

STATE OF NEW YORK

8287

IN SENATE

April 26, 2018

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, in relation to standing to file paternity petitions, necessary parties in paternity cases and vacating acknowledgments of paternity

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 522 of the family court act, as amended by chapter
2 892 of the laws of 1986, is amended to read as follows:

3 § 522. Persons who may originate proceedings. Proceedings to establish
4 the paternity of the child and to compel support under this article may
5 be commenced by the mother, whether a minor or not, by a person alleging
6 to be the father, whether a minor or not, by the child or child's guard-
7 ian or other person standing in a parental relation or being the next of
8 kin of the child, or by any authorized representative of an incorporated
9 society doing charitable or philanthropic work, or if the mother or
10 child is or is likely to become a public charge on a county, city or
11 town, by a public welfare official of the county, city or town where the
12 mother resides or the child is found. If a proceeding is originated by a
13 public welfare official and thereafter withdrawn or dismissed without
14 consideration on the merits, such withdrawal or dismissal shall be with-
15 out prejudice to other persons. An alleged father may file a petition to
16 establish paternity notwithstanding an acknowledgment of paternity
17 signed by the mother and another man.

18 § 2. Section 523 of the family court act, as amended by chapter 398 of
19 the laws of 1997, is amended to read as follows:

20 § 523. Petition. Proceedings are commenced by the filing of a verified
21 petition, alleging that the person named as respondent, or the petition-
22 er if the petitioner is a person alleging to be the child's father, is
23 or may be the father of the child and petitioning the court to issue a
24 summons or a warrant, requiring the respondent to show cause why the
25 court should not enter a declaration of paternity, an order of support,
26 and such other and further relief as may be appropriate under the

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

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1 circumstances. The petition shall be in writing and verified by the
2 petitioner. Any such petition for the establishment of paternity or the
3 establishment, modification and/or enforcement of a child support obli-
4 gation for persons not in receipt of family assistance, which contains a
5 request for child support enforcement services completed in a manner as
6 specified in section one hundred eleven-g of the social services law,
7 shall constitute an application for such services. In the event that the
8 mother signed an acknowledgement of paternity with a man other than the
9 alleged father, the male signatory to the acknowledgment of paternity is
10 a necessary party and must be named as a respondent.

11 § 3. Section 524 of the family court act, as amended by chapter 59 of
12 the laws of 1993 and subdivision (b) as amended by chapter 398 of the
13 laws of 1997, is amended to read as follows:

14 § 524. Issuance of summons. (a) On receiving a petition sufficient in
15 law commencing a paternity proceeding, the court shall cause a summons
16 to be issued, requiring the respondent or respondents to show cause why
17 the declaration of paternity, order of filiation, order of support and
18 other and further relief prayed for by the petition should not be made.

19 (b) The summons shall contain or have attached thereto a notice stat-
20 ing: (i) that ~~[the]~~ a respondent's failure to appear shall result in the
21 default entry of an order of filiation by the court upon proof of the
22 respondent's actual notice of the commencement of the proceeding; and
23 (ii) that a respondent's failure to appear may result in the suspension
24 of his or her driving privileges; state professional, occupational and
25 business licenses; and sporting licenses and permits.

26 § 4. Subdivision (a) of section 532 of the family court act, as
27 amended by chapter 214 of the laws of 1998, is amended to read as
28 follows:

29 (a) The court shall advise the parties of their right to one or more
30 genetic marker tests or DNA tests and, on the court's own motion or the
31 motion of any party, shall order the mother, her child ~~[and]~~, the
32 alleged father, and, if appropriate, the male signatory to an acknowl-
33 edgement of paternity to submit to one or more genetic marker or DNA
34 tests of a type generally acknowledged as reliable by an accreditation
35 body designated by the secretary of the federal department of health and
36 human services and performed by a laboratory approved by such an accred-
37 itation body and by the commissioner of health or by a duly qualified
38 physician to aid in the determination of whether the alleged father is
39 or is not the father of the child. 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. The
43 record or report of the results of any such genetic marker or DNA test
44 ordered pursuant to this section or pursuant to section one hundred
45 eleven-k of the social services law shall be received in evidence by the
46 court pursuant to subdivision (e) of rule forty-five hundred eighteen of
47 the civil practice law and rules where no timely objection in writing
48 has been made thereto and that if such timely objections are not made,
49 they shall be deemed waived and shall not be heard by the court. If the
50 record or report of the results of any such genetic marker or DNA test
51 or tests indicate at least a ninety-five percent probability of paterni-
52 ty, the admission of such record or report shall create a rebuttable
53 presumption of paternity, and shall establish, if un rebutted, the pater-
54 nity of and liability for the support of a child pursuant to this arti-
55 cle and article four of this act.

1 § 5. Section 542 of the family court act is amended by adding a new
2 subdivision (d) to read as follows:

3 (d) If the mother signed an acknowledgement of paternity with another
4 man whom the court has determined is not the biological father of the
5 child, the court shall make an order vacating the acknowledgement of
6 paternity at the same time that it makes the order of filiation.

7 § 6. This act shall take effect on the ninetieth day after it shall
8 have become a law.