S T A T E O F N E W Y O R K

4593

2011-2012 Regular Sessions

I N S E N A T E

April 13, 2011

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 paternity testing and adjudications in child protective proceedings in the family court

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

Section 1. Section 532 of the family court act is amended by adding a new subdivision (d) to read as follows:

(D) IN ANY PROCEEDING IN THE FAMILY COURT, WHETHER UNDER THIS ACT OR UNDER ANY OTHER LAW, IF THERE IS AN ALLEGATION OR STATEMENT IN A PETITION THAT A PERSON IS THE FATHER OF A CHILD, WHO IS A SUBJECT OF THE PROCEEDING BUT PATERNITY HAS NOT BEEN ESTABLISHED, THE COURT MAY, UPON THE CONSENT OF THE ALLEGED FATHER AND MOTHER, MAKE AN ORDER FOR THE ALLEGED FATHER, MOTHER AND CHILD TO SUBMIT TO ONE OR MORE GENETIC MARKER OR DNA TESTS, IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. WHERE THE MOTHER OR ALLEGED FATHER OF THE CHILD DOES NOT CONSENT TO THE TESTING, THE COURT MAY DIRECT ANY PARTY EMPOWERED UNDER SECTION FIVE HUNDRED TWENTY-TWO OF THIS ARTICLE TO FILE A VERIFIED PETITION UNDER SECTION FIVE HUNDRED TWENTY-THREE OF THIS ARTICLE TO ESTABLISH PATERNITY. IF THE MOTHER IS NOT BEFORE THE COURT, THE COURT MAY NONETHELESS MAKE AN ORDER FOR GENETIC MARKER OR DNA TESTING IF THE COURT FINDS THAT SHE HAS BEEN GIVEN NOTICE AND AN OPPORTUNITY TO BE HEARD. NO SUCH TEST SHALL BE ORDERED, HOWEVER, UPON A WRITTEN FINDING BY THE COURT THAT IT IS NOT IN THE BEST INTERESTS OF THE CHILD ON THE BASIS OF RES JUDICATA, EQUITABLE ESTOPPEL, OR THE PRESUMPTION OF LEGITIMACY OF A CHILD BORN TO A MARRIED WOMAN.

S 2. Subdivisions (b) and (c) of section 564 of the family court act, as added by chapter 440 of the laws of 1978, are amended to read as follows:

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

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(b) The court may make such an order of filiation if (1) both parents are before the court, AND (2) the father waives both the filing of a petition under section five hundred twenty-three of this [act] ARTICLE and the right to a hearing under section five hundred [thirty-three] THIRTY-ONE of this [act] ARTICLE, and (3) the court is satisfied as to the paternity of the child from the testimony or sworn statements of the parents OR FROM THE RESULTS OF GENETIC TESTING PERFORMED IN ACCORDANCE WITH SECTION FIVE HUNDRED THIRTY-TWO OF THIS ARTICLE. IF THE MOTHER IS NOT BEFORE THE COURT, THE COURT MAY MAKE AN ORDER OF FILIATION BASED UPON THE RESULTS OF GENETIC TESTING ORDERED PURSUANT TO SUBDIVISION (D) OF SECTION FIVE HUNDRED THIRTY-TWO OF THIS ARTICLE.

(c) The court may in any such proceeding in its discretion direct either the mother or any other person empowered under section five hundred twenty-two of this [act] ARTICLE to file a verified petition under section five hundred twenty-three of this [act] ARTICLE. THE COURT MAY IN ANY SUCH PROCEEDING, UPON ITS OWN MOTION OR UPON THE MOTION OF EITHER PARENT OR ALLEGED PARENT OR THE CHILD, DIRECT THE ALLEGED FATHER, MOTHER AND CHILD TO SUBMIT TO ONE OR MORE GENETIC MARKER OR DNA TESTS, IN ACCORDANCE WITH THE PROVISIONS OF SECTION FIVE HUNDRED THIRTY-TWO OF THIS ARTICLE. NO SUCH TEST SHALL BE ORDERED, HOWEVER, UPON A WRITTEN FINDING BY THE COURT THAT IT IS NOT IN THE BEST INTERESTS OF THE CHILD ON THE BASIS OF RES JUDICATA, EQUITABLE ESTOPPEL, OR THE PRESUMPTION OF LEGITIMACY OF A CHILD BORN TO A MARRIED WOMAN.

S 3. Section 1035 of the family court act is amended by adding a new subdivision (g) to read as follows:

(G) IN ANY CASE IN WHICH PATERNITY HAS NOT BEEN ESTABLISHED REGARDING A CHILD WHO IS THE SUBJECT OF A PETITION UNDER THIS ARTICLE AND AN ALLEGED FATHER IS BEFORE THE COURT, THE COURT MAY DIRECT GENETIC TESTING IN ACCORDANCE WITH SECTION FIVE HUNDRED THIRTY-TWO OF THIS ACT, MAY DIRECT THE FILING OF A PATERNITY PETITION IN ACCORDANCE WITH SECTION FIVE HUNDRED TWENTY-THREE OF THIS ACT OR MAY ADJUDICATE PATERNITY PURSUANT TO SECTION FIVE HUNDRED SIXTY-FOUR OF THIS ACT.

S 4. Subparagraph (viii) of paragraph 2 of subdivision (d) of section 1089 of the family court act is amended by adding a new clause (I) to read as follows:

(I) IN ANY CASE IN WHICH PATERNITY HAS NOT BEEN ESTABLISHED REGARDING A CHILD WHO IS THE SUBJECT OF A HEARING UNDER THIS ARTICLE AND AN ALLEGED FATHER IS BEFORE THE COURT, THE COURT MAY DIRECT GENETIC TESTING IN ACCORDANCE WITH SECTION FIVE HUNDRED THIRTY-TWO OF THIS ACT, MAY DIRECT THE FILING OF A PATERNITY PETITION IN ACCORDANCE WITH SECTION FIVE HUNDRED TWENTY-THREE OF THIS ACT OR MAY ADJUDICATE PATERNITY PURSUANT TO SECTION FIVE HUNDRED SIXTY-FOUR OF THIS ACT.

S 5. This act shall take effect immediately.