



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB4008

Introduced 2/26/2009, by Rep. Paul D. Froehlich

#### SYNOPSIS AS INTRODUCED:

305 ILCS 5/10-17.7

410 ILCS 535/12

750 ILCS 45/11

from Ch. 111 1/2, par. 73-12

from Ch. 40, par. 2511

Amends the Illinois Public Aid Code, the Vital Records Act, and the Illinois Parentage Act of 1984. Provides that the Department of Healthcare and Family Services' form for voluntary acknowledgement of paternity in connection with child support collection shall be the same form prepared by the Department and distributed to county clerks and registrars under the Vital Records Act. Provides that an acknowledgement of paternity and denial of paternity form shall include a statement informing the mother, the alleged father, and the presumed father, if any, that they have the right to request DNA tests regarding the issue of the child's paternity and that by signing the form, they expressly waive such tests. Requires that the statement on the acknowledgement and denial of paternity form concerning the right to request DNA tests be set forth in bold-face capital letters not less than 0.25 inches in height. Provides that in an action brought under the Illinois Parentage Act of 1984 to determine the existence of the father and child relationship or to declare the non-existence of the parent and child relationship, the court or Administrative Hearing Officer in an Expedited Child Support System shall, prior to the entry of a judgment in the case, advise the respondent who appears of the right to request an order that the parties and the child submit to DNA tests to determine inherited characteristics; provides that the advisement shall be noted in the record. Effective immediately.

LRB096 10628 KTG 20800 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning children.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Public Aid Code is amended by  
5 changing Section 10-17.7 as follows:

6 (305 ILCS 5/10-17.7)

7 Sec. 10-17.7. Administrative determination of paternity.  
8 The Illinois Department may provide by rule for the  
9 administrative determination of paternity by the Child and  
10 Spouse Support Unit in cases involving applicants for or  
11 recipients of financial aid under Article IV of this Act and  
12 other persons who are given access to the child support  
13 enforcement services of this Article as provided in Section  
14 10-1, including persons similarly situated and receiving  
15 similar services in other states. The rules shall extend to  
16 cases in which the mother and alleged father voluntarily  
17 acknowledge paternity in the form required by the Illinois  
18 Department or agree to be bound by the results of genetic  
19 testing or in which the alleged father has failed to respond to  
20 a notification of support obligation issued under Section 10-4  
21 and to cases of contested paternity. The Illinois Department's  
22 form for voluntary acknowledgement of paternity shall be the  
23 same form prepared by the Illinois Department for use under the

1 requirements of Section 12 of the Vital Records Act. Any  
2 presumption provided for under the Illinois Parentage Act of  
3 1984 shall apply to cases in which paternity is determined  
4 under the rules of the Illinois Department. The rules shall  
5 provide for notice and an opportunity to be heard by the  
6 responsible relative and the person receiving child support  
7 enforcement services under this Article if paternity is not  
8 voluntarily acknowledged, and any final administrative  
9 decision rendered by the Illinois Department shall be reviewed  
10 only under and in accordance with the Administrative Review  
11 Law. Determinations of paternity made by the Illinois  
12 Department under the rules authorized by this Section shall  
13 have the full force and effect of a court judgment of paternity  
14 entered under the Illinois Parentage Act of 1984.

15 In determining paternity in contested cases, the Illinois  
16 Department shall conduct the evidentiary hearing in accordance  
17 with Section 11 of the Parentage Act of 1984, except that  
18 references in that Section to "the court" shall be deemed to  
19 mean the Illinois Department's hearing officer in cases in  
20 which paternity is determined administratively by the Illinois  
21 Department.

22 Notwithstanding any other provision of this Article, a  
23 default determination of paternity may be made if service of  
24 the notice under Section 10-4 was made by publication under the  
25 rules for administrative paternity determination authorized by  
26 this Section. The rules as they pertain to service by

1 publication shall (i) be based on the provisions of Section  
2 2-206 and 2-207 of the Code of Civil Procedure, (ii) provide  
3 for service by publication in cases in which the whereabouts of  
4 the alleged father are unknown after diligent location efforts  
5 by the Child and Spouse Support Unit, and (iii) provide for  
6 publication of a notice of default paternity determination in  
7 the same manner that the notice under Section 10-4 was  
8 published.

9 The Illinois Department may implement this Section through  
10 the use of emergency rules in accordance with Section 5-45 of  
11 the Illinois Administrative Procedure Act. For purposes of the  
12 Illinois Administrative Procedure Act, the adoption of rules to  
13 implement this Section shall be considered an emergency and  
14 necessary for the public interest, safety, and welfare.

15 (Source: P.A. 92-590, eff. 7-1-02.)

16 Section 10. The Vital Records Act is amended by changing  
17 Section 12 as follows:

18 (410 ILCS 535/12) (from Ch. 111 1/2, par. 73-12)

19 Sec. 12. Live births; place of registration.

20 (1) Each live birth which occurs in this State shall be  
21 registered with the local or subregistrar of the district in  
22 which the birth occurred as provided in this Section, within 7  
23 days after the birth. When a birth occurs on a moving  
24 conveyance, the city, village, township, or road district in

1 which the child is first removed from the conveyance shall be  
2 considered the place of birth and a birth certificate shall be  
3 filed in the registration district in which the place is  
4 located.

5 (2) When a birth occurs in an institution, the person in  
6 charge of the institution or his designated representative  
7 shall obtain and record all the personal and statistical  
8 particulars relative to the parents of the child that are  
9 required to properly complete the live birth certificate; shall  
10 secure the required personal signatures on the hospital  
11 worksheet; shall prepare the certificate from this worksheet;  
12 and shall file the certificate with the local registrar. The  
13 institution shall retain the hospital worksheet permanently or  
14 as otherwise specified by rule. The physician in attendance  
15 shall verify or provide the date of birth and medical  
16 information required by the certificate, within 24 hours after  
17 the birth occurs.

18 (3) When a birth occurs outside an institution, the  
19 certificate shall be prepared and filed by one of the following  
20 in the indicated order of priority:

21 (a) The physician in attendance at or immediately after  
22 the birth, or in the absence of such a person,

23 (b) Any other person in attendance at or immediately  
24 after the birth, or in the absence of such a person,

25 (c) The father, the mother, or in the absence of the  
26 father and the inability of the mother, the person in

1 charge of the premises where the birth occurred.

2 (4) Unless otherwise provided in this Act, if the mother  
3 was not married to the father of the child at either the time  
4 of conception or the time of birth, the name of the father  
5 shall be entered on the child's birth certificate only if the  
6 mother and the person to be named as the father have signed an  
7 acknowledgment of parentage in accordance with subsection (5).

8 Unless otherwise provided in this Act, if the mother was  
9 married at the time of conception or birth and the presumed  
10 father (that is, the mother's husband) is not the biological  
11 father of the child, the name of the biological father shall be  
12 entered on the child's birth certificate only if, in accordance  
13 with subsection (5), (i) the mother and the person to be named  
14 as the father have signed an acknowledgment of parentage and  
15 (ii) the mother and presumed father have signed a denial of  
16 paternity.

17 (5) Upon the birth of a child to an unmarried woman, or  
18 upon the birth of a child to a woman who was married at the time  
19 of conception or birth and whose husband is not the biological  
20 father of the child, the institution at the time of birth and  
21 the local registrar or county clerk after the birth shall do  
22 the following:

23 (a) Provide (i) an opportunity for the child's mother  
24 and father to sign an acknowledgment of parentage and (ii)  
25 if the presumed father is not the biological father, an  
26 opportunity for the mother and presumed father to sign a

1 denial of paternity. The signing and witnessing of the  
2 acknowledgment of parentage or, if the presumed father of  
3 the child is not the biological father, the acknowledgment  
4 of parentage and denial of paternity conclusively  
5 establishes a parent and child relationship in accordance  
6 with Sections 5 and 6 of the Illinois Parentage Act of  
7 1984.

8 The Department of Healthcare and Family Services shall  
9 furnish the acknowledgment of parentage and denial of  
10 paternity form to institutions, county clerks, and State  
11 and local registrars' offices. The form shall include  
12 instructions to send the original signed and witnessed  
13 acknowledgment of parentage and denial of paternity to the  
14 Department of Healthcare and Family Services. The  
15 acknowledgement of paternity and denial of paternity form  
16 shall also include a statement informing the mother, the  
17 alleged father, and the presumed father, if any, that they  
18 have the right to request deoxyribonucleic acid (DNA) tests  
19 regarding the issue of the child's paternity and that by  
20 signing the form, they expressly waive such tests. The  
21 statement shall be set forth in bold-face capital letters  
22 not less than 0.25 inches in height.

23 (b) Provide the following documents, furnished by the  
24 Department of Healthcare and Family Services, to the  
25 child's mother, biological father, and (if the person  
26 presumed to be the child's father is not the biological

1 father) presumed father for their review at the time the  
2 opportunity is provided to establish a parent and child  
3 relationship:

4 (i) An explanation of the implications of,  
5 alternatives to, legal consequences of, and the rights  
6 and responsibilities that arise from signing an  
7 acknowledgment of parentage and, if necessary, a  
8 denial of paternity, including an explanation of the  
9 parental rights and responsibilities of child support,  
10 visitation, custody, retroactive support, health  
11 insurance coverage, and payment of birth expenses.

12 (ii) An explanation of the benefits of having a  
13 child's parentage established and the availability of  
14 parentage establishment and child support enforcement  
15 services.

16 (iii) A request for an application for child  
17 support enforcement services from the Department of  
18 Healthcare and Family Services.

19 (iv) Instructions concerning the opportunity to  
20 speak, either by telephone or in person, with staff of  
21 the Department of Healthcare and Family Services who  
22 are trained to clarify information and answer  
23 questions about paternity establishment.

24 (v) Instructions for completing and signing the  
25 acknowledgment of parentage and denial of paternity.

26 (c) Provide an oral explanation of the documents and



1 instructions set forth in subdivision (5)(b), including an  
2 explanation of the implications of, alternatives to, legal  
3 consequences of, and the rights and responsibilities that  
4 arise from signing an acknowledgment of parentage and, if  
5 necessary, a denial of paternity. The oral explanation may  
6 be given in person or through the use of video or audio  
7 equipment.

8 (6) The institution, State or local registrar, or county  
9 clerk shall provide an opportunity for the child's father or  
10 mother to sign a rescission of parentage. The signing and  
11 witnessing of the rescission of parentage voids the  
12 acknowledgment of parentage and nullifies the presumption of  
13 paternity if executed and filed with the Department of  
14 Healthcare and Family Services (formerly Illinois Department  
15 of Public Aid) within the time frame contained in Section 5 of  
16 the Illinois Parentage Act of 1984. The Department of  
17 Healthcare and Family Services shall furnish the rescission of  
18 parentage form to institutions, county clerks, and State and  
19 local registrars' offices. The form shall include instructions  
20 to send the original signed and witnessed rescission of  
21 parentage to the Department of Healthcare and Family Services.

22 (7) An acknowledgment of paternity signed pursuant to  
23 Section 6 of the Illinois Parentage Act of 1984 may be  
24 challenged in court only on the basis of fraud, duress, or  
25 material mistake of fact, with the burden of proof upon the  
26 challenging party. Pending outcome of a challenge to the

1 acknowledgment of paternity, the legal responsibilities of the  
2 signatories shall remain in full force and effect, except upon  
3 order of the court upon a showing of good cause.

4 (8) When the process for acknowledgment of parentage as  
5 provided for under subsection (5) establishes the paternity of  
6 a child whose certificate of birth is on file in another state,  
7 the Department of Healthcare and Family Services shall forward  
8 a copy of the acknowledgment of parentage, the denial of  
9 paternity, if applicable, and the rescission of parentage, if  
10 applicable, to the birth record agency of the state where the  
11 child's certificate of birth is on file.

12 (9) In the event the parent-child relationship has been  
13 established in accordance with subdivision (a)(1) of Section 6  
14 of the Parentage Act of 1984, the names of the biological  
15 mother and biological father so established shall be entered on  
16 the child's birth certificate, and the names of the surrogate  
17 mother and surrogate mother's husband, if any, shall not be on  
18 the birth certificate.

19 (Source: P.A. 95-331, eff. 8-21-07.)

20 Section 15. The Illinois Parentage Act of 1984 is amended  
21 by changing Sections 11 as follows:

22 (750 ILCS 45/11) (from Ch. 40, par. 2511)

23 Sec. 11. Tests to determine inherited characteristics.

24 (a) In any action brought under Section 7 to determine the

1 existence of the father and child relationship or to declare  
2 the non-existence of the parent and child relationship, the  
3 court or Administrative Hearing Officer in an Expedited Child  
4 Support System shall, prior to the entry of a judgment in the  
5 case, advise the respondent who appears of the right to request  
6 an order that the parties and the child submit to  
7 deoxyribonucleic acid (DNA) tests to determine inherited  
8 characteristics. The advisement shall be noted in the record.

9 As soon as practicable, the court or Administrative Hearing  
10 Officer in an Expedited Child Support System may, and upon  
11 request of a party shall, order or direct the mother, child and  
12 alleged father to submit to deoxyribonucleic acid (DNA) tests  
13 to determine inherited characteristics. If any party refuses to  
14 submit to the tests, the court may resolve the question of  
15 paternity against that party or enforce its order if the rights  
16 of others and the interests of justice so require.

17 (b) The tests shall be conducted by an expert qualified as  
18 an examiner of blood or tissue types and appointed by the  
19 court. The expert shall determine the testing procedures.  
20 However, any interested party, for good cause shown, in advance  
21 of the scheduled tests, may request a hearing to object to the  
22 qualifications of the expert or the testing procedures. The  
23 expert appointed by the court shall testify at the pre-test  
24 hearing at the expense of the party requesting the hearing,  
25 except as provided in subsection (h) of this Section for an  
26 indigent party. An expert not appointed by the court shall

1 testify at the pre-test hearing at the expense of the party  
2 retaining the expert. Inquiry into an expert's qualifications  
3 at the pre-test hearing shall not affect either parties' right  
4 to have the expert qualified at trial.

5 (c) The expert shall prepare a written report of the test  
6 results. If the test results show that the alleged father is  
7 not excluded, the report shall contain a combined paternity  
8 index relating to the probability of paternity. The expert may  
9 be called by the court as a witness to testify to his or her  
10 findings and, if called, shall be subject to cross-examination  
11 by the parties. If the test results show that the alleged  
12 father is not excluded, any party may demand that other  
13 experts, qualified as examiners of blood or tissue types,  
14 perform independent tests under order of court, including, but  
15 not limited to, blood types or other tests of genetic markers  
16 such as those found by Human Leucocyte Antigen (HLA) tests. The  
17 results of the tests may be offered into evidence. The number  
18 and qualifications of the experts shall be determined by the  
19 court.

20 (d) Documentation of the chain of custody of the blood or  
21 tissue samples, accompanied by an affidavit or certification in  
22 accordance with Section 1-109 of the Code of Civil Procedure,  
23 is competent evidence to establish the chain of custody.

24 (e) The report of the test results prepared by the  
25 appointed expert shall be made by affidavit or by certification  
26 as provided in Section 1-109 of the Code of Civil Procedure and

1 shall be mailed to all parties. A proof of service shall be  
2 filed with the court. The verified report shall be admitted  
3 into evidence at trial without foundation testimony or other  
4 proof of authenticity or accuracy, unless a written motion  
5 challenging the admissibility of the report is filed by either  
6 party within 28 days of receipt of the report, in which case  
7 expert testimony shall be required. A party may not file such a  
8 motion challenging the admissibility of the report later than  
9 28 days before commencement of trial. Before trial, the court  
10 shall determine whether the motion is sufficient to deny  
11 admission of the report by verification. Failure to make that  
12 timely motion constitutes a waiver of the right to object to  
13 admission by verification and shall not be grounds for a  
14 continuance of the hearing to determine paternity.

15 (f) Tests taken pursuant to this Section shall have the  
16 following effect:

17 (1) If the court finds that the conclusion of the  
18 expert or experts, as disclosed by the evidence based upon  
19 the tests, is that the alleged father is not the parent of  
20 the child, the question of paternity shall be resolved  
21 accordingly.

22 (2) If the experts disagree in their findings or  
23 conclusions, the question shall be weighed with other  
24 competent evidence of paternity.

25 (3) If the tests show that the alleged father is not  
26 excluded and that the combined paternity index is less than

1           500 to 1, this evidence shall be admitted by the court and  
2           shall be weighed with other competent evidence of  
3           paternity.

4           (4) If the tests show that the alleged father is not  
5           excluded and that the combined paternity index is at least  
6           500 to 1, the alleged father is presumed to be the father,  
7           and this evidence shall be admitted. This presumption may  
8           be rebutted by clear and convincing evidence.

9           (g) Any presumption of parentage as set forth in Section 5  
10          of this Act is rebutted if the court finds that the conclusion  
11          of the expert or experts excludes paternity of the presumed  
12          father.

13          (h) The expense of the tests shall be paid by the party who  
14          requests the tests. Where the tests are requested by the party  
15          seeking to establish paternity and that party is found to be  
16          indigent by the court, the expense shall be paid by the public  
17          agency providing representation; except that where a public  
18          agency is not providing representation, the expense shall be  
19          paid by the county in which the action is brought. Where the  
20          tests are ordered by the court on its own motion or are  
21          requested by the alleged or presumed father and that father is  
22          found to be indigent by the court, the expense shall be paid by  
23          the county in which the action is brought. Any part of the  
24          expense may be taxed as costs in the action, except that no  
25          costs may be taxed against a public agency that has not  
26          requested the tests.

1           (i) The compensation of each expert witness appointed by  
2 the court shall be paid as provided in subsection (h) of this  
3 Section. Any part of the payment may be taxed as costs in the  
4 action, except that no costs may be taxed against a public  
5 agency that has not requested the services of the expert  
6 witness.

7           (j) Nothing in this Section shall prevent any party from  
8 obtaining tests of his or her own blood or tissue independent  
9 of those ordered by the court or from presenting expert  
10 testimony interpreting those tests or any other blood tests  
11 ordered pursuant to this Section. Reports of all the  
12 independent tests, accompanied by affidavit or certification  
13 pursuant to Section 1-109 of the Code of Civil Procedure, and  
14 notice of any expert witnesses to be called to testify to the  
15 results of those tests shall be submitted to all parties at  
16 least 30 days before any hearing set to determine the issue of  
17 parentage.

18           (Source: P.A. 87-428; 87-435; 88-353; 88-687, eff. 1-24-95.)

19           Section 99. Effective date. This Act takes effect upon  
20 becoming law.