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BILL ANALYSIS



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Senate Bills 749, 750, and 751  
Sponsor: Senator Robert Geake  
Committee: Families, Mental Health and Human Services

Date Completed: 11-9-95

**SUMMARY OF SENATE BILLS 749, 750, and 751 as introduced 11-7-95:**

**Senate Bill 749** would create the "Acknowledgment of Parentage Act" to:

- Provide that a child's mother and a man could sign an acknowledgment of parentage form that would establish paternity.
- Require completed forms to be filed with the State Registrar, who would have to review and file them in a central registry.
- Require a form to contain specific notices to the parties, including notice that the acknowledgment would waive genetic testing and a trial to determine paternity.
- Provide that after a mother and father signed an acknowledgment, the mother would be presumed to have custody of the minor child unless otherwise ordered or agreed.
- Require the State Registrar to prepare and approve the form and make it available to the public.
- Provide that a child's mother, a man signing an acknowledgment, a child, or a prosecuting attorney could file a claim for revocation of an acknowledgment.

**Senate Bill 750** would amend the Revised Probate Code to provide that a man would be considered the natural father of a child born out of wedlock, for purposes of intestate succession, if he and the mother signed an acknowledgment of parentage as provided in Senate Bill 749. (Currently, a man and the mother may sign an acknowledgment of paternity, which must be filed with the probate court.)

**Senate Bill 751** would amend the Public Health Code to require hospitals to give unmarried

mothers giving birth an acknowledgment of parentage form and forward completed forms to the State Registrar; require the Department of Public Health (DPH) to develop the form and distribute it free of charge to hospitals; and require an acknowledgment of parentage form to be filed before a birth certificate could contain the name of the father of a child born to an unmarried woman.

All of the bills would take effect on October 1, 1996. Senate Bills 750 and 751 are tie-barred to Senate Bill 749.

**Senate Bill 749**

Acknowledgment of Parentage

If a child were born out of wedlock, a man would be considered to be the natural father of the child if the man joined with the child's mother and acknowledged the child as his child by completing a form that was an acknowledgment of parentage. ("Child" would mean a child conceived and born to a woman who was not married at the time of conception or the date of birth of the child, or a child whom the circuit court determined was born or conceived during a marriage but was not the issue of that marriage.)

An acknowledgment of parentage form would be valid and effective if signed by the mother and father and those signatures were notarized by a notary public authorized by the state in which the acknowledgment was signed. An acknowledgment could be signed any time during the child's lifetime. The mother and father would have to be given a copy of the completed acknowledgment at the time of signing.

An acknowledgment would establish paternity, and could be the basis for court-ordered child support,

custody, or visitation without further adjudication under the Paternity Act. The child would bear the same relationship to the mother and the man signing as the father as a child born or conceived during a marriage and would have the identical status, rights, and duties of a child born in lawful wedlock effective from birth.

#### Filing with the State Registrar

A completed original acknowledgment of parentage would have to be filed with the State Registrar (an individual appointed by the DPH Director to administer the system of vital statistics). Upon receiving an acknowledgment, the State Registrar would have to review the form. If it appeared to be properly completed and notarized, the State Registrar would have to file the acknowledgment in a central registry in the Office of the State Registrar. A filed acknowledgment would have to be maintained as a permanent record in a manner consistent with Section 2876 of the Public Health Code (which requires the DPH to provide for the preservation of vital records and vital statistics made or received by the Department).

The State Registrar would have to issue a copy of an acknowledgment filed in the central registry under the procedures and upon payment of the fee prescribed by the Public Health Code. Upon its filing, a completed acknowledgment form could serve as a basis for preparation of a new birth certificate.

#### Contents and Preparation of Form

An acknowledgment of parentage form would have to include at least all of the following written notices to the parties:

- The acknowledgment of parentage would be a legal, public document.
- Completion of the acknowledgment would be voluntary.
- The mother would have custody of the child unless otherwise determined by the court or agreed by the parties in writing.
- Either parent could assert a claim in court for visitation or custody.
- The parents would have a right to notice and a hearing regarding the child's adoption.
- Both parents would have the responsibility to support the child and to comply with a court or administrative order for the child's support.

The form also would have to include notice that the acknowledgment would waive the following:

- Blood or genetic tests to determine if the man was the child's biological father.
- Any right to an attorney, including the prosecuting attorney or an attorney appointed by the court in the case of indigency, to represent either party in a court action to determine if the man was the child's biological father.
- A trial to determine if the man was the child's biological father.

The State Registrar would have to prepare or approve the form used for acknowledgment of parentage. The form would have to conform as closely as possible to the preceding provisions, Federal requirements, and the needs of other appropriate State agencies. The State Registrar would have to make the form available to the public through the Department of Social Services, prosecuting attorneys, and hospitals as provided in the Public Health Code.

#### Claim for Revocation

The mother or the man who signed the acknowledgment, the child who was the subject of the acknowledgment, or a prosecuting attorney could file a claim for revocation of an acknowledgment of parentage. If filed as an original action, the claim would have to be filed in the circuit court of the county where either the mother or the man resided. If neither of those parties lived in this State, the claim would have to be filed in the county where the child resided. A claim for revocation could be filed as a motion in an existing action for child support, custody, or visitation in the county where the action was, and all provisions in the proposed Act would apply as if it were an original action.

A claim for revocation would have to be supported by an affidavit signed by the claimant setting forth facts that constituted one of the following: mistake of fact; newly discovered evidence that by due diligence could not have been found before the acknowledgment was signed; fraud; misrepresentation or misconduct; or duress in signing the acknowledgment.

If it found that the affidavit was sufficient, the court could order blood or genetic tests at the claimant's expense, or could take other action the court considered appropriate. The party filing the claim

would have the burden of proving, by clear and convincing evidence, that the man was not the father and that, considering the equities of the case, revocation was proper.

The court clerk would have to forward a copy of an order of revocation to the State Registrar. The State Registrar would have to vacate the acknowledgment and could amend the birth certificate as prescribed by the order.

Whether a claim for revocation arose as an original action or as a motion in another action, the prosecuting attorney, an attorney appointed by the county, or an attorney appointed by the court would not be required to represent either party regarding the claim.

#### Other Provisions

After a mother and father signed an acknowledgment of parentage, the mother would be presumed to have custody of the minor child unless otherwise determined by the court or otherwise agreed upon by the parties in writing.

In proceedings under the proposed Act, the court could appoint a next friend or guardian ad litem to represent a minor parent at the court's discretion. A minor parent could sign an acknowledgment of parentage with the same effect as if he or she were of legal age.

Except as otherwise provided by law, a mother and father who signed an acknowledgment that was filed with the State Registrar would be consenting to the general, personal jurisdiction of the courts of record of this State regarding the issues of the support, custody, and visitation of the child.

The proposed Act would not affect the validity of an acknowledgment signed before the Act's effective date. The procedures for determination of a claim for revocation would apply to all acknowledgments, including those signed before the Act's effective date.

#### Senate Bill 750

Under the Revised Probate Code, if a child is born out of wedlock or is born or conceived during a marriage but is not the issue of that marriage, a man is considered to be the natural father of the child for all purposes of intestate succession (without a will) if the man joins with the child's mother and acknowledges that child as his child by

completing and filing an acknowledgment of paternity (or if other conditions are met). The man and mother must sign the acknowledgment in the presence of two witnesses and in the presence of a judge, court clerk, or notary public. The acknowledgment must be filed with the probate court.

The bill would delete these references to an acknowledgment of paternity, and provide that a man would be considered a child's natural father if he or she joined with the child's mother and acknowledged that child as his child by completing an acknowledgment of parentage as prescribed in the proposed Acknowledgment of Parentage Act.

The bill also would delete a requirement that, if the Department of Social Services or the prosecuting attorney provides assistance to parties in executing an acknowledgment of paternity, the Department or prosecutor give the mother and man written information on the parents' rights and responsibilities resulting from the acknowledgment.

In addition, the bill would delete a provision that an acknowledgment of paternity is presumed to establish paternity for all purposes, and may be set aside by the circuit court only if the man is proven not to be the father by clear and convincing evidence.

Currently, a child conceived "following artificial insemination" of a married woman with the consent of her husband must be considered as their child for all purposes of intestate succession. The bill would refer, instead, to a child conceived by a married woman with her husband's consent "following the utilization of assisted reproductive technology".

#### Senate Bill 751

The Public Health Code requires a hospital to give an unmarried mother of a live child born in the hospital a form that may be completed by the mother and father to acknowledge paternity of the child as provided in the Revised Probate Code. The hospital must file the completed acknowledgment of paternity with the probate court of the mother's county of residence, and give the DPH a copy of the acknowledgment. Upon its filing with the probate court, the acknowledgment establishes legal paternity.

The bill provides, instead, that a hospital would have to provide to an unmarried mother of a live

child an acknowledgment of parentage form that could be completed by the child's mother and father to acknowledge paternity of the child as provided in the proposed Acknowledgment of Parentage Act. The hospital would have to forward a completed acknowledgment of parentage to the State Registrar. The bill would continue to require a hospital to give the parents information on the purpose and completion of the form and on the parents' rights and responsibilities, but would delete a description of what that information must include. The DPH would have to develop the acknowledgment of parentage form and distribute it free of charge to hospitals; currently, the Department must develop and distribute free of charge the acknowledgment of paternity form.

Under the Code, if a child's mother was not married at the time of conception or birth, the father's name may not be entered on the birth certificate without the mother's written consent and without the completion, and filing in the probate court, of an acknowledgment of paternity by the mother and the individual to be named as the father. The acknowledgment of paternity must be completed as provided in the Revised Probate Code. The bill provides, instead, that if a child's mother were not married at the time of conception or birth, the father's name could not be entered on the birth certificate without the mother's written consent and without the completion, and filing with the State Registrar, of an acknowledgment of parentage by the mother and the individual to be named as the father. The acknowledgment of parentage would have to be completed as provided in the proposed Acknowledgment of Parentage Act.

The Code requires the State Registrar to establish a new birth certificate for an individual born in this State when the Registrar receives certain items, including a request that a new certificate be established and the evidence required by the DPH proving that the individual has been legitimated or a court determination of the individual's paternity has been made. The bill, instead, would require the State Registrar to issue a new birth certificate upon receiving a request and the evidence required by the Department proving that the individual's paternity had been established.

Currently, upon written request and payment of the prescribed fee, the State Registrar or local registrar must issue a certified copy of a live birth record or a certificate of registration containing certain facts (i.e., the name of the individual to whom the vital record pertains, the nature, date, and place of the event, and the date of filing) to the

individual who is the subject of the live birth record, a parent named in the birth record, an heir, a legal representative or legal guardian of the individual who is the subject of the live birth record, or a court of competent jurisdiction. The bill also would require the State Registrar or local registrar to issue a certified copy of the documentary evidence on file in the Office of the State Registrar that was not sealed under the Code and that served as the basis for a change of a live birth record.

The Code provides that a child born to a married woman as a result of artificial insemination, with consent of her husband, is considered to be the legitimate child of the husband and wife. The bill would refer, instead, to a child conceived by a married woman, with her husband's consent, following the use of assisted reproductive technology.

The bill would amend the Code's definition of "vital record" to include an acknowledgment of parentage.

MCL 700.111 (S.B. 750)  
333.1104 et al. (S.B. 751)

Legislative Analyst: S. Margules

### **FISCAL IMPACT**

#### **Senate Bill 749**

The estimated cost of establishing and maintaining the central registry that would be required under the bill would be approximately \$300,000. It appears that Federal funds would be available through the Department of Social Services to cover at least a portion of the costs of the new registry.

#### **Senate Bills 750 and 751**

The bills would have no fiscal impact on State or local government.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.