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:

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

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 If a proceeding is originated by a public welfare official and thereafter withdrawn or dismissed without consideration on the merits, such withdrawal or dismissal shall be without prejudice to other persons.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

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

§ 523. Petition. Proceedings are commenced by the filing of a verified petition, alleging that the person named as respondent, or the petitioner if the petitioner is a person alleging to be the child's father, is **or may be** the father of the child and petitioning the court to issue a summons or a warrant, requiring the respondent to show cause why the court should not enter a declaration of paternity, an order of support, 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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circumstances. The petition shall be in writing and verified by the petitioner. Any such petition for the establishment of paternity or the establishment, modification and/or enforcement of a child support obligation for persons not in receipt of family assistance, which contains a request for child support enforcement services completed in a manner as specified in section one hundred eleven-g of the social services law, shall constitute an application for such services. **In the event that the mother signed an acknowledgement of paternity with a man other than the alleged father, the male signatory to the acknowledgment of paternity is a necessary party and must be named as a respondent.**

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

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

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

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

(a) The court shall advise the parties of their right to one or more genetic marker tests or DNA tests and, on the court's own motion or the motion of any party, shall order the mother, her child [~~and~~]**,** the alleged father**, and, if appropriate, the male signatory to an acknowledgement of paternity** to submit to one or more genetic marker or DNA tests of a type generally acknowledged as reliable by an accreditation body designated by the secretary of the federal department of health and human services and performed by a laboratory approved by such an accreditation body and by the commissioner of health or by a duly qualified physician to aid in the determination of whether the alleged father is or is not the father of the child. 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. The record or report of the results of any such genetic marker or DNA test ordered pursuant to this section or pursuant to section one hundred eleven-k of the social services law shall be received in evidence by the court pursuant to subdivision (e) of rule forty-five hundred eighteen of the civil practice law and rules where no timely objection in writing has been made thereto and that if such timely objections are not made, they shall be deemed waived and shall not be heard by the court. If the record or report of the results of any such genetic marker or DNA test or tests indicate at least a ninety-five percent probability of paternity, the admission of such record or report shall create a rebuttable presumption of paternity, and shall establish, if unrebutted, the paternity of and liability for the support of a child pursuant to this article and article four of this act.

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

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

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