

7375

2013-2014 Regular Sessions

I N A S S E M B L Y

May 14, 2013

Introduced by M. of A. WEINSTEIN -- (at request of the Office of Court Administration) -- read once and referred 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8 THE ACKNOWLEDGMENT, THE SIGNATORY may [be rescinded] SEEK TO RESCIND THE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.

LBD09330-07-3

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 ANYTIME UP
5 TO SIXTY DAYS AFTER THE SIGNATORY'S ATTAINING THE AGE OF EIGHTEEN YEARS
6 OR SIXTY DAYS AFTER THE DATE ON WHICH THE RESPONDENT IS REQUIRED TO
7 ANSWER A PETITION (INCLUDING, BUT NOT LIMITED TO, A PETITION TO ESTAB-
8 LISH A SUPPORT ORDER) RELATING TO THE CHILD IN WHICH THE SIGNATORY IS A
9 PARTY, WHICHEVER IS EARLIER; PROVIDED, HOWEVER, THAT THE SIGNATORY MUST
10 HAVE BEEN ADVISED AT SUCH PROCEEDING OF HIS OR HER RIGHT TO FILE A PETI-
11 TION TO VACATE THE ACKNOWLEDGMENT WITHIN SIXTY DAYS OF THE DATE OF SUCH
12 PROCEEDING.

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

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

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

53 (c) Neither [signator's] SIGNATORY'S legal obligations, including the
54 obligation for child support arising from the acknowledgment, may be
55 suspended during the challenge to the acknowledgment except for good
56 cause as the court may find. If the court vacates the acknowledgment of

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

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

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

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

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

55 (II) that if such an acknowledgment is not made, the putative father
56 can be held liable for support only if the family court, after a hear-

ing, makes an order declaring that the putative father is the father of the child whereupon the court may make an order of support which may be retroactive to the birth of the child;

(III) that if made a respondent in a proceeding to establish paternity the putative father has a right to free legal representation if indigent;

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

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

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

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

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

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

(B) A SIGNATORY TO AN ACKNOWLEDGMENT OF PATERNITY, WHO HAD NOT ATTAINED THE AGE OF EIGHTEEN AT THE TIME OF EXECUTION OF THE ACKNOWLEDGMENT, SHALL HAVE THE RIGHT TO RESCIND THE ACKNOWLEDGMENT ANYTIME UP TO SIXTY DAYS AFTER THE SIGNATORY'S ATTAINING THE AGE OF EIGHTEEN YEARS OR SIXTY DAYS AFTER THE DATE ON WHICH THE RESPONDENT IS REQUIRED TO ANSWER A PETITION (INCLUDING, BUT NOT LIMITED TO, A PETITION TO ESTABLISH A SUPPORT ORDER) RELATING TO THE CHILD, WHICHEVER IS EARLIER; PROVIDED, HOWEVER, THAT THE SIGNATORY MUST HAVE BEEN ADVISED AT SUCH PROCEEDING OF HIS OR HER RIGHT TO FILE A PETITION TO VACATE THE ACKNOWLEDGMENT WITHIN SIXTY DAYS OF THE DATE OF SUCH PROCEEDING;

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

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

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

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

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

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

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

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

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

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

(D) A SIGNATORY TO AN ACKNOWLEDGMENT OF PATERNITY, WHO HAS NOT ATTAINED THE AGE OF EIGHTEEN AT THE TIME OF EXECUTION OF THE ACKNOWLEDGMENT, SHALL HAVE THE RIGHT TO RESCIND THE ACKNOWLEDGMENT ANYTIME UP TO SIXTY DAYS AFTER THE SIGNATORY'S ATTAINING THE AGE OF EIGHTEEN YEARS OR SIXTY DAYS AFTER THE DATE ON WHICH THE RESPONDENT IS REQUIRED TO ANSWER A PETITION (INCLUDING, BUT NOT LIMITED TO, A PETITION TO ESTABLISH A SUPPORT ORDER) RELATING TO THE CHILD IN WHICH THE SIGNATORY IS A PARTY, WHICHEVER IS EARLIER; PROVIDED, HOWEVER, THAT THE SIGNATORY MUST HAVE BEEN ADVISED AT SUCH PROCEEDING OF HIS OR HER RIGHT TO FILE A PETITION

1 TO VACATE THE ACKNOWLEDGMENT WITHIN SIXTY DAYS OF THE DATE OF SUCH
2 PROCEEDING.
3 (E) AFTER the expiration of [sixty days of the execution of the
4 acknowledgment] THE TIME LIMITS SET FORTH IN PARAGRAPHS (C) AND (D) OF
5 THIS SUBDIVISION, [either signator] ANY OF THE SIGNATORIES may challenge
6 the acknowledgment of paternity in court only on the basis of fraud,
7 duress, or material mistake of fact, with the burden of proof on the
8 party challenging the voluntary acknowledgment. The acknowledgment shall
9 have full force and effect once so signed. The original or a copy of the
10 [acknowledgement] ACKNOWLEDGMENT shall be filed with the registrar of
11 the district in which the birth certificate has been filed.
12 S 3. This act shall take effect on the ninetieth day after it shall
13 have become a law.