



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

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**ON THE FOLLOWING MEASURE:**

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

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY

**DATE:** Thursday, February 21, 2019      **TIME:** 10:00 a.m.

**LOCATION:** State Capitol, Room 016

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

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Chair Rhoads 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. This bill would clarify the legislative intent of 584-12, HRS, as it would explicitly provide 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.

The Department sees no legal issues with Senate Bill No. 325 and appreciates the opportunity to provide comments.

TESTIMONY OF THOMAS D. FARRELL  
Regarding SB 325, Relating to Parentage  
Committee on Judiciary  
Senator Karl Rhoads, Chair/Senator Glen Wakai, Vice Chair  
Thursday, February 21, 2019 10:00 a.m.  
Conference Room 016, State Capitol

Good morning Senator Rhoads and Members of the Committee:

SB 325 is the Senate companion to HB 1265. It appears that HB 1265 will not be crossing over as the House Judiciary Committee deferred action on the House bill with no new decision-making date announced.

I have two concerns about SB 325.

First, the bill would amend §584-12, to provide that evidence of non-consent to artificial insemination may be used to establish paternity. Maybe I'm the only one who thinks that's crazy, but it seems rather unfair to allow the fact that someone objected to becoming a father to establish that he is one. If anything, non-consent should be a defense to establishment of paternity or at least evidence of non-paternity. Similarly, consent to artificial insemination would tend to indicate that someone actually intended to become a father, and it seems reasonable to be able to use that as evidence to establish paternity.

The other problem I have with SB 325 is that, while it appears to be only prospective in application, Section 1 of the Bill, containing its findings and purpose, purports to establish legislative intent in 1973. I think forty-six years is a little late to establish "what we really meant to say is..." This is just an attempt to overturn a Supreme Court decision that some people don't like. None of you were serving in 1973, and you couldn't have a clue what the legislature intended then. This isn't just an academic argument. While the findings and purposes are not "black letter law," they may give rise to arguments about retroactive application, which could open a real can of worms.

So, I would respectfully request that you hold the bill, or if you must pass it on, then amend it to state that evidence of consent may be used to establish and evidence of non-consent may be used as a defense, and that the bill is prospective in application only.

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