



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

SB2606

Introduced 1/21/2010, by Sen. Kwame Raoul

#### SYNOPSIS AS INTRODUCED:

750 ILCS 45/11

from Ch. 40, par. 2511

Amends the Illinois Parentage Act of 1984. Provides how the lab shall determine the databases to use in calculating the probability of paternity based on the ethnic or racial group of an individual. Provides that if the genetic testing does not identify the father, additional testing may be required. Provides that if the alleged father is not excluded by the testing, the report shall contain statistics (instead of contain a combined paternity index relating to the probability of paternity) based upon a prescribed statistical formula. Provides that if the test shows that the alleged father is not excluded, any party may demand that other qualified experts perform tests using blood types or other tests of genetic markers (instead of genetic markers found by Human Leucocyte Antigen (HLA) tests). Provides that if the tests show that the alleged father is not excluded and that there is at least a 99.9 percent probability of paternity (instead of and that the combined paternity index is less than 500 to 1), the alleged father is presumed to be the father, and this evidence shall be admitted (instead of admitted and weighed with other competent evidence). Provides that a man identified as the father may rebut the DNA test results by other genetic testing that satisfies the Act which exclude the man as the father or identifies another man as the possible father (instead of any parentage presumption is rebutted if the court finds that the conclusion of an expert excludes paternity). Provides that if more than one man is identified as the possible father, the court shall order each identified person to submit to DNA testing. Provides that the test expenses shall be paid by the party requesting the tests, except that the court may apportion the costs between the parties, upon request (instead of paid by the party requesting the test).

LRB096 15539 AJ0 30769 b

1 AN ACT concerning civil law.

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

4 Section 5. The Illinois Parentage Act of 1984 is amended by  
5 changing Section 11 as follows:

6 (750 ILCS 45/11) (from Ch. 40, par. 2511)

7 Sec. 11. Tests to determine inherited characteristics.

8 (a) In any action brought under Section 7 to determine the  
9 existence of the father and child relationship or to declare  
10 the non-existence of the parent and child relationship, the  
11 court or Administrative Hearing Officer in an Expedited Child  
12 Support System shall, prior to the entry of a judgment in the  
13 case, advise the respondent who appears of the right to request  
14 an order that the parties and the child submit to  
15 deoxyribonucleic acid (DNA) tests to determine inherited  
16 characteristics. The advisement shall be noted in the record.  
17 As soon as practicable, the court or Administrative Hearing  
18 Officer in an Expedited Child Support System may, and upon  
19 request of a party shall, order or direct the mother, child and  
20 alleged father to submit to deoxyribonucleic acid (DNA) tests  
21 to determine inherited characteristics. If any party refuses to  
22 submit to the tests, the court may resolve the question of  
23 paternity against that party or enforce its order if the rights

1 of others and the interests of justice so require.

2 (b) The tests shall be conducted by an expert qualified as  
3 an examiner of blood or tissue types and appointed by the  
4 court. The expert shall determine the testing procedures.  
5 However, any interested party, for good cause shown, in advance  
6 of the scheduled tests, may request a hearing to object to the  
7 qualifications of the expert or the testing procedures. The  
8 expert appointed by the court shall testify at the pre-test  
9 hearing at the expense of the party requesting the hearing,  
10 except as provided in subsection (h) of this Section for an  
11 indigent party. An expert not appointed by the court shall  
12 testify at the pre-test hearing at the expense of the party  
13 retaining the expert. Inquiry into an expert's qualifications  
14 at the pre-test hearing shall not affect either parties' right  
15 to have the expert qualified at trial.

16 (b-1) Genetic testing must be of a type reasonably relied  
17 upon by experts in the field of genetic testing and performed  
18 in a testing laboratory accredited by the American Association  
19 of Blood Banks, or a successor to its functions.

20 (b-2) A specimen used in genetic testing may consist of one  
21 or more samples, or a combination of samples, of blood, buccal  
22 cells, bone, hair, or other body tissue or fluid.

23 (b-3) The testing laboratory shall determine the databases  
24 from which to select frequencies for use in calculation of the  
25 probability of paternity based on the ethnic or racial group of  
26 an individual. If there is disagreement as to the testing

1 laboratory's choice, the following procedures apply:

2 (1) The individual objecting may require the testing  
3 laboratory, within 30 days after receipt of the report of  
4 the test, to recalculate the probability of paternity using  
5 an ethnic or racial group different from that used by the  
6 laboratory.

7 (2) The individual objecting to the testing  
8 laboratory's initial choice shall:

9 (A) if the frequencies are not available to the  
10 testing laboratory for the ethnic or racial group  
11 requested, provide the requested frequencies compiled  
12 in a manner recognized by accrediting bodies; or

13 (B) engage another testing laboratory to perform  
14 the calculations.

15 (b-4) If, after recalculation using a different ethnic or  
16 racial group, genetic testing does not rebuttably identify a  
17 man as the father of a child, an individual who has been tested  
18 may be required to submit to additional genetic testing.

19 (c) The expert shall prepare a written report of the test  
20 results. If the test results show that the alleged father is  
21 not excluded, the report shall contain statistics based upon  
22 the statistical formula of Combined Paternity Index (CPI) and  
23 the Probability of Paternity as determined by the probability  
24 of exclusion (Random Man Not Excluded = RMNE) ~~a combined~~  
25 paternity index relating to the probability of paternity. The  
26 expert may be called by the court as a witness to testify to

1 his or her findings and, if called, shall be subject to  
2 cross-examination by the parties. If the test results show that  
3 the alleged father is not excluded, any party may demand that  
4 other experts, qualified as examiners of blood or tissue types,  
5 perform independent tests under order of court, including, but  
6 not limited to, blood types or other tests of genetic markers  
7 ~~such as those found by Human Leucocyte Antigen (HLA) tests~~. The  
8 results of the tests may be offered into evidence. The number  
9 and qualifications of the experts shall be determined by the  
10 court.

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

15 (e) The report of the test results prepared by the  
16 appointed expert shall be made by affidavit or by certification  
17 as provided in Section 1-109 of the Code of Civil Procedure and  
18 shall be mailed to all parties. A proof of service shall be  
19 filed with the court. The verified report shall be admitted  
20 into evidence at trial without foundation testimony or other  
21 proof of authenticity or accuracy, unless a written motion  
22 challenging the admissibility of the report is filed by either  
23 party within 28 days of receipt of the report, in which case  
24 expert testimony shall be required. A party may not file such a  
25 motion challenging the admissibility of the report later than  
26 28 days before commencement of trial. Before trial, the court

1 shall determine whether the motion is sufficient to deny  
2 admission of the report by verification. Failure to make that  
3 timely motion constitutes a waiver of the right to object to  
4 admission by verification and shall not be grounds for a  
5 continuance of the hearing to determine paternity.

6 (f) Tests taken pursuant to this Section shall have the  
7 following effect:

8 (1) If the court finds that the conclusion of the  
9 expert or experts, as disclosed by the evidence based upon  
10 the tests, is that the alleged father is not the parent of  
11 the child, the question of paternity shall be resolved  
12 accordingly.

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

16 (3) If the tests show that the alleged father is not  
17 excluded and that the combined paternity index is at least  
18 1,000 to 1, and there is at least a 99.9 percent  
19 probability of paternity, the alleged father is presumed to  
20 be the father, and this evidence shall be admitted ~~less~~  
21 than 500 to 1, this evidence shall be admitted by the court  
22 and shall be weighed with other competent evidence of  
23 paternity.

24 (4) A man identified under paragraph (3) of subsection  
25 (f) as the father of the child may rebut the genetic  
26 testing results by other genetic testing satisfying the

1           requirements of this Act which:

2                   (A) excludes the man as a genetic father of the  
3                   child; or

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

11                   (5) Except as otherwise provided in this Act, if more  
12                   than one man is identified by genetic testing as the  
13                   possible father of the child, the court shall order them to  
14                   submit to further genetic testing to identify the genetic  
15                   father.

16                   (g) (Blank). ~~Any presumption of parentage as set forth in~~  
17                   ~~Section 5 of this Act is rebutted if the court finds that the~~  
18                   ~~conclusion of the expert or experts excludes paternity of the~~  
19                   ~~presumed father.~~

20                   (h) The expense of the tests shall be paid by the party who  
21                   requests the tests, except that the court may apportion the  
22                   costs between the parties, upon request. Where the tests are  
23                   requested by the party seeking to establish paternity and that  
24                   party is found to be indigent by the court, the expense shall  
25                   be paid by the public agency providing representation; except  
26                   that where a public agency is not providing representation, the

1 expense shall be paid by the county in which the action is  
2 brought. Where the tests are ordered by the court on its own  
3 motion or are requested by the alleged or presumed father and  
4 that father is found to be indigent by the court, the expense  
5 shall be paid by the county in which the action is brought. Any  
6 part of the expense may be taxed as costs in the action, except  
7 that no costs may be taxed against a public agency that has not  
8 requested the tests.

9 (i) The compensation of each expert witness appointed by  
10 the court shall be paid as provided in subsection (h) of this  
11 Section. Any part of the payment may be taxed as costs in the  
12 action, except that no costs may be taxed against a public  
13 agency that has not requested the services of the expert  
14 witness.

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

26 (Source: P.A. 96-333, eff. 8-11-09; 96-474, eff. 8-14-09.)