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SENATE BILL 851

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Rod Adair

AN ACT

RELATING TO DOMESTIC AFFAIRS; AMENDING THE UNIFORM PARENTAGE ACT BY ADDING NEW SECTIONS TO REQUIRE GENETIC TESTING FOR NAMED FATHERS OF CHILDREN BORN OUT OF WEDLOCK; PROVIDING FOR A GENETIC TESTING WAIVER ATTACHMENT; PROVIDING FOR EXCEPTIONS TO THE RIGHT TO GENETIC TESTING FOR DETERMINING PATERNITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 24-14-13 NMSA 1978 (being Laws 1961, Chapter 44, Section 13, as amended) is amended to read:

"24-14-13. BIRTH REGISTRATION. - -

A. A certificate of birth for each live birth ~~which~~ that occurs in this state shall be filed with the vital statistics bureau of the public health division of the department or as otherwise directed by the state registrar within ten days after the birth and shall be registered if it

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1 has been completed and filed in accordance with this section.  
2 When a birth, however, occurs on a moving conveyance, a birth  
3 certificate shall be registered in this state and the place  
4 where the child is first removed shall be considered the place  
5 of birth.

6 B. When a birth occurs in an institution, the  
7 person in charge of the institution or his designated  
8 representative shall obtain the personal data, prepare the  
9 certificate of birth, secure the signatures required and file  
10 it as directed in this section. The physician or other person  
11 in attendance shall certify the medical information required by  
12 the certificate of birth within ten working days after the  
13 birth in accordance with policies established by the  
14 institution where the birth occurred. The person in charge of  
15 the institution or his designee shall complete and sign the  
16 certificate of birth.

17 C. When a birth occurs outside an institution, the  
18 certificate of birth shall be prepared and filed by one of the  
19 following in the indicated order of priority:

- 20 (1) the physician in attendance at or  
21 immediately after the birth;  
22 (2) any other person in attendance at or  
23 immediately after the birth [~~or in the absence of this person~~];  
24 or  
25 (3) the father, the mother or, in the absence

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1 of the father and the inability of the mother, the person in  
2 charge of the premises where the birth occurred.

3 D. If the mother was married at the time of either  
4 conception or birth, the name of the husband shall be entered  
5 on the certificate of birth as the father of the child, unless  
6 paternity has been determined pursuant to Subsection F or G of  
7 this section or by a court, in which case the name of the  
8 father as determined by the court shall be entered.

9 E. If the mother ~~[was]~~ is not married at the time  
10 of ~~[either conception or]~~ birth, ~~[but]~~ the named father ~~[has~~  
11 ~~signed an acknowledgment of paternity as provided by this~~  
12 ~~section, the father's name, date of birth and social security~~  
13 ~~number shall be entered on the acknowledgement of paternity]~~  
14 shall submit to a genetic test as provided in Section 40-11-24  
15 NMSA 1978 to determine paternity. The name of the father shall  
16 not be entered on the certificate of birth without the written  
17 consent of the mother and the person to be named as the father,  
18 unless a determination of paternity has been established as  
19 provided in section 40-11-24 NMSA 1978 or made by a court, in  
20 which case the name of the father as determined by the court  
21 shall be entered.

22 F. At or before the birth of a child to an  
23 unmarried woman, the person in charge of the institution, a  
24 designated representative, the attending physician or midwife  
25 shall

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1                   ~~[(1) provide an opportunity for the child's~~  
2 ~~mother and natural father to complete an acknowledgement of~~  
3 ~~paternity. The completed affidavit shall be filed with the~~  
4 ~~vital statistics bureau of the public health division of the~~  
5 ~~department. The acknowledgement shall contain or have attached~~  
6 ~~to it:~~

7                                 ~~(a) a sworn statement by the mother~~  
8 ~~consenting to the assertion of paternity;~~

9                                 ~~(b) a sworn statement by the father that~~  
10 ~~he is the natural father of the child;~~

11                                ~~(c) written information, furnished by~~  
12 ~~the human services department, explaining the implications of~~  
13 ~~signing, including legal parental rights and responsibilities;~~  
14 ~~and~~

15                                ~~(d) the social security numbers of both~~  
16 ~~parents;~~

17                                (2)] provide written information, furnished by  
18 the human services department, to the mother and father or  
19 [putative] named father, regarding the [benefits] requirement  
20 of having the child's paternity established as provided in  
21 Section 40-11-24 NMSA 1978 and of the availability of paternity  
22 establishment services and child support enforcement services.

23                   G. If a married mother claims that her husband is  
24 not the father of the child, the husband agrees that he is not  
25 the father and the putative father agrees that he is the

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1 father, an acknowledgement of paternity may be signed by the  
2 respective parties and duly notarized. Upon filing this  
3 affidavit with the state registrar, the name of the  
4 [~~nonhusband~~] putative father shall be entered on the  
5 certificate of birth as the father.

6 H. Pursuant to an interagency agreement for proper  
7 reimbursement, the vital statistics bureau of the public health  
8 division of the department shall make available to the human  
9 services department the birth certificate, the mother's and  
10 father's social security numbers and paternity  
11 acknowledgements. The human services department shall use  
12 these records only in conjunction with its duties as the state  
13 IV-D agency responsible for the child support program under  
14 Title IV-D of the federal Social Security Act. "

15 Section 2. Section 40-11-1 NMSA 1978 (being Laws 1986,  
16 Chapter 47, Section 1) is amended to read:

17 "40-11-1. SHORT TITLE. -- [~~This act~~] Chapter 40, Article 11  
18 NMSA 1978 may be cited as the "Uniform Parentage Act". "

19 Section 3. Section 40-11-5 NMSA 1978 (being Laws 1986,  
20 Chapter 47, Section 5, as amended) is amended to read:

21 "40-11-5. PRESUMPTION OF PATERNITY. --

22 A. A man [~~is~~] shall be presumed to be the natural  
23 father of a child if:

24 (1) he and the child's natural mother are or  
25 have been married to each other and the child is born during

1 the marriage or within three hundred days after the marriage is  
2 terminated by death, annulment, declaration of invalidity or  
3 dissolution of marriage or after a decree of separation is  
4 entered by a court;

5 (2) before the child's birth, he and the  
6 child's natural mother have attempted to marry each other by a  
7 marriage solemnized in apparent compliance with law, although  
8 the attempted marriage is or could be declared invalid, and:

9 (a) if the attempted marriage could be  
10 declared invalid only by a court, the child is born during the  
11 attempted marriage or within three hundred days after its  
12 termination by death, annulment, declaration of invalidity or  
13 divorce; or

14 (b) if the attempted marriage is invalid  
15 without a court order, the child is born within three hundred  
16 days after the termination of cohabitation;

17 (3) after the child's birth, he and the  
18 child's natural mother have married or attempted to marry each  
19 other by a marriage solemnized in apparent compliance with law,  
20 although the attempted marriage is or could be declared  
21 invalid, and:

22 (a) he has acknowledged his paternity of  
23 the child in writing filed with the vital statistics bureau of  
24 the public health division of the department of health;

25 (b) with his consent, he is named as the

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1 child's father on the child's birth certificate; or

2 (c) he is obligated to support the child  
3 under a written voluntary promise or by court order;

4 (4) except as provided in Section 40-11-24  
5 NMSA 1978, while the child is under the age of majority, he  
6 openly holds out the child as his natural child and has  
7 established a personal, financial or custodial relationship  
8 with the child; or

9 (5) except as provided in Section 40-11-24  
10 NMSA 1978, he acknowledges his paternity of the child pursuant  
11 to Section 24-14-13 NMSA 1978 or in writing filed with the  
12 vital statistics bureau of the public health division of the  
13 department of health, which shall promptly inform the mother of  
14 the filing of the acknowledgment, and, within a reasonable time  
15 after being informed of the filing, she does not dispute the  
16 acknowledgment. In order to enforce the rights of custody or  
17 visitation, a man presumed to be the father as a result of  
18 filing a written acknowledgment shall seek an appropriate  
19 judicial order in an action filed for that purpose. A signed  
20 voluntary acknowledgment of paternity is considered a legal  
21 finding of paternity, subject to the right of any signatory to  
22 rescind the acknowledgment within the earlier of:

23 (a) sixty days from the date of signing;

24 or

25 (b) the date of an administrative or

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1 judicial proceeding relating to the child, including a  
2 proceeding to establish a support order, to which the signatory  
3 is a party. After sixty days from the date of signing, the  
4 acknowledgment may be challenged in court only on the grounds  
5 of fraud, duress or material mistake of fact, with the burden  
6 of proof upon the challenger, although legal responsibilities  
7 arising from signing the acknowledgment may not be suspended  
8 during the challenge, except upon a showing of good cause.  
9 Judicial or administrative proceedings are not required to  
10 ratify an unchallenged acknowledgment.

11 B. If two or more men are presumed under this  
12 section to be the child's father, an acknowledgment by one of  
13 them may be effective only with the written consent of the  
14 other or pursuant to Subsection C of this section.

15 C. A presumption under this section may be rebutted  
16 in an appropriate action only by clear and convincing evidence.  
17 If two or more men are presumed under this section to be the  
18 father of the same child, paternity shall be established as  
19 provided in the Uniform Parentage Act. If the presumption has  
20 been rebutted with respect to one man, paternity of the child  
21 by another man may be determined in the same action if he has  
22 been made a party.

23 D. A man [is] shall be presumed to be the natural  
24 father of a child if, pursuant to blood or genetic tests  
25 properly performed by a qualified person and evaluated by an

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1 expert, including deoxyribonucleic acid (DNA) probe technique  
2 tests under the Uniform Parentage Act, the probability of his  
3 being the father is ninety-nine percent or higher.

4 E. Except as provided in Section 40-11-24 NMSA  
5 1978, the voluntary acknowledgment of paternity [~~must~~] shall be  
6 recognized as a basis for seeking a support order without  
7 requiring any further proceedings to establish paternity.

8 F. Full faith and credit [~~must~~] shall be given to  
9 determination of paternity made by other states, including  
10 acknowledgments of paternity. "

11 Section 4. A new section of the Uniform Parentage Act,  
12 Section 40-11-24 NMSA 1978, is enacted to read:

13 "40-11-24. [NEW MATERIAL] CHILDREN BORN OUT OF WEDLOCK--  
14 GENETIC TESTING REQUIREMENT. --

15 A. A named father of a child born out of wedlock  
16 shall be required to submit to a genetic test as provided in  
17 Section 40-11-12 NMSA 1978 prior to signing an acknowledgment  
18 of paternity form as provided in Section 24-14-13 NMSA 1978.

19 B. The named father's genetic test results shall be  
20 compared to the child's genetic test results to confirm  
21 paternity.

22 C. The acknowledgment of paternity form or a signed  
23 voluntary acknowledgment of paternity shall have no legal  
24 effect if the genetic testing results prove that the named  
25 father of a child born out of wedlock is not the natural father

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1 of the child."

2 Section 5. A new section of the Uniform Parentage Act,  
3 Section 40-11-25 NMSA 1978, is enacted to read:

4 "40-11-25. [NEW MATERIAL] NOTICE OF RIGHT TO GENETIC  
5 TESTING. --

6 A. The acknowledgment of paternity form shall  
7 contain a separate genetic testing waiver attachment that shall  
8 be presented to all presumed fathers of children born in  
9 wedlock. The genetic testing waiver attachment shall clearly  
10 state that the presumed father may have genetic testing  
11 completed to determine paternity. The genetic testing waiver  
12 attachment shall contain an explanation that a presumed father  
13 who signs both the genetic testing waiver attachment and the  
14 acknowledgment of paternity form shall, after two years from  
15 the date of signing both forms, forfeit his right to challenge  
16 paternity.

17 B. If a presumed father of a child born in wedlock  
18 is presented with the acknowledgment of paternity form and a  
19 genetic testing waiver attachment while at the hospital when  
20 the child is born, the person presenting the presumed father  
21 the form and waiver attachment shall, in private, explain the  
22 meaning of the form and waiver attachment to the presumed  
23 father.

24 C. If a presumed father chooses not to sign the  
25 genetic testing waiver attachment, the presumed father may

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1 submit to a genetic test that shall be processed and compared  
2 to the genetic test results of the child. Expenses to complete  
3 the testing shall be paid for by the presumed father.

4 D. An acknowledgment of paternity form shall have  
5 no legal effect for a presumed father of a child born in  
6 wedlock unless the presumed father also signs a genetic testing  
7 waiver attachment. If the results of genetic testing confirm  
8 that the presumed father is the natural father, then a signed  
9 genetic testing waiver attachment shall not be required for the  
10 acknowledgment of paternity form to take effect.

11 E. The provisions of this section shall not apply  
12 when a child born in wedlock has been conceived as a result of  
13 artificial insemination pursuant to the provisions of Section  
14 40-11-6 NMSA 1978 or as a result of other means of assisted  
15 reproductive technology whereby the woman, upon written and  
16 signed consent of her husband, is impregnated with semen  
17 donated by a man not her husband. "

18 Section 6. A new section of the Uniform Parentage Act,  
19 Section 40-11-26 NMSA 1978, is enacted to read:

20 "40-11-26. [NEW MATERIAL] GENETIC TESTING PRIOR TO  
21 ISSUANCE OF CHILD SUPPORT ORDER. --

22 A. Prior to the issuance of a child support order  
23 against a named father of a child born out of wedlock who has  
24 not signed an acknowledgment of paternity form, the court shall  
25 order the named father to submit to genetic testing to

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1 determine paternity. If genetic testing concludes that the  
2 named father is not the biological father of the child, the  
3 court shall not issue a child support order against him.

4 B. A child support order entered against a presumed  
5 father of a child born in wedlock shall provide the presumed  
6 father with a right to have genetic testing completed and the  
7 right shall be clearly explained to the presumed father by the  
8 court. The right shall not apply if:

9 (1) the presumed father's child was born prior  
10 to the effective date of the provisions of this act and the  
11 presumed father has signed, within the last two years, an  
12 acknowledgment of paternity form; or

13 (2) the presumed father's child was born after  
14 the effective date of the provisions of this act and the  
15 presumed father has signed both an acknowledgment of paternity  
16 form and a genetic testing waiver attachment as provided in  
17 Section 40-11-25 NMSA 1978 and two years have passed since the  
18 date the presumed father signed the genetic testing waiver  
19 attachment. "

20 Section 7. A new section of the Uniform Parentage Act,  
21 Section 40-11-27 NMSA 1978, is enacted to read:

22 "40-11-27. [NEW MATERIAL] COSTS.--The department of  
23 health shall work with the appropriate federal agencies to  
24 determine how much of the genetic testing provided for in this  
25 act may be reimbursed pursuant to the existing federal

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government testing reimbursement rules."