

ASSEMBLY BILL NO. 498—COMMITTEE ON JUDICIARY

MARCH 22, 2007

Referred to Committee on Judiciary

SUMMARY—Makes various changes to provisions concerning certain actions to determine paternity. (BDR 11-1403)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted-material] is material to be omitted.

AN ACT relating to parentage; creating a conclusive presumption of paternity in certain circumstances; expanding the persons authorized to perform certain tests to determine paternity; clarifying that the results of such tests and any sample or specimen taken may be used only for certain purposes; revising certain provisions concerning voluntary acknowledgments of paternity; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill provides that if the results of a blood test or genetic test establish a probability of the alleged father's paternity of 99 percent or more, the results of such a test create a conclusive presumption of paternity except in certain limited circumstances. (NRS 126.051)

Sections 4 and 12 of this bill amend existing law to provide that a person designated by the Division of Welfare and Supportive Services of the Department of Health and Human Services, the district attorney or the Attorney General is authorized to perform certain tests for the typing of blood or the taking of specimens for genetic identification in paternity cases. (NRS 126.121, 652.210)

Section 4 also clarifies that the results of such tests and any sample or specimen taken may be used only for the purposes specified in chapter 126 of NRS.

Sections 2 and 7-11 of this bill amend existing law to provide that the mother and father of a child may sign a declaration under penalty of perjury, rather than an affidavit which requires the signature of a notary public, for the voluntary acknowledgment of paternity of a child. (NRS 126.053, 440.280, 440.283, 440.287, 440.325, 449.246)



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 126.051 is hereby amended to read as follows:
2 126.051 1. A man is presumed to be the natural father of a
3 child if:

4 (a) He and the child's natural mother are or have been married
5 to each other and the child is born during the marriage, or within
6 285 days after the marriage is terminated by death, annulment,
7 declaration of invalidity or divorce, or after a decree of separation is
8 entered by a court.

9 (b) He and the child's natural mother were cohabiting for at least
10 6 months before the period of conception and continued to cohabit
11 through the period of conception.

12 (c) Before the child's birth, he and the child's natural mother
13 have attempted to marry each other by a marriage solemnized in
14 apparent compliance with law, although the attempted marriage is
15 invalid or could be declared invalid, and:

16 (1) If the attempted marriage could be declared invalid only
17 by a court, the child is born during the attempted marriage, or within
18 285 days after its termination by death, annulment, declaration of
19 invalidity or divorce; or

20 (2) If the attempted marriage is invalid without a court order,
21 the child is born within 285 days after the termination of
22 cohabitation.

23 (d) While the child is under the age of majority, he receives the
24 child into his home and openly holds out the child as his natural
25 child.

26 ~~[(e) Blood]~~

27 2. *A conclusive presumption that a man is the natural father*
28 *of a child is established if tests for the typing of blood* or tests for
29 genetic identification made pursuant to NRS 126.121 show a
30 probability of 99 percent or more that he is the father ~~[]~~ *except that*
31 *the presumption may be rebutted if he establishes that he has an*
32 *identical sibling who may be the father.*

33 ~~[2-]~~ 3. A presumption under ~~[this section]~~ *subsection 1* may be
34 rebutted in an appropriate action only by clear and convincing
35 evidence. If two or more presumptions arise which conflict with
36 each other, the presumption which on the facts is founded on the
37 weightier considerations of policy and logic controls. The
38 presumption is rebutted by a court decree establishing paternity of
39 the child by another man.

40 **Sec. 2.** NRS 126.053 is hereby amended to read as follows:

41 126.053 1. After the expiration of the period described in
42 subsection 2, ~~[an affidavit]~~ *a declaration* for the voluntary



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1 acknowledgment of paternity developed by the State Board of
2 Health pursuant to NRS 440.283 shall be deemed to have the same
3 effect as a judgment or order of a court determining the existence of
4 the relationship of parent and child if the ~~[affidavit]~~ **declaration** is
5 signed in this or any other state by the mother and father of the
6 child. ~~[An—affidavit]~~ **A declaration** for the voluntary
7 acknowledgment of paternity that is signed pursuant to this
8 subsection is not required to be ratified by a court of this State
9 before the ~~[affidavit]~~ **declaration** is deemed to have the same effect
10 as a judgment or order of a court determining the existence of the
11 relationship of parent and child.

12 2. A person who signs an acknowledgment of paternity in this
13 State may rescind the acknowledgment:

14 (a) Within 60 days after the acknowledgment is signed by both
15 persons; or

16 (b) Before the date on which an administrative or judicial
17 proceeding relating to the child begins if that person is a party to the
18 proceeding,

19 ↪ whichever occurs earlier.

20 3. After the expiration of the period during which an
21 acknowledgment may be rescinded pursuant to subsection 2, the
22 acknowledgment may not be challenged except upon the grounds of
23 fraud, duress or material mistake of fact. The burden of proof is on
24 the person challenging the acknowledgment to establish that the
25 acknowledgment was signed because of fraud, duress or material
26 mistake of fact.

27 4. Except upon a showing of good cause, a person's obligation
28 for the support of a child must not be suspended during a hearing to
29 challenge a voluntary acknowledgment of paternity.

30 **Sec. 3.** NRS 126.101 is hereby amended to read as follows:

31 126.101 1. The child must be made a party to the action. If he
32 is a minor, he must be represented by his general guardian or a
33 guardian ad litem appointed by the court. The child's mother or
34 father may not represent the child as guardian or otherwise. If a
35 district attorney brings an action pursuant to NRS 125B.150 and the
36 interests of the child:

37 (a) Are adequately represented by the appointment of the district
38 attorney as his guardian ad litem, the district attorney shall act as
39 guardian ad litem for the child without the need for court
40 appointment.

41 (b) Are not adequately represented by the appointment of the
42 district attorney as his guardian ad litem, the Division of Welfare
43 and Supportive Services of the Department of Health and Human
44 Services must be appointed as guardian ad litem in the case.



2. The natural mother and a man presumed to be the father under NRS 126.051 must be made parties, but if more than one man is presumed to be the natural father, only a man presumed pursuant to subsection 2 *or* 3 of NRS 126.051 is an indispensable party. Any other presumed or alleged father may be made a party.

3. The court may align the parties.

Sec. 4. NRS 126.121 is hereby amended to read as follows:

126.121 1. The court may, and shall upon the motion of a party, order the mother, child, alleged father or any other person so involved to submit to one or more tests for the typing of blood or taking of specimens for genetic identification to be made by *a designated person, by* qualified physicians or *by* other qualified persons, under such restrictions and directions as the court or judge deems proper. Whenever such a test is ordered and made, the results of the test must be received in evidence and must be made available to a judge, master or referee conducting a hearing pursuant to NRS 126.111. *The results of the test and any sample or specimen taken may be used only for the purposes specified in this chapter.* Unless a party files a written objection to the result of a test at least 30 days before the hearing at which the result is to be received in evidence, the result is admissible as evidence of paternity without foundational testimony or other proof of authenticity or accuracy. The order for such a test also may direct that the testimony of the experts and of the persons so examined may be taken by deposition or written interrogatories.

2. If any party refuses to submit to or fails to appear for a test ordered pursuant to subsection 1, the court may presume that the result of the test would be adverse to the interests of that party or may enforce its order if the rights of others and the interests of justice so require.

3. The court, upon reasonable request by a party, shall order that independent tests for determining paternity be performed by other experts or qualified laboratories.

4. In all cases, the court shall determine the number and qualifications of the experts and laboratories.

5. As used in this section:

(a) "Designated person" means a person who is:

(1) Properly trained to take samples or specimens for tests for the typing of blood and genetic identification; and

(2) Designated by an enforcing authority to take such samples or specimens.

(b) "Enforcing authority" means the Division of Welfare and Supportive Services of the Department of Health and Human Services, its designated representative, a district attorney or the Attorney General when acting pursuant to NRS 425.380.



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Sec. 5. NRS 128.150 is hereby amended to read as follows:

128.150 1. If a mother relinquishes or proposes to relinquish for adoption a child who has:

(a) A presumed father ~~[under subsection 1 of]~~ *pursuant to* NRS 126.051;

(b) A father whose relationship to the child has been determined by a court; or

(c) A father as to whom the child is a legitimate child under chapter 126 of NRS, under prior law of this State or under the law of another jurisdiction,

↳ and the father has not consented to the adoption of the child or relinquished the child for adoption, a proceeding must be brought pursuant to this chapter and a determination made of whether a parent and child relationship exists and if so, if it should be terminated.

2. If a mother relinquishes or proposes to relinquish for adoption a child who does not have:

(a) A presumed father ~~[under subsection 1 of]~~ *pursuant to* NRS 126.051;

(b) A father whose relationship to the child has been determined by a court;

(c) A father as to whom the child is a legitimate child under chapter 126 of NRS, under prior law of this State or under the law of another jurisdiction; or

(d) A father who can be identified in any other way,

↳ or if a child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished, or the mother or the person having custody of the child, shall file a petition in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not to exist by a court.

3. In an effort to identify and protect the interests of the natural father, the court which is conducting a proceeding pursuant to this chapter shall cause inquiry to be made of the mother and any other appropriate person. The inquiry must include the following:

(a) Whether the mother was married at the time of conception of the child or at any time thereafter.

(b) Whether the mother was cohabiting with a man at the time of conception or birth of the child.

(c) Whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy.

(d) Whether any man has formally or informally acknowledged or declared his possible paternity of the child.



1 4. If, after the inquiry, the natural father is identified to the
2 satisfaction of the court, or if more than one man is identified as a
3 possible father, each must be given notice of the proceeding in
4 accordance with subsection 6 of this section or with this chapter, as
5 applicable. If any of them fails to appear or, if appearing, fails to
6 claim custodial rights, such failure constitutes abandonment of the
7 child. If the natural father or a man representing himself to be the
8 natural father, claims custodial rights, the court shall proceed to
9 determine custodial rights.

10 5. If, after the inquiry, the court is unable to identify the natural
11 father or any possible natural father and no person has appeared
12 claiming to be the natural father and claiming custodial rights, the
13 court shall enter an order terminating the unknown natural father's
14 parental rights with reference to the child. Subject to the disposition
15 of any appeal, upon the expiration of 6 months after an order
16 terminating parental rights is issued under this subsection, or this
17 chapter, the order cannot be questioned by any person in any
18 manner or upon any ground, including fraud, misrepresentation,
19 failure to give any required notice or lack of jurisdiction of the
20 parties or of the subject matter.

21 6. Notice of the proceeding must be given to every person
22 identified as the natural father or a possible natural father in the
23 manner provided by law and the Nevada Rules of Civil Procedure
24 for the service of process in a civil action, or in any manner the
25 court directs. Proof of giving the notice must be filed with the court
26 before the petition is heard.

27 **Sec. 6.** NRS 425.345 is hereby amended to read as follows:

28 425.345 To the extent they are not inconsistent with the
29 provisions of this chapter, the provisions of chapters 31A, 125B and
30 126 of NRS apply to ~~if a hearing held~~ *any action taken* pursuant to
31 the provisions of this chapter.

32 **Sec. 7.** NRS 440.280 is hereby amended to read as follows:

33 440.280 1. If a birth occurs in a hospital or the mother and
34 child are immediately transported to a hospital, the person in charge
35 of the hospital or his designated representative shall obtain the
36 necessary information, prepare a birth certificate, secure the
37 signatures required by the certificate and file it within 10 days with
38 the health officer of the registration district where the birth occurred.
39 The physician in attendance shall provide the medical information
40 required by the certificate and certify to the fact of birth within 72
41 hours after the birth. If the physician does not certify to the fact of
42 birth within the required 72 hours, the person in charge of the
43 hospital or his designated representative shall complete and sign the
44 certification.



2. If a birth occurs outside a hospital and the mother and child are not immediately transported to a hospital, the birth certificate must be prepared and filed by one of the following persons in the following order of priority:

(a) The physician in attendance at or immediately after the birth.

(b) Any other person in attendance at or immediately after the birth.

(c) The father, mother or, if the father is absent and the mother is incapacitated, the person in charge of the premises where the birth occurred.

3. If a birth occurs in a moving conveyance, the place of birth is the place where the child is removed from the conveyance.

4. In cities, the certificate of birth must be filed sooner than 10 days after the birth if so required by municipal ordinance or regulation.

5. If the mother was:

(a) Married at the time of birth, the name of her husband must be entered on the certificate as the father of the child unless:

(1) A court has issued an order establishing that a person other than the mother's husband is the father of the child; or

(2) The mother and a person other than the mother's husband have signed ~~[an-affidavit]~~ *a declaration* for the voluntary acknowledgment of paternity developed by the Board pursuant to NRS 440.283.

(b) Widowed at the time of birth but married at the time of conception, the name of her husband at the time of conception must be entered on the certificate as the father of the child unless:

(1) A court has issued an order establishing that a person other than the mother's husband at the time of conception is the father of the child; or

(2) The mother and a person other than the mother's husband at the time of conception have signed ~~[an-affidavit]~~ *a declaration* for the voluntary acknowledgment of paternity developed by the Board pursuant to NRS 440.283.

6. If the mother was unmarried at the time of birth, the name of the father may be entered on the original certificate of birth only if:

(a) The provisions of paragraph (b) of subsection 5 are applicable;

(b) A court has issued an order establishing that the person is the father of the child; or

(c) The mother and father of the child have signed ~~[an-affidavit]~~ *a declaration* for the voluntary acknowledgment of paternity developed by the Board pursuant to NRS 440.283. If both the father and mother execute ~~[an-affidavit]~~ *a declaration* consenting to the use of the surname of the father as the surname of the child, the



1 name of the father must be entered on the original certificate of birth
2 and the surname of the father must be entered thereon as the
3 surname of the child.

4 7. An order entered or ~~[an affidavit]~~ *a declaration* executed
5 pursuant to subsection 6 must be submitted to the local health
6 officer, his authorized representative, or the attending physician or
7 midwife before a proper certificate of birth is forwarded to the State
8 Registrar. The order or ~~[affidavit]~~ *declaration* must then be
9 delivered to the State Registrar for filing. The State Registrar's file
10 of orders and ~~[affidavits]~~ *declarations* must be sealed and the
11 contents of the file may be examined only upon order of a court of
12 competent jurisdiction or at the request of the father or mother or the
13 Division of Welfare and Supportive Services of the Department of
14 Health and Human Services as necessary to carry out the provisions
15 of 42 U.S.C. § 654a. The local health officer shall complete the
16 original certificate of birth in accordance with subsection 6 and
17 other provisions of this chapter.

18 8. As used in this section, "court" has the meaning ascribed to
19 it in NRS 125B.004.

20 **Sec. 8.** NRS 440.283 is hereby amended to read as follows:

21 440.283 1. The Board shall:

22 (a) Develop ~~[an affidavit]~~ *a declaration to be signed under*
23 *penalty of perjury* for the voluntary acknowledgment of paternity in
24 this State that complies with the requirements prescribed by the
25 Secretary of Health and Human Services pursuant to 42 U.S.C. §
26 652(a); and

27 (b) Distribute the ~~[affidavits]~~ *declarations* to:

28 (1) Each hospital or obstetric center in this State; and

29 (2) Any other entity authorized to provide services relating to
30 the voluntary acknowledgment of paternity pursuant to the
31 regulations adopted by the Secretary of Health and Human Services
32 pursuant to 42 U.S.C. § 666(a)(5)(C).

33 2. Subject to the provisions of subsection 3, the State Registrar
34 of Vital Statistics and the entities described in paragraph (b) of
35 subsection 1 shall offer to provide services relating to the voluntary
36 acknowledgment of paternity in the manner prescribed in the
37 regulations adopted by the Secretary of Health and Human Services
38 pursuant to 42 U.S.C. § 666(a)(5)(C).

39 3. Before providing ~~[an affidavit]~~ *a declaration* for the
40 acknowledgment of paternity to the mother of a child or a person
41 who wishes to acknowledge the paternity of the child, the agencies
42 described in paragraph (b) of subsection 1 shall ensure that the
43 mother and the person who wishes to acknowledge paternity are
44 given notice, orally and in writing, of the rights, responsibilities and



1 legal consequences of, and the alternatives to, signing the ~~[affidavit]~~
2 **declaration** for the acknowledgment of paternity.

3 **Sec. 9.** NRS 440.287 is hereby amended to read as follows:

4 440.287 1. If a mother or a person who has signed ~~[an~~
5 ~~affidavit]~~ **a declaration** for the voluntary acknowledgment of
6 paternity with the mother rescinds the acknowledgment pursuant to
7 subsection 2 of NRS 126.053, the State Registrar shall not issue a
8 new certificate of birth to remove the name of the person who
9 originally acknowledged paternity unless a court issues an order
10 establishing that the person who acknowledged paternity is not the
11 father of the child.

12 2. As used in this section, "court" has the meaning ascribed to
13 it in NRS 125B.004.

14 **Sec. 10.** NRS 440.325 is hereby amended to read as follows:

15 440.325 1. In the case of the paternity of a child being
16 established by the:

17 (a) Mother and father acknowledging paternity of a child by
18 signing ~~[an—affidavit]~~ **a declaration** for the voluntary
19 acknowledgment of paternity developed by the Board pursuant to
20 NRS 440.283; or

21 (b) Order of a district court,
22 ➔ the State Registrar, upon the receipt of the ~~[affidavit]~~ **declaration**
23 or court order, shall prepare a new certificate of birth in the name of
24 the child as shown in the ~~[affidavit]~~ **declaration** or order with no
25 reference to the fact of legitimation.

26 2. The new certificate must be identical with the certificate
27 registered for the birth of a child born in wedlock.

28 3. Except as otherwise provided in subsection 4, the evidence
29 upon which the new certificate was made and the original certificate
30 must be sealed and filed and may be opened only upon the order of
31 a court of competent jurisdiction.

32 4. The State Registrar shall, upon the request of the Division of
33 Welfare and Supportive Services of the Department of Health and
34 Human Services, open a file that has been sealed pursuant to
35 subsection 3 to allow the Division to compare the information
36 contained in the ~~[affidavit]~~ **declaration** or order upon which the new
37 certificate was made with the information maintained pursuant to 42
38 U.S.C. § 654a.

39 **Sec. 11.** NRS 449.246 is hereby amended to read as follows:

40 449.246 1. Before discharging an unmarried woman who has
41 borne a child, a hospital or obstetric center shall provide to the
42 child's mother and father:

43 (a) The opportunity to sign, in the hospital, ~~[an—affidavit]~~ **a**
44 **declaration** for the voluntary acknowledgment of paternity
45 developed pursuant to NRS 440.283;



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- (b) Written materials about establishing paternity;
- (c) The forms necessary to acknowledge paternity voluntarily;
- (d) A written description of the rights and responsibilities of acknowledging paternity; and
- (e) The opportunity to speak by telephone with personnel of the program for enforcement of child support who are trained to clarify information and answer questions about the establishment of paternity.

2. The Administrator of the Division of Welfare and Supportive Services of the Department of Health and Human Services shall adopt the regulations necessary to ensure that the services provided by a hospital or obstetric center pursuant to this section are in compliance with the regulations adopted by the Secretary of Health and Human Services pursuant to 42 U.S.C. § 666(a)(5)(C).

Sec. 12. NRS 652.210 is hereby amended to read as follows:

652.210 ~~{No}~~

1. Except as otherwise provided in subsection 2 and NRS 126.121, no person other than a licensed physician, a licensed optometrist, a licensed practical nurse, a registered nurse, a licensed physician assistant, a certified osteopathic physician's assistant, a certified intermediate emergency medical technician, a certified advanced emergency medical technician, a practitioner of respiratory care licensed pursuant to chapter 630 of NRS or a licensed dentist may manipulate a person for the collection of specimens. ~~{, except that}~~

2. The technical personnel of a laboratory may collect blood, remove stomach contents, perform certain diagnostic skin tests or field blood tests or collect material for smears and cultures.

