and has retained legal representation to represent the individual throughout the arrangement.

**Sec. 64:**

- Allows a gestational surrogacy agreement to be executed only if at least one party is a resident of the state, the embryo transfer occurs in the state, or all parties intend for the child to be born in the state.
- Requires the gestational surrogate and each intended parent to meet the eligibility requirements under section 63.
- Mandates that each intended parent, the surrogate, and the surrogate's spouse, if applicable, be parties to the agreement.
- Requires the agreement to be in writing, signed by all parties, and acknowledged in writing by the surrogate and each intended parent.
- Specifies that signatures must be made under penalty of perjury or be notarized.
- Mandates that the agreement identify the attorneys representing the parties throughout the surrogacy arrangement.
- Requires the intended parent or parents to pay for independent legal representation for the surrogate.
- Establishes that the agreement must be executed before the embryo transfer leading to pregnancy.

**Sec. 65:**

- Requires a surrogacy agreement to include a requirement that the surrogate agrees to attempt to become pregnant by means of assisted reproduction, that the surrogate and the surrogate's spouse or former spouse have no claim to parentage of a child conceived by assisted reproduction, that the surrogate's spouse, if any, acknowledges and agrees to comply with the obligations imposed on the surrogate by the agreement, and that the intended parent or parents will be the exclusive legal parents of the child immediately upon birth, unless otherwise provided in section 102.
- Requires a surrogacy agreement to include a provision that the intended parent or parents will assume financial responsibility for the child immediately upon birth, regardless of the number of children born, gender, or any mental or physical condition, unless otherwise provided in section 102.
- Requires a surrogacy agreement to disclose how the intended parents will cover the surrogate's surrogacy-related expenses and the child's medical expenses, including a summary of any health care policy used for coverage and potential liabilities.
- Requires a surrogacy agreement to allow the surrogate to make all health and welfare decisions regarding the surrogate and the pregnancy, including reproductive health care decisions as defined in ORS 435.190.
- Requires a surrogacy agreement to include information on each party's right to terminate the agreement under section 69.
- Allows a surrogacy agreement to provide for compensation, reimbursement of reasonable expenses, and specific reimbursements if the agreement is terminated under section 69.
- Prohibits a surrogacy agreement from assigning rights to any third party and states that no third party other than the child is a beneficiary of the agreement.

**Sec. 66:**

- Establishes that a surrogate's marriage, dissolution, annulment, or legal separation does not affect the validity of a surrogacy agreement, and the surrogate's new spouse is not a presumed parent unless the agreement states otherwise.
- Establishes that an intended parent's marriage, dissolution, annulment, or legal separation does not affect the validity of the agreement, and the new spouse is not a parent based on the agreement unless expressly provided otherwise.
- Allows the parties to amend the agreement jointly before an embryo transfer resulting in pregnancy.

**Sec. 67:**

- Requires a petition and any other documents related to surrogacy agreements filed with the court to be sealed and exempt from public disclosure, except to a party to the proceeding, a child conceived under the agreement, an attorney for a party or child, the court, or by court order for good cause.

**Sec. 68:**

- Grants a court exclusive, continuing jurisdiction over all matters related to a gestational surrogacy agreement from its execution until 90 days after the child's birth in any proceeding where parentage is a relevant fact.
- Clarifies that this jurisdiction does not extend to making or enforcing child support or custody determinations unless the court already has such authority.

**Sec. 69:**

- Allows a party to terminate a gestational surrogacy agreement at any time before an embryo transfer by providing written notice to all other parties.
- Allows termination after a failed embryo transfer at any time before a subsequent transfer.
- Releases all parties from obligations under the agreement upon termination, unless otherwise stated, but requires intended parents to cover reimbursable expenses incurred by the surrogate before termination.
- Protects a surrogate and their spouse or former spouse from liability for penalties or damages for terminating the agreement, except in cases of fraud.

**Sec. 70:**

- Establishes that, unless otherwise provided in specific exceptions, each intended parent is a legal parent of a child conceived under a gestational surrogacy agreement upon birth.
- Establishes that, unless otherwise provided in specific exceptions, neither the gestational surrogate nor their spouse or former spouse is a legal parent of the child.
- Requires the court to order genetic testing if there is an allegation that the child is genetically related to the gestational surrogate, unless all parties voluntarily consent to testing and submit results as evidence.
- Establishes that if a gestational surrogate is presumed to be a genetic parent under section 45, the child is not considered to be conceived by assisted reproduction for purposes of establishing parentage under ORS 109.065.
- Establishes that intended parents remain the legal parents of the child even if, due to a clinical or laboratory error, the child is not genetically related to them or their donor, subject to other claims of parentage.

**Sec. 71:**

- Establishes that an intended parent remains a legal parent even if they die after the embryo transfer but before the child's birth.
- Establishes that an intended parent who dies before the embryo transfer is a legal parent only if the surrogacy agreement explicitly states they would be the parent of a child conceived after their death and the transfer occurs within 24 months of their death.

**Sec. 72 and 73:**

## SB 163 -2 STAFF MEASURE SUMMARY

- Allows a party to a gestational surrogacy agreement to petition the court before, during, or after birth for a judgment declaring the intended parents as the legal parents.
- Allows the court to declare that the gestational surrogate and their spouse or former spouse are not legal parents.
- Allows the court to seal records from public inspection, except as authorized under section 67.
- Permits the court to order the child's surrender to the intended parents if necessary.
- Allows the court to grant additional necessary relief.
- Permits pre-birth judgments but requires enforcement to be delayed until birth, with a party responsible for notifying the court.
- Clarifies that the state and state registrar are not required parties in these proceedings.
- Allows a party to the gestational surrogacy agreement to commence a proceeding in the circuit court for a judgment direction the State Registrar of the Center for Health Statistics to designate each intended parent as a parent of the child on the birth record.

### Sec. 74:

- Enforces gestational surrogacy agreements that comply with sections 63 to 74.
- Requires the court to determine the rights and duties of parties in a noncompliant surrogacy agreement based on their intent at the time of execution.
- Grants standing to all parties and their spouses at the time of execution to litigate enforcement issues.
- Entitles nonbreaching parties to legal or equitable remedies unless otherwise specified in the agreement or subsections (4) and (5).
- Prohibits specific performance as a remedy for requiring a surrogate to become pregnant, terminate or not terminate a pregnancy, or undergo medical procedures.
- Allows specific performance if an intended parent is determined to be the legal parent and a breach prevents them from exercising parental rights at birth or accepting parental duties.

### Sec. 75 -78:

- Amends ORS 111.005 to include a person designated in writing by the decedent to control the use of the decedent's gametes or embryos after the decedent's death to the definition of 'interested person'.
- Expands the criteria for recognizing parentage in intestate succession by allowing parentage to be established under ORS 109.065 or through a written acknowledgment signed by the parent during the child's lifetime, rather than requiring both conditions to be met.
- Updates ORS 163.537 to include fees for services pursuant to a gestational surrogacy agreement.

### Sec. 79:

- Amends ORS 419B.603 to exclude proceedings to determine the parentage of a child conceived by assisted reproduction, whether under a gestational surrogacy agreement or not, from the definition of "child custody proceeding."
- Replaces "biological parent" with "genetic parent" in definitions of "Indian child" and "parent."
- Clarifies that a father's parentage must be acknowledged or established under specific ORS provisions to be considered a "parent."

### Sec. 80-83:

- Amends ORS 432.088 and ORS 677.990 to align language with definitions of the measure.
- Repeals ORS 109.239, 109.243, 109.247, 677.355, 677.360, 677.365 and 677.370.

### Sec. 84-88:

- Defines key terms, including assisted reproduction, donor, gametes, identifying information, and medical history.

## SB 163 -2 STAFF MEASURE SUMMARY

- Applies new recordkeeping and disclosure requirements only to gametes collected after the effective date of the bill.
- Requires gamete banks and fertility clinics to collect identifying information and medical history from donors at the time of donation.
- Requires gamete banks and fertility clinics receiving gametes from another facility to collect and maintain contact information for the originating facility.
- Requires gamete banks and fertility clinics to provide identifying donor information to a donor-conceived child upon request at age 18.
- Requires gamete banks and fertility clinics to make a good-faith effort to provide nonidentifying medical history to donor-conceived individuals or their legal guardians upon request.
- Requires facilities that received gametes from another facility to disclose the originating facility's contact information upon request.
- Requires gamete banks and fertility clinics to maintain donor records, including screening, testing, and compliance with state and federal laws.

### Sec. 89-95:

- Amends ORS 25.080 to align with the definitions of the measure.
- Amends ORS 25.501 to include definitions for alleged genetic parent, combined relationship index, genetic testing, and relationship index to align with the measure.
- Amends provisions to align with the definitions of the measure.

### Sec. 96-100:

- Expands venue options for parentage proceedings to the judicial district where the child resides or is located, where the alleged genetic parent resides if the child is out of state, or where the estate is administered if a parent is deceased.
- Updates terminology to align with the measure.
- Prohibits reopening parentage and ordering genetic testing if parentage was established under ORS 109.070(1)(a)(B), the parties are married at the time of the request, and the request is made by DHS unless both spouse's consent.

### Sec. 101:

- Allows the court to consolidate a parentage proceeding with cases involving adoption, termination of parental rights, juvenile dependency, custody, visitation, child support, dissolution, annulment, legal separation, estate administration, or any other case where parentage is relevant.
- Prohibits a respondent from consolidating a parentage proceeding with a case brought under ORS chapter 110.

### Sec. 102:

- Binds a signatory to an acknowledgment of parentage as specified under ORS 25.554, 109.070, 109.072, and 432.098.
- Binds a parent to an adjudication of parentage if the court had jurisdiction under ORS 110.518 and the individual received notice of the proceeding.
- Limits when a child is bound by a determination of parentage, requiring consistency with genetic testing, assisted reproduction, or representation in the proceeding.
- Deems a court's final order in a dissolution, annulment, or legal separation as an adjudication of parentage if it identifies the child as a "child of the marriage" or provides child support without disavowing parentage.
- Allows a prior determination of parentage to be used as a defense in future parentage proceedings involving a different individual.
- Permits a party to challenge an adjudication of parentage only under ORS 109.072.

### Sec. 104 and 105:

## SB 163 -2 STAFF MEASURE SUMMARY

- Requires consideration of uniformity in applying and interpreting specified sections of the act to align with states that enact the Uniform Parentage Act.
- Modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, except for provisions in 15 U.S.C. 7001(c) and 7003(b).

Sec. 106 - 155:

- Updates related ORS provision to conform with the measure.
- Establishes various operative dates.

### **BACKGROUND:**

Oregon's parentage laws, codified in ORS Chapter 109, provide legal mechanisms for establishing and contesting parentage. In addition to marriage-based presumptions, voluntary acknowledgments allow individuals to establish legal parentage by signing a legally binding document. Courts also adjudicate parentage in cases involving disputes, multiple parental claims, or when a parent seeks to challenge or confirm their legal status. The increasing use of assisted reproductive technologies, including sperm or egg donation, in vitro fertilization (IVF), and surrogacy, has raised legal questions about parentage. Oregon law addresses some aspects of assisted reproduction, but there has been no comprehensive statutory framework governing all cases involving surrogacy or posthumous conception. These gaps have led to legal uncertainty, requiring courts to apply existing statutes to cases involving non-traditional family structures. The Uniform Parentage Act (UPA) was first introduced by the Uniform Law Commission (ULC) in 1973 as a model for states to standardize parentage determinations. Over time, the UPA has been revised to reflect changes in family law and reproductive medicine, with major updates in 2002, and 2017. The 2002 UPA introduced provisions addressing genetic testing and assisted reproduction, while the 2017 UPA expanded protections for same-sex parents and clarified non-biological parental rights. The UPA refines legal standards for voluntary acknowledgments of parentage, assisted reproduction, and gestational surrogacy agreements.

Oregon has previously adopted elements of the UPA, but not all provisions have been incorporated into state law. Existing statutes address voluntary acknowledgments and genetic testing but contain fewer provisions governing surrogacy and assisted reproduction. The lack of statutory clarity in some areas has led to legal questions about parental rights in cases involving non-traditional family structures. Senate Bill 163-1 proposes changes to Oregon's parentage laws by incorporating provisions from the UPA and modifying existing statutes. The bill revises definitions, establishes legal presumptions, and changes judicial procedures related to parent-child relationships. It addresses parentage determinations for children conceived through assisted reproduction and provides a legal framework for gestational surrogacy agreements. SB 163-1 establishes new rules for genetic testing, including requirements for admissibility and the use of accredited laboratories. It modifies procedures for voluntary acknowledgments of parentage, bringing them in line with court-adjudicated determinations. The bill also includes provisions for posthumous parentage, allowing a deceased individual to be legally recognized as a parent under certain conditions.