

4644

2013-2014 Regular Sessions

I N   S E N A T E

April 16, 2013

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Introduced by Sen. BONACIC -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the family court act and the public health law, in relation to acknowledgments of paternity executed by juveniles under the age of eighteen

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Subdivisions (b) and (c) of section 516-a of the family  
2     court act, as amended by chapter 462 of the laws of 2007, are amended to  
3     read as follows:  
4     (b) (i) [An] WHERE A SIGNATORY TO AN acknowledgment of paternity  
5     executed pursuant to section one hundred eleven-k of the social services  
6     law or section four thousand one hundred thirty-five-b of the public  
7     health law HAD ATTAINED THE AGE OF EIGHTEEN AT THE TIME OF EXECUTION OF  
8     THE ACKNOWLEDGMENT, THE SIGNATORY may [be rescinded] SEEK TO RESCIND THE  
9     ACKNOWLEDGMENT by [either signator's] filing [of] a petition with the  
10    court to vacate the acknowledgment within the earlier of sixty days of  
11    the date of signing the acknowledgment or the date of an administrative  
12    or a judicial proceeding (including, BUT NOT LIMITED TO, a proceeding to  
13    establish a support order) relating to the child in which [either signa-  
14    tor] THE SIGNATORY is a party. [If, at any time before or after a peti-  
15    tion is filed, a signator dies or becomes mentally ill or cannot be  
16    found within the state, neither the proceeding nor the right to commence  
17    the proceeding shall abate but may be commenced or continued by any of  
18    the persons authorized by this article to commence a paternity proceed-  
19    ing.] For purposes of this section, the "date of an administrative or a  
20    judicial proceeding" shall be the date by which the respondent is  
21    required to answer the petition. [The]  
22    (II) WHERE A SIGNATORY TO AN ACKNOWLEDGMENT OF PATERNITY EXECUTED  
23    PURSUANT TO SECTION ONE HUNDRED ELEVEN-K OF THE SOCIAL SERVICES LAW OR

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

LBD09330-02-3

1 SECTION FOUR THOUSAND ONE HUNDRED THIRTY-FIVE-B OF THE PUBLIC HEALTH LAW  
2 HAD NOT ATTAINED THE AGE OF EIGHTEEN AT THE TIME OF EXECUTION OF THE  
3 ACKNOWLEDGMENT, THE SIGNATORY MAY SEEK TO RESCIND THE ACKNOWLEDGMENT BY  
4 FILING A PETITION WITH THE COURT TO VACATE THE ACKNOWLEDGMENT WITHIN THE  
5 EARLIER OF SIXTY DAYS OF THE SIGNATORY'S ATTAINING OF THE AGE OF EIGH-  
6 TEEN YEARS OR SIXTY DAYS OF THE DATE ON WHICH THE SIGNATORY FIRST  
7 APPEARED FOR A JUDICIAL PROCEEDING (INCLUDING, BUT NOT LIMITED TO, A  
8 PROCEEDING TO ESTABLISH A SUPPORT ORDER) RELATING TO THE CHILD IN WHICH  
9 THE SIGNATORY IS A PARTY; PROVIDED, HOWEVER, THAT THE SIGNATORY'S  
10 PARENT, GUARDIAN OR ATTORNEY MUST ALSO HAVE BEEN PRESENT AT SUCH JUDI-  
11 CIAL PROCEEDING AND THE SIGNATORY MUST HAVE BEEN ADVISED AT SUCH  
12 PROCEEDING OF HIS OR HER RIGHT TO FILE A PETITION TO VACATE THE ACKNOWL-  
13 EDGMENT WITHIN SIXTY DAYS OF THE DATE OF SUCH PROCEEDING.

14 (III) WHERE A PETITION TO VACATE AN ACKNOWLEDGMENT OF PATERNITY HAS  
15 BEEN FILED IN ACCORDANCE WITH PARAGRAPH (I) OR (II) OF THIS SUBDIVISION,  
16 THE court shall order genetic marker tests or DNA tests for the determi-  
17 nation of the child's paternity. No such test shall be ordered, however,  
18 upon a written finding by the court that it is not in the best interests  
19 of the child on the basis of res judicata, equitable estoppel, or the  
20 presumption of legitimacy of a child born to a married woman. If the  
21 court determines, following the test, that the person who signed the  
22 acknowledgment is the father of the child, the court shall make a find-  
23 ing of paternity and enter an order of filiation. If the court deter-  
24 mines that the person who signed the acknowledgment is not the father of  
25 the child, the acknowledgment shall be vacated.

26 [(ii)] (IV) After the expiration of [sixty days of the execution of  
27 the acknowledgment] THE TIME LIMITS SET FORTH IN PARAGRAPHS (I) AND (II)  
28 OF THIS SUBDIVISION, [either signator] ANY OF THE SIGNATORIES TO AN  
29 ACKNOWLEDGMENT OF PATERNITY may challenge the acknowledgment [of pater-  
30 nity] in court by alleging and proving fraud, duress, or material  
31 mistake of fact. [If, at any time before or after a petition is filed, a  
32 signator dies or becomes mentally ill or cannot be found within the  
33 state, neither the proceeding nor the right to commence the proceeding  
34 shall abate but may be commenced or continued by any of the persons  
35 authorized by this article to commence a paternity proceeding.] If the  
36 petitioner proves to the court that the acknowledgment of paternity was  
37 signed under fraud, duress, or due to a material mistake of fact, the  
38 court shall THEN order genetic marker tests or DNA tests for the deter-  
39 mination of the child's paternity. No such test shall be ordered, howev-  
40 er, upon a written finding by the court that it is not in the best  
41 interests of the child on the basis of res judicata, equitable estoppel,  
42 or the presumption of legitimacy of a child born to a married woman. If  
43 the court determines, following the test, that the person who signed the  
44 acknowledgment is the father of the child, the court shall make a find-  
45 ing of paternity and enter an order of filiation. If the court deter-  
46 mines that the person who signed the acknowledgment is not the father of  
47 the child, the acknowledgment shall be vacated.

48 (V) IF, AT ANY TIME BEFORE OR AFTER A SIGNATORY HAS FILED A PETITION  
49 TO VACATE AN ACKNOWLEDGMENT OF PATERNITY PURSUANT TO THIS SUBDIVISION,  
50 THE SIGNATORY DIES OR BECOMES MENTALLY ILL OR CANNOT BE FOUND WITHIN THE  
51 STATE, NEITHER THE PROCEEDING NOR THE RIGHT TO COMMENCE THE PROCEEDING  
52 SHALL ABATE BUT MAY BE COMMENCED OR CONTINUED BY ANY OF THE PERSONS  
53 AUTHORIZED BY THIS ARTICLE TO COMMENCE A PATERNITY PROCEEDING.

54 (c) Neither [signator's] SIGNATORY'S legal obligations, including the  
55 obligation for child support arising from the acknowledgment, may be  
56 suspended during the challenge to the acknowledgment except for good

1 cause as the court may find. If the court vacates the acknowledgment of  
2 paternity, the court shall immediately provide a copy of the order to  
3 the registrar of the district in which the child's birth certificate is  
4 filed and also to the putative father registry operated by the depart-  
5 ment of social services pursuant to section three hundred seventy-two-c  
6 of the social services law. In addition, if the mother of the child who  
7 is the subject of the acknowledgment is in receipt of child support  
8 services pursuant to title six-A of article three of the social services  
9 law, the court shall immediately provide a copy of the order to the  
10 child support enforcement unit of the social services district that  
11 provides the mother with such services.

12 S. 2. Subdivisions 1 and 2 of section 4135-b of the public health law,  
13 subdivision 1 as added by chapter 59 of the laws of 1993, paragraph (a)  
14 of subdivision 1 as amended by chapter 214 of the laws of 1998, subdivi-  
15 sion 2 as amended by chapter 170 of the laws of 1994 and paragraph (b)  
16 of subdivision 2 as amended by chapter 398 of the laws of 1997, are  
17 amended to read as follows:

18 1. (a) Immediately preceding or following the in-hospital birth of a  
19 child to an unmarried woman, the person in charge of such hospital or  
20 his or her designated representative shall provide to the child's mother  
21 and putative father, if such father is readily identifiable and avail-  
22 able, the documents and written instructions necessary for such mother  
23 and putative father to complete an acknowledgment of paternity witnessed  
24 by two persons not related to the signatory. Such acknowledgment, if  
25 signed by both parties, at any time following the birth of a child,  
26 shall be filed with the registrar at the same time at which the certif-  
27 icate of live birth is filed, if possible, or anytime thereafter. Noth-  
28 ing herein shall be deemed to require the person in charge of such  
29 hospital or his or her designee to seek out or otherwise locate a puta-  
30 tive father who is not readily identifiable or available. The acknowl-  
31 edgment shall be executed on a form provided by the commissioner devel-  
32 oped in consultation with the appropriate commissioner of the department  
33 of family assistance, which shall include the social security number of  
34 the mother and of the putative father and provide in plain language (i)  
35 a statement by the mother consenting to the acknowledgment of paternity  
36 and a statement that the putative father is the only possible father,  
37 (ii) a statement by the putative father that he is the biological father  
38 of the child, and (iii) a statement that the signing of the acknowledg-  
39 ment of paternity by both parties shall have the same force and effect  
40 as an order of filiation entered after a court hearing by a court of  
41 competent jurisdiction, including an obligation to provide support for  
42 the child except that, only if filed with the registrar of the district  
43 in which the birth certificate has been filed, will the acknowledgment  
44 have such force and effect with respect to inheritance rights.

45 (B) Prior to the execution of an acknowledgment of paternity, the  
46 mother and the putative father shall be provided orally, which may be  
47 through the use of audio or video equipment, and in writing with such  
48 information as is required pursuant to this section with respect to  
49 their rights and the consequences of signing a voluntary acknowledgment  
50 of paternity including, but not limited to[, ]:

51 (I) that the signing of the acknowledgment of paternity shall estab-  
52 lish the paternity of the child and shall have the same force and effect  
53 as an order of paternity or filiation issued by a court of competent  
54 jurisdiction establishing the duty of both parties to provide support  
55 for the child;

1 (II) that if such an acknowledgment is not made, the putative father  
2 can be held liable for support only if the family court, after a hear-  
3 ing, makes an order declaring that the putative father is the father of  
4 the child whereupon the court may make an order of support which may be  
5 retroactive to the birth of the child;

6 (III) that if made a respondent in a proceeding to establish paternity  
7 the putative father has a right to free legal representation if indi-  
8 gent;

9 (IV) that the putative father has a right to a genetic marker test or  
10 to a DNA test when available;

11 (V) that by executing the acknowledgment, the putative father waives  
12 his right to a hearing, to which he would otherwise be entitled, on the  
13 issue of paternity;

14 (VI) that a copy of the acknowledgment of paternity shall be filed  
15 with the putative father registry pursuant to section three hundred  
16 seventy-two-c of the social services law, and that such filing may  
17 establish the child's right to inheritance from the putative father  
18 pursuant to clause (B) of subparagraph two of paragraph (a) of section  
19 4-1.2 of the estates, powers and trusts law;

20 (VII) that, if such acknowledgment is filed with the registrar of the  
21 district in which the birth certificate has been filed, such acknowledg-  
22 ment will establish inheritance rights from the putative father pursuant  
23 to clause (A) of subparagraph two of paragraph (a) of section 4-1.2 of  
24 the estates, powers and trusts law;

25 (VIII) that no further judicial or administrative proceedings are  
26 required to [ratio] RATIFY an unchallenged acknowledgment of paternity  
27 provided, however, that [both the putative father and the mother of the  
28 child]:

29 (A) A SIGNATORY TO AN ACKNOWLEDGMENT OF PATERNITY, WHO HAD ATTAINED  
30 THE AGE OF EIGHTEEN AT THE TIME OF EXECUTION OF THE ACKNOWLEDGMENT,  
31 SHALL have the right to rescind the acknowledgment within the earlier of  
32 sixty days from the date of signing the acknowledgment or the date of an  
33 administrative or a judicial proceeding (including, BUT NOT LIMITED TO,  
34 a proceeding to establish a support order) relating to the child in  
35 which [either] THE signatory is a party[;], PROVIDED that the "date of  
36 an administrative or a judicial proceeding" shall be the date by which  
37 the respondent is required to answer the petition;

38 (B) A SIGNATORY TO AN ACKNOWLEDGMENT OF PATERNITY, WHO HAD NOT  
39 ATTAINED THE AGE OF EIGHTEEN AT THE TIME OF EXECUTION OF THE ACKNOWLEDG-  
40 MENT, SHALL HAVE THE RIGHT TO RESCIND THE ACKNOWLEDGMENT WITHIN THE  
41 EARLIER OF SIXTY DAYS OF THE SIGNATORY'S ATTAINING OF THE AGE OF EIGH-  
42 TEEN YEARS OR SIXTY DAYS OF THE DATE ON WHICH THE SIGNATORY FIRST  
43 APPEARS FOR A JUDICIAL PROCEEDING (INCLUDING, BUT NOT LIMITED TO, A  
44 PROCEEDING TO ESTABLISH A SUPPORT ORDER) RELATING TO THE CHILD;  
45 PROVIDED, HOWEVER, THAT THE SIGNATORY'S PARENT, GUARDIAN OR ATTORNEY  
46 MUST ALSO HAVE BEEN PRESENT AT SUCH JUDICIAL PROCEEDING AND THE SIGNATO-  
47 RY MUST HAVE BEEN ADVISED AT SUCH PROCEEDING OF HIS OR HER RIGHT TO FILE  
48 A PETITION TO VACATE THE ACKNOWLEDGMENT WITHIN SIXTY DAYS OF THE DATE OF  
49 SUCH PROCEEDING;

50 (IX) that after the expiration of [sixty days of the execution of the  
51 acknowledgment] THE TIME LIMITS SET FORTH IN CLAUSES (A) AND (B) OF  
52 SUBPARAGRAPH (VIII) OF THIS PARAGRAPH, [either signatory] ANY OF THE  
53 SIGNATORIES may challenge the acknowledgment of paternity in court only  
54 on the basis of fraud, duress, or material mistake of fact, with the  
55 burden of proof on the party challenging the voluntary acknowledgment;

1 (X) that [they] THE PUTATIVE FATHER AND MOTHER may wish to consult  
2 with [an attorney] ATTORNEYS before executing the acknowledgment; and  
3 that they have the right to seek legal representation and supportive  
4 services including counseling regarding such acknowledgment;

5 (XI) that the acknowledgment of paternity may be the basis for the  
6 putative father establishing custody and visitation rights to the child  
7 [; if the acknowledgment is signed, it may be the basis] AND for requir-  
8 ing the putative father's consent prior to an adoption proceeding;

9 (XII) THAT the mother's refusal to sign the acknowledgment shall not  
10 be deemed a failure to cooperate in establishing paternity for the  
11 child; and

12 (XIII) THAT the child may bear the last name of either parent, which  
13 name shall not affect the legal status of the child.

14 In addition, the governing body of such hospital shall insure that  
15 appropriate staff shall provide to the child's mother and putative  
16 father, prior to the mother's discharge from the hospital, the opportu-  
17 nity to speak with hospital staff to obtain clarifying information and  
18 answers to their questions about paternity establishment, and shall also  
19 provide the telephone number of the local support collection unit.

20 [(b)] (C) Within ten days after receiving the certificate of birth,  
21 the registrar shall furnish without charge to each parent or guardian of  
22 the child or to the mother at the address designated by her for that  
23 purpose, a certified copy of the certificate of birth and, if applica-  
24 ble, a certified copy of the written acknowledgment of paternity. If the  
25 mother is in receipt of child support enforcement services pursuant to  
26 title six-A of article three of the social services law, the registrar  
27 also shall furnish without charge a certified copy of the certificate of  
28 birth and, if applicable, a certified copy of the written acknowledgment  
29 of paternity to the social services district of the county within which  
30 the mother resides.

31 2. (a) When a child's paternity is acknowledged voluntarily pursuant  
32 to section one hundred eleven-k of the social services law, the social  
33 services official shall file the executed acknowledgment with the  
34 registrar of the district in which the birth occurred and in which the  
35 birth certificate has been filed.

36 (b) Where a child's paternity has not been acknowledged voluntarily  
37 pursuant to paragraph (a) of subdivision one of this section or para-  
38 graph (a) of this subdivision, the child's mother and the putative  
39 father may voluntarily acknowledge a child's paternity pursuant to this  
40 paragraph by signing the acknowledgment of paternity [provided, however,  
41 that both the putative father and the mother of the child].

42 (C) A SIGNATORY TO AN ACKNOWLEDGMENT OF PATERNITY, WHO HAS ATTAINED  
43 THE AGE OF EIGHTEEN AT THE TIME OF EXECUTION OF THE ACKNOWLEDGMENT SHALL  
44 have the right to rescind the acknowledgment within the earlier of sixty  
45 days from the date of signing the acknowledgment or the date of an  
46 administrative or a judicial proceeding (including, BUT NOT LIMITED TO,  
47 a proceeding to establish a support order) relating to the child in  
48 which either signatory is a party; PROVIDED that for purposes of this  
49 section, the "date of an administrative or a judicial proceeding" shall  
50 be the date by which the respondent is required to answer the petition[;  
51 that after].

52 (D) A SIGNATORY TO AN ACKNOWLEDGMENT OF PATERNITY, WHO HAS NOT  
53 ATTAINED THE AGE OF EIGHTEEN AT THE TIME OF EXECUTION OF THE ACKNOWLEDG-  
54 MENT, SHALL HAVE THE RIGHT TO RESCIND THE ACKNOWLEDGMENT WITHIN THE  
55 EARLIER OF SIXTY DAYS OF THE SIGNATORY'S ATTAINING OF THE AGE OF EIGH-  
56 TEEN YEARS OR SIXTY DAYS OF THE DATE ON WHICH THE SIGNATORY FIRST

1 APPEARS FOR A JUDICIAL PROCEEDING (INCLUDING, BUT NOT LIMITED TO, A  
2 PROCEEDING TO ESTABLISH A SUPPORT ORDER) RELATING TO THE CHILD IN WHICH  
3 THE SIGNATORY IS A PARTY; PROVIDED, HOWEVER, THAT A PARENT OR GUARDIAN  
4 OR ATTORNEY OF THE SIGNATORY MUST ALSO HAVE BEEN PRESENT AT SUCH JUDI-  
5 CIAL PROCEEDING AND THE SIGNATORY MUST HAVE BEEN ADVISED AT SUCH  
6 PROCEEDING OF HIS OR HER RIGHT TO FILE A PETITION TO VACATE THE ACKNOWL-  
7 EDGMENT WITHIN SIXTY DAYS OF THE DATE OF SUCH PROCEEDING.

8 (E) AFTER the expiration of [sixty days of the execution of the  
9 acknowledgment] THE TIME LIMITS SET FORTH IN PARAGRAPHS (C) AND (D) OF  
10 THIS SUBDIVISION, [either signator] ANY OF THE SIGNATORIES may challenge  
11 the acknowledgment of paternity in court only on the basis of fraud,  
12 duress, or material mistake of fact, with the burden of proof on the  
13 party challenging the voluntary acknowledgment. The acknowledgment shall  
14 have full force and effect once so signed. The original or a copy of the  
15 [acknowledgement] ACKNOWLEDGMENT shall be filed with the registrar of  
16 the district in which the birth certificate has been filed.

17 S 3. This act shall take effect on the ninetieth day after it shall  
18 have become a law.