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

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2013-2014 Regular Sessions

I N S E N A T E

April 16, 2013

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:

Section 1. Subdivisions (b) and (c) of section 516-a of the family court act, as amended by chapter 462 of the laws of 2007, are amended to read as follows:

(b) (i) [An] WHERE A SIGNATORY TO AN acknowledgment of paternity executed pursuant to section one hundred eleven-k of the social services law or section four thousand one hundred thirty-five-b of the public health law HAD ATTAINED THE AGE OF EIGHTEEN AT THE TIME OF EXECUTION OF THE ACKNOWLEDGMENT, THE SIGNATORY may [be rescinded] SEEK TO RESCIND THE ACKNOWLEDGMENT by [either signator's] filing [of] a petition with the court to vacate the acknowledgment within the earlier of sixty days of 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 signator] THE SIGNATORY is a party. [If, at any time before or after a petition is filed, a signator dies or becomes mentally ill or cannot be found within the state, neither the proceeding nor the right to commence the proceeding shall abate but may be commenced or continued by any of the persons authorized by this article to commence a paternity proceeding.] 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. [The]

(II) WHERE A SIGNATORY TO AN ACKNOWLEDGMENT OF PATERNITY EXECUTED 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.

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SECTION FOUR THOUSAND ONE HUNDRED THIRTY-FIVE-B OF THE PUBLIC HEALTH LAW HAD NOT ATTAINED THE AGE OF EIGHTEEN AT THE TIME OF EXECUTION OF THE ACKNOWLEDGMENT, THE SIGNATORY MAY SEEK TO RESCIND THE ACKNOWLEDGMENT BY FILING A PETITION WITH THE COURT TO VACATE THE ACKNOWLEDGMENT WITHIN THE EARLIER OF SIXTY DAYS OF THE SIGNATORY'S ATTAINING OF THE AGE OF EIGHTEEN YEARS OR SIXTY DAYS OF THE DATE ON WHICH THE SIGNATORY FIRST APPEARED FOR A JUDICIAL PROCEEDING (INCLUDING, BUT NOT LIMITED TO, A PROCEEDING TO ESTABLISH A SUPPORT ORDER) RELATING TO THE CHILD IN WHICH THE SIGNATORY IS A PARTY; PROVIDED, HOWEVER, THAT THE SIGNATORY'S PARENT, GUARDIAN OR ATTORNEY MUST ALSO HAVE BEEN PRESENT AT SUCH JUDICIAL PROCEEDING AND 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.

(III) WHERE A PETITION TO VACATE AN ACKNOWLEDGMENT OF PATERNITY HAS BEEN FILED IN ACCORDANCE WITH PARAGRAPH (I) OR (II) OF THIS SUBDIVISION, THE court shall order genetic marker tests or DNA tests for the determination of the child's paternity. 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. If the court determines, following the test, that the person who signed the acknowledgment is the father of the child, the court shall make a finding of paternity and enter an order of filiation. If the court determines that the person who signed the acknowledgment is not the father of the child, the acknowledgment shall be vacated.

[(ii)] (IV) After the expiration of [sixty days of the execution of the acknowledgment] THE TIME LIMITS SET FORTH IN PARAGRAPHS (I) AND (II) OF THIS SUBDIVISION, [either signator] ANY OF THE SIGNATORIES TO AN ACKNOWLEDGMENT OF PATERNITY may challenge the acknowledgment [of paternity] in court by alleging and proving fraud, duress, or material mistake of fact. [If, at any time before or after a petition is filed, a signator dies or becomes mentally ill or cannot be found within the state, neither the proceeding nor the right to commence the proceeding shall abate but may be commenced or continued by any of the persons authorized by this article to commence a paternity proceeding.] If the petitioner proves to the court that the acknowledgment of paternity was signed under fraud, duress, or due to a material mistake of fact, the court shall THEN order genetic marker tests or DNA tests for the determination of the child's paternity. 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. If the court determines, following the test, that the person who signed the acknowledgment is the father of the child, the court shall make a finding of paternity and enter an order of filiation. If the court determines that the person who signed the acknowledgment is not the father of the child, the acknowledgment shall be vacated.

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

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

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

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

1. (a) Immediately preceding or following the in-hospital birth of a child to an unmarried woman, the person in charge of such hospital or his or her designated representative shall provide to the child's mother and putative father, if such father is readily identifiable and available, the documents and written instructions necessary for such mother and putative father to complete an acknowledgment of paternity witnessed by two persons not related to the signatory. Such acknowledgment, if signed by both parties, at any time following the birth of a child, shall be filed with the registrar at the same time at which the certificate of live birth is filed, if possible, or anytime thereafter. Nothing herein shall be deemed to require the person in charge of such hospital or his or her designee to seek out or otherwise locate a putative father who is not readily identifiable or available. The acknowledgment shall be executed on a form provided by the commissioner developed in consultation with the appropriate commissioner of the department of family assistance, which shall include the social security number of the mother and of the putative father and provide in plain language (i) a statement by the mother consenting to the acknowledgment of paternity and a statement that the putative father is the only possible father, (ii) a statement by the putative father that he is the biological father of the child, and (iii) a statement that the signing of the acknowledgment of paternity by both parties shall have the same force and effect as an order of filiation entered after a court hearing by a court of competent jurisdiction, including an obligation to provide support for the child except that, only if filed with the registrar of the district in which the birth certificate has been filed, will the acknowledgment have such force and effect with respect to inheritance rights.

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

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

(II) that if such an acknowledgment is not made, the putative father can be held liable for support only if the family court, after a hearing, 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 WITHIN THE EARLIER OF SIXTY DAYS OF THE SIGNATORY'S ATTAINING OF THE AGE OF EIGHTEEN YEARS OR SIXTY DAYS OF THE DATE ON WHICH THE SIGNATORY FIRST APPEARS FOR A JUDICIAL PROCEEDING (INCLUDING, BUT NOT LIMITED TO, A PROCEEDING TO ESTABLISH A SUPPORT ORDER) RELATING TO THE CHILD; PROVIDED, HOWEVER, THAT THE SIGNATORY'S PARENT, GUARDIAN OR ATTORNEY MUST ALSO HAVE BEEN PRESENT AT SUCH JUDICIAL PROCEEDING AND 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 WITHIN THE EARLIER OF SIXTY DAYS OF THE SIGNATORY'S ATTAINING OF THE AGE OF EIGHTEEN YEARS OR SIXTY DAYS OF THE DATE ON WHICH THE SIGNATORY FIRST

APPEARS FOR A JUDICIAL PROCEEDING (INCLUDING, BUT NOT LIMITED TO, A PROCEEDING TO ESTABLISH A SUPPORT ORDER) RELATING TO THE CHILD IN WHICH THE SIGNATORY IS A PARTY; PROVIDED, HOWEVER, THAT A PARENT OR GUARDIAN OR ATTORNEY OF THE SIGNATORY MUST ALSO HAVE BEEN PRESENT AT SUCH JUDICIAL PROCEEDING AND 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.

(E) AFTER the expiration of [sixty days of the execution of the acknowledgment] THE TIME LIMITS SET FORTH IN PARAGRAPHS (C) AND (D) OF THIS SUBDIVISION, [either signator] 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. The acknowledgment shall have full force and effect once so signed. The original or a copy of the [acknowledgement] ACKNOWLEDGMENT shall be filed with the registrar of the district in which the birth certificate has been filed.

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