

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1366

By: Jones

AS INTRODUCED

An Act relating to public health and safety; amending 10 O.S. 2001, Section 70, as amended by Section 1, Chapter 314, O.S.L. 2002 (10 O.S. Supp. 2002, Section 70), which relates to paternity; modifying process and procedures; updating language; amending 63 O.S. 2001, Sections 1-311.3 and 1-321, which relate to birth certificates; requiring certain affidavits to be filed with the Office of the State Registrar of Vital Statistics; requiring certain information to be given to biological father; making certain information available to certain persons; updating language; requiring certain training; requiring certain facilities to present information to certain persons; providing for immunity; requiring promulgation of rules; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 10 O.S. 2001, Section 70, as amended by Section 1, Chapter 314, O.S.L. 2002 (10 O.S. Supp. 2002, Section 70), is amended to read as follows:

Section 70. A. Except as otherwise provided by law, a woman who gives birth to a child is the natural mother of the child.

B. Paternity may be established by:

1. ~~A notarized written statement of the father and mother~~ An affidavit acknowledging paternity of the father and mother pursuant to Section 1-311.3 of Title 63 of the Oklahoma Statutes. A statement acknowledging paternity shall have the same legal effect as an order of paternity entered in a court or administrative proceeding.

a. The ~~statement~~ acknowledgment of paternity may be rescinded by the mother or acknowledging father within the earlier of:

- (1) sixty (60) days after the ~~statement~~ affidavit is signed by filing a signed rescission of affidavit acknowledging paternity form with the Office of the State Registrar of Vital Statistics, or
- (2) the date of an administrative or judicial proceeding relating to the child, including but not limited to a proceeding to establish a support order, in which the signatory is a party.

After the sixty-day period referred to in division (1) of this subparagraph, a signed ~~voluntary acknowledgment of~~ affidavit acknowledging paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger. Legal responsibilities, including but not limited to child support obligations, of any signatory arising from the acknowledgment shall not be suspended during the challenge, except for good cause shown.

This subparagraph shall not be interpreted to authorize the rescission of an acknowledgement of paternity if such rescission would be prohibited under applicable federal law.

- b. (1) If the mother was married at the time of conception or birth, and her husband is not the natural father of the child, the husband may sign a husband's denial of paternity form, which must be filed along with the affidavit acknowledging paternity.
- (2) The rescission of affidavit acknowledging paternity and the husband's denial of paternity forms shall be prescribed by the Department of Human Services and made available at the same

locations as the affidavit acknowledging paternity provided for in Section 1-311.3 of Title 63 of the Oklahoma Statutes;

2. Scientifically reliable genetic tests, including but not limited to blood tests;

3. District or administrative court order; or

4. As otherwise provided by law.

C. 1. If the person signing the ~~acknowledgment of affidavit~~ acknowledging paternity is determined in an administrative or judicial proceeding not to be the father of the child, on the basis of fraud, duress or material mistake of fact pursuant to subsection B of this section, the Department of Human Services, the Office of Administrative Hearings: Child Support, or the court shall dismiss any pending court or administrative collection proceedings against the father and the father will be released from any court-ordered or Department-ordered payments for the support and maintenance of the child.

2. The State Registrar of Vital Statistics shall remove the name of the person listed as the father from the birth certificate upon notice from the Department that such person has been judicially or administratively determined not to be the father. Once paternity is established, the State Registrar of Vital Statistics shall correct its records and amend the birth certificate to reflect the father's name.

D. 1. Proceedings to establish paternity may be brought in the appropriate district court or through the Department. Proceedings may be brought by the mother, father, guardian, or custodian of the child, the Department, the district attorney, a public or private agency or authority chargeable with the support of the child, or by the child.

2. The court, after determining paternity in a civil action, shall enter an order providing for the support and maintenance of the child.

3. The social security numbers of both parents and the child shall be included on the summary of support order form provided for in Section 120 of Title 43 of the Oklahoma Statutes which shall be submitted to the Central Case Registry as provided for in Section 112A of Title 43 of the Oklahoma Statutes.

4. The district court may further make provision for custody and visitation based upon the best interests of the child.

E. An action to establish paternity shall be available to a child if commenced within one (1) year after the child reaches the age of eighteen (18).

SECTION 2. AMENDATORY 63 O.S. 2001, Section 1-311.3, is amended to read as follows:

Section 1-311.3 A. Unless an adoption decree has been presented~~r~~ and consent to adoption has been given as otherwise provided by law, upon the birth of a child to an unmarried woman, the person required by Section 1-311 of this title to prepare and file a birth certificate shall:

1. Provide written materials and an oral, audio, or video presentation to the child's mother and~~or~~ natural father including, but not limited to, an affidavit acknowledging paternity on a form prescribed by the Department of Human Services. The completed affidavit shall be filed with the ~~local registrar~~ Office of the State Registrar of Vital Statistics. The affidavit shall contain:

- a. a statement by the mother consenting to the assertion of paternity and stating the name of the father,
- b. a statement by the father that he is the natural father of the child,
- c. the social security numbers of both parents, and

- d. other information as the Secretary of Health and Human Services may require;

2. Provide written information, furnished by the Department of Human Services, along with an oral, audio, or video presentation, to the mother and the natural father:

- a. explaining that the completed, ~~notarized~~ affidavit shall be filed with the ~~local registrar~~ Office of the State Registrar of Vital Statistics,
- b. regarding the benefits of having ~~her~~ the child's paternity established and of the availability of paternity establishment services, including but not limited to, a request for support enforcement services, and
- c. explaining the implications of signing the affidavit acknowledging paternity, including but not limited to, parental rights and responsibilities; and

3. Provide the original affidavit acknowledging paternity to the Office of the State Registrar of Vital Statistics. Copies of the original affidavit acknowledging paternity shall be provided to the Department of Human Services Child Support Enforcement Division and to the mother and acknowledged father of the child. The Department of Human Services shall provide access to the affidavits acknowledging paternity via electronic means to the paternity registry created pursuant to Section 7506-1.1 of Title 10 of the Oklahoma Statutes.

B. The Department of Human Services shall make the affidavits acknowledging paternity, the rescission of affidavit acknowledging paternity, ~~and~~ the husband's denial of paternity, and the adult child's consent forms available at each county office of the Department and at the Office of the State Registrar of Vital Statistics ~~and at the office of each local registrar~~.

C. All hospitals and birthing centers in this state shall have at least one staff member trained annually in the Voluntary Paternity Acknowledgment process by the Department of Human Services. Training shall be provided to hospitals and birthing centers by the Department of Human Services.

D. All hospitals and birthing centers shall present to unmarried parents of a child born at the hospital or the center a form documenting that the parents have been presented an opportunity to acknowledge paternity. The form shall be prescribed by the Department of Human Services and provided to all hospitals and birthing centers. Hospitals and birthing centers shall maintain the signed forms for not less than three (3) years.

E. Hospitals and birthing centers shall be immune from civil liability to an individual or agency for acting in accordance with this section.

F. The Department of Human Services may audit the records of a hospital or birthing center to ensure compliance with this section.

G. The Department of Human Services shall promulgate rules as necessary to implement the provisions of this section.

H. Upon receipt by the State Registrar of Vital Statistics of a certified copy of an order or decree of adoption, the State Registrar shall prepare a supplementary birth certificate as directed by Section 7505-6.6 of Title 10 of the Oklahoma Statutes regardless of whether an affidavit acknowledging paternity has been prepared or filed with the Office of the State Registrar of Vital Statistics pursuant to this section.

SECTION 3. AMENDATORY 63 O.S. 2001, Section 1-321, is amended to read as follows:

Section 1-321. ~~(a)~~ A. A certificate or record registered ~~under~~ pursuant to the provisions of this article may be amended only in accordance with the provisions of this article and ~~regulations thereunder adopted~~ rules promulgated by the State Board of Health

pursuant thereto to protect the integrity and accuracy of vital statistics records.

~~(b)~~ A B. Except as otherwise provided in subsection D of this section, a certificate that is amended ~~under~~ pursuant to the provisions of this section shall be marked "amended", ~~except as provided in subsection (d) of this section.~~ The date of amendment and a summary description of the evidence submitted in support of the amendment shall be endorsed on or made a part of the record. The Board shall prescribe by ~~regulation~~ rule the conditions under which additions or minor corrections shall be made to birth certificates within one (1) year after the date of birth without the certificate being considered as amended.

~~(c)~~ C. Upon receipt of a certified copy of a court order changing the name of a person born in this state and upon request of such person or ~~his~~ the parent, guardian, or legal representative of such person, the State Commissioner of Health shall amend the certificate of birth to reflect the new name.

~~(d)~~ D. 1. When a child is born out of wedlock, the Commissioner shall amend a certificate of birth to show paternity, if paternity is not currently shown on the birth certificate, in the following situations:

~~(1)~~ Upon

a. upon request and receipt of a ~~sworn acknowledgment of an affidavit acknowledging~~ paternity of a child born out of wedlock signed by both parents, or

~~(2)~~ Upon

b. upon receipt of a certified copy of a court order establishing paternity.

2. The Commissioner shall, also, change the surname of the child on the certificate to the surname of the father upon:

a. receipt of a notarized written request signed by both parents, or ~~upon~~

b. receipt of a certified copy of a court order directing such name be changed. ~~Such~~

3. The certificate amended pursuant to this subsection shall not be marked "amended".

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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