House Bill 2941

Sponsored by Representative BERGER; Representatives BOQUIST, BROWN, GARRARD, KITTS, KRIEGER, KROPF, WIRTH (at the request of Matt Minahan)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced.**

Permits man to petition court to reopen issue of paternity if blood tests show zero percent probability that man is father of child. Establishes conditions under which court may render judgment of nonpaternity.

1 **A BILL FOR AN ACT**

2 Relating to paternity; creating new provisions; and amending ORS 109.070, 109.073, 109.092, 109.124,

3   109.125, 109.175, 109.326 and 416.443.

4 **Be It Enacted by the People of the State of Oregon:**

5   <u>SECTION 1.</u> **Section 2 of this 2005 Act is added to and made a part of ORS 109.124 to**

6 **109.230.**

7   <u>SECTION 2.</u> **(1) At any time after paternity is established under ORS 109.070 (1), if no**

8 **blood tests, as defined in ORS 109.251, were performed before paternity was established, a**

9 **man who has been ordered to pay child support may petition the court to reopen the issue**

10 **of paternity.**

11   **(2) The petition must contain:**

12   **(a) An affidavit executed by the petitioner stating that the petitioner has discovered new**

13 **evidence since paternity was established; and**

14   **(b) The results of blood tests, administered within 90 days before the petition is filed, that**

15 **show a zero percent probability that the petitioner is the father of the child.**

16   **(3) Upon receipt of a petition, the court may, or on the motion of a party shall, order the**

17 **mother, child and petitioner to submit blood tests as provided in ORS 109.250 to 109.262.**

18   **(4) The provisions of ORS 109.155 apply to a proceeding under this section.**

19   **(5) The court shall make a determination of nonpaternity if the court finds, based on all**

20 **the evidence as provided in ORS 109.258, that the petitioner is not the father of the child and**

21 **the petitioner has shown that:**

22   **(a) The petitioner has not adopted the child;**

23   **(b) The child was not conceived by artificial insemination while the petitioner and the**

24 **mother were married;**

25   **(c) The petitioner has not acted to prevent the father from asserting his parental rights;**

26 **and**

27   **(d) The petitioner, with knowledge that he is not the father, has not:**

28   **(A) Married the mother and voluntarily assumed the duty of supporting the child;**

29   **(B) Been named as the child's father on the child's birth certificate with the petitioner's**

30 **consent;**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1   **(C) Voluntarily entered into a written agreement to support the child; or**

2   **(D) Disregarded or, without good cause, failed to respond to written notice from a child**

3 **support agency or a court ordering the petitioner to submit to blood tests.**

4   **(6)(a) Child support obligations ordered before a petition is filed under this section con-**

5 **tinue until a determination of nonpaternity is made by the court. However, the court may**

6 **order the petitioner to make child support payments to the Division of Child Support and the**

7 **division to hold the payments until a judgment is entered under ORS 18.075.**

8   **(b) If the court renders a judgment of nonpaternity under this section, the court may**

9 **order the division to return the child support payments held by the division to the petitioner**

10 **or to credit the payments against any arrearages owed by the petitioner.**

11   **(7) If the court denies the petition, the court shall award reasonable attorney fees to the**

12 **nonpetitioning parties.**

13   <u>SECTION 3.</u> ORS 109.070 is amended to read:

14   109.070. (1) The paternity of a person may be established as follows:

15   [*(a) The child of a wife cohabiting with her husband who was not impotent or sterile at the time*

16 *of the conception of the child shall be conclusively presumed to be the child of her husband, whether*

17 *or not the marriage of the husband and wife may be void.*]

18   [*(b)*] **(a)** A child born in wedlock, there being no judgment of separation from bed or board, [*shall*

19 *be*] **is** presumed to be the child of the mother's husband, whether or not the marriage of the husband

20 and wife may be void. This [*shall be*] **is** a disputable presumption.

21   [*(c)*] **(b)** By the marriage of the parents of a child after birth of the child.

22   [*(d)*] **(c)** By filiation proceedings.

23   [*(e)*] **(d)** By filing with the State Registrar of the Center for Health Statistics the voluntary ac-

24 knowledgment of paternity form as provided for by ORS 432.287. Except as otherwise provided in

25 subsection (2) of this section, this filing establishes paternity for all purposes.

26   [*(f)*] **(e)** By having established paternity through a voluntary acknowledgment of paternity pro-

27 cess in another state.

28   [*(g)*] **(f)** By paternity being established or declared by other provision of law.

29   (2)(a) A party to a voluntary acknowledgment of paternity may rescind the acknowledgment

30 within the earlier of:

31   (A) Sixty days after filing the voluntary acknowledgment of paternity; or

32   (B) The date of a proceeding relating to the child, including a proceeding to establish a support

33 order, in which the party wishing to rescind the acknowledgment is also a party to the proceeding.

34 For the purposes of this subparagraph, the date of a proceeding is the date on which an order is

35 entered in the proceeding.

36   (b)(A) A signed voluntary acknowledgment of paternity filed in this state may be challenged:

37   (i) At any time after the 60-day period **in a proceeding under section 2 of this 2005 Act or**

38 on the basis of fraud, duress or material mistake of fact. The party bringing the challenge has the

39 burden of proof.

40   (ii) Within one year after the voluntary acknowledgment has been filed[, *unless the provisions*

41 *of paragraph (c) of this subsection apply*]. No challenge to the voluntary acknowledgment may be

42 allowed more than one year after the voluntary acknowledgment has been filed, unless the pro-

43 visions of sub-subparagraph (i) of this subparagraph apply.

44   (B) Legal responsibilities arising from the voluntary acknowledgment of paternity, including

45 child support obligations, may not be suspended during the challenge, except for good cause.

1 [*(c) No later than one year after a voluntary acknowledgment of paternity form is filed in this state*

2 *and if genetic parentage tests have not been previously completed, a party to the acknowledgment or the*

3 *state, if child support enforcement services are being provided under ORS 25.080, may apply to the*

4 *court or to the administrator, as defined in ORS 25.010, for an order requiring that the parties and the*

5 *child submit to genetic parentage tests.*]

6 [*(d) If the results of the tests exclude the male party as a possible father of the child, a party or*

7 *the state, if child support enforcement services are being provided under ORS 25.080, may apply to the*

8 *court for an order of nonpaternity. Upon receipt of an order of nonpaternity, the Director of Human*

9 *Services shall correct any records maintained by the State Registrar of the Center for Health Statistics*

10 *that indicate that the male party is the parent of the child.*]

11 [*(e) The state Child Support Program shall pay any costs for genetic parentage tests subject to re-*

12 *covery from the party who requested the tests.*]

13 **SECTION 4.** ORS 109.125 is amended to read:

14 109.125. (1) Any of the following may initiate proceedings under this section:

15 (a) A mother of a child born out of wedlock or a female pregnant with a child who may be born

16 out of wedlock;

17 (b) The duly appointed and acting guardian of the child, conservator of the child's estate or a

18 guardian ad litem, if the guardian or conservator has the physical custody of the child or is pro-

19 viding support for the child;

20 (c) The administrator**, as defined in ORS 25.010**;

21 (d) A person claiming to be the father of a child born out of wedlock or of an unborn child who

22 may be born out of wedlock; [*or*]

23 **(e) A man denying that he is the father of a child; or**

24 [*(e)*] **(f)** The minor child by a guardian ad litem.

25 (2) Proceedings [*shall be*] **are** initiated by the filing of a duly verified petition of the initiating

26 party. The petition shall contain:

27 (a) If the initiating party is one of those specified in subsection (1)(a) to (c) of this section:

28 (A) The name of the mother of the child born out of wedlock or the female pregnant with a child

29 who may be born out of wedlock;

30 (B) Facts showing the petitioner's status to initiate proceedings;

31 (C) A statement that a respondent is the father;

32 (D) The probable time or period of time during which conception took place; and

33 (E) A statement of the specific relief sought.

34 (b) If the initiating party is a person specified in subsection (1)(d) of this section:

35 (A) The name of the mother of the child born out of wedlock or the female pregnant with a child

36 who may be born out of wedlock;

37 (B) A statement that the initiating party is the father of the child and accepts the same re-

38 sponsibility for the support and education of the child and for all pregnancy-related expenses that

39 he would have if the child were born to him in lawful wedlock;

40 (C) The probable time or period of time during which conception took place; and

41 (D) A statement of the specific relief sought.

42 **(c) If the initiating party is a person specified in subsection (1)(e) of this section:**

43 **(A) The name of the mother of the child or the female pregnant with a child;**

44 **(B) A statement that the initiating party is not the father of the child; and**

45 **(C) A statement of the specific relief sought.**

1 (3) When proceedings are initiated by the administrator, **as defined in ORS 25.010,** the state

2 and the child's mother and putative father are parties.

3 (4) When a proceeding is initiated under this section and the child support rights of one of the

4 parties or of the child at issue have been assigned to the state, **the petitioner shall serve** a true

5 copy of the petition [*shall be served*] by mail or personal delivery on the Administrator of the Divi-

6 sion of Child Support of the Department of Justice or on the branch office providing support services

7 to the county in which the suit is filed.

8 **SECTION 5.** ORS 416.443 is amended to read:

9 416.443. (1) No later than one year after an order establishing paternity is entered under ORS

10 416.440 and if no [*genetic parentage test has*] **blood tests, as defined in ORS 109.251, have** been

11 completed, a party may apply to the administrator to have the issue of paternity reopened. Upon

12 receipt of a timely application, the administrator shall order:

13 (a) The mother and the male party to submit to [*parentage*] **blood** tests; and

14 (b) The person having physical custody of the child to submit the child to a [*parentage*] **blood**

15 test.

16 (2) If a party refuses to comply with an order under subsection (1) of this section, the issue of

17 paternity shall be resolved against that party by an appropriate order of the court upon the motion

18 of the administrator. Support paid before an order is vacated under this section [*shall*] **may** not be

19 returned to the payer.

20 **(3) Notwithstanding subsection (1) of this section, at any time a man may petition a court**

21 **to reopen the issue of paternity under section 2 of this 2005 Act.**

22 **SECTION 6.** ORS 109.073 is amended to read:

23 109.073. Except as otherwise provided in ORS 25.020, the Social Security number of a parent

24 who is subject to a paternity determination pursuant to ORS 109.070 [*(1)(d), (e), (f) or (g)*] **(1)(c), (d),**

25 **(e) or (f)** or 416.400 to 416.470 shall be included in the order, judgment or other declaration estab-

26 lishing paternity.

27 **SECTION 7.** ORS 109.092 is amended to read:

28 109.092. When it is determined that a woman is pregnant with a child, the woman and any man

29 to whom she is not married and with whom she engaged in sexual intercourse at approximately the

30 time of conception have an obligation to recognize that the man may be the other person responsible

31 for the conception. During the months of pregnancy, the man may join the woman in acknowledging

32 paternity and assuming the rights and duties of expectant parenthood. If the man acknowledges

33 paternity of the expected child and the woman denies that he is the father or refuses to join him in

34 acknowledging paternity, the man may seek relief under ORS 109.125. If the woman wants the man

35 to join her in acknowledging his paternity of the expected child and the man denies that he is the

36 father or refuses to join her in acknowledging paternity, the woman may seek relief under ORS

37 109.125. If after the birth of the child the mother decides to surrender the child for adoption and

38 paternity has not been acknowledged as provided in ORS 109.070 [*(1)(e)*] **(1)(d)** or the putative father

39 has not asserted his rights in filiation proceedings, the mother has the right without the consent of

40 the father to surrender the child as provided in ORS 418.270 or to consent to the child's adoption.

41 **SECTION 8.** ORS 109.124 is amended to read:

42 109.124. As used in ORS 109.124 to 109.230, unless the context requires otherwise:

43 (1) "Child attending school" has the meaning given that term in ORS 107.108.

44 (2) "Child born out of wedlock" means a child born to an unmarried woman, or to a married

45 woman by a man other than her husband[*, if the conclusive presumption in ORS 109.070 (1)(a) does*

1 *not apply*].

2 (3) "Respondent" may include, but is not limited to, one or more persons who may be the father

3 of a child born out of wedlock, the husband of a woman who has or may have a child born out of

4 wedlock, the mother of a child born out of wedlock, the female pregnant with a child who may be

5 born out of wedlock, or the duly appointed and acting guardian of the child or conservator of the

6 child's estate.

7 **SECTION 9.** ORS 109.175 is amended to read:

8 109.175. (1) If paternity of a child born out of wedlock is established pursuant to a petition filed

9 under ORS 109.125 or an order or judgment entered pursuant to ORS 109.124 to 109.230 or ORS

10 416.400 to 416.470, or if paternity is established by the filing of a voluntary acknowledgment of

11 paternity as provided by ORS 109.070 [*(1)(e)*] **(1)(d)**, the parent with physical custody at the time of

12 filing of the petition or the notice under ORS 416.415, or the parent with physical custody at the

13 time of the filing of the voluntary acknowledgment of paternity, has sole legal custody until a court

14 specifically orders otherwise. The first time the court determines who should have legal custody,

15 neither parent [*shall have*] **has** the burden of proving a change of circumstances. The court shall

16 give primary consideration to the best interests and welfare of the child and shall consider all the

17 standards set out in ORS 107.137.

18 (2) In any proceeding under this section, the court may cause an investigation, examination or

19 evaluation to be made under ORS 107.425 or may appoint an individual or a panel or may designate

20 a program to assist the court in creating parenting plans or resolving disputes regarding parenting

21 time and to assist parents in creating and implementing parenting plans under ORS 107.425 (3).

22 **SECTION 10.** ORS 109.326 is amended to read:

23 109.326. (1) If the mother of a child was married at the time of the conception or birth of the

24 child, and it has been determined pursuant to ORS 109.070 or judicially determined that her husband

25 at such time or times was not the father of the child, the husband's authorization or waiver may

26 not be required in adoption, juvenile court or other proceedings concerning the custody of the child.

27 (2) If paternity of the child has not been determined, a determination of nonpaternity may be

28 made by any court having adoption, divorce or juvenile court jurisdiction. The testimony or affidavit

29 of the mother or the husband or another person with knowledge of the facts filed in the proceeding

30 shall constitute competent evidence before the court making the determination.

31 (3) Before making the determination of nonpaternity, citation to show cause why [*such*] **the**

32 husband's parental rights should not be terminated [*shall*] **must** be served on him in the manner

33 provided by ORS 109.330 if:

34 (a) There has been a determination by any court [*of competent jurisdiction*] that the husband is

35 the father of the child;

36 (b) The child resided with the husband at any time since the child's birth; or

37 (c) The husband repeatedly has contributed or tried to contribute to the support of the child.

38 (4) There [*shall be*] **is** sufficient proof to enable the court to grant the relief sought without

39 notice to the husband provided that the affidavit of the mother of the child, of the husband or of

40 another person with knowledge of the facts filed in the proceeding states or the court finds from

41 other competent evidence:

42 (a) That the mother of the child was not cohabiting with her husband at the time of conception

43 of the child and that the husband is not the father of the child;

44 (b) That the husband has not been judicially determined to be the father;

45 (c) That the child has not resided with the husband; and

1 (d) That the husband has not contributed or tried to contribute to the support of the child.

2 (5) Notwithstanding the provision of ORS 109.070 [*(1)(b)*] **(1)(a)**, notice to the husband pursuant

3 to ORS 109.330 [*shall not be*] **is not** required and the husband's consent, authorization or waiver

4 [*shall not be*] **is not** required in adoption proceedings concerning the child unless the husband has

5 met the requirements for notice in subsection (3)(a), (b) or (c) of this section.

6 (6) A husband who was not cohabiting with the mother at the time of the child's conception has

7 the primary responsibility to protect the husband's rights.

8 (7) Nothing in this section [*shall*] **may** be used to set aside an act of a permanent nature, in-

9 cluding but not limited to adoption or termination of parental rights, unless the father establishes

10 within one year after the entry of the final judgment or order fraud on the part of the petitioner

11 with respect to the matters specified in subsection (4)(a), (b), (c) or (d) of this section.

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