

House Bill 2811

Sponsored by Representative BERGER; Representative THATCHER (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**.

Establishes right of man claiming to be father of child born out of wedlock to challenge presumption or voluntary acknowledgment of paternity.

Requires court to order blood tests if child's birth occurred within 300 days after sexual relations.

Mandates minimum visitation of one weekend per month if blood tests prove man to be biological father of child.

A BILL FOR AN ACT

1
2 Relating to paternity; creating new provisions; and amending ORS 109.070.

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

4 **SECTION 1.** ORS 109.070 is amended to read:

5 109.070. (1) The paternity of a person may be established as follows:

6 (a) A man is rebuttably presumed to be the father of a child born to a woman if he and the
7 woman were married to each other at the time of the child's birth, without a judgment of separation,
8 regardless of whether the marriage is void.

9 (b) A man is rebuttably presumed to be the father of a child born to a woman if he and the
10 woman were married to each other and the child is born within 300 days after the marriage is ter-
11 minated by death, annulment or dissolution or after entry of a judgment of separation.

12 (c) By the marriage of the parents of a child after the birth of the child, and the parents filing
13 with the State Registrar of the Center for Health Statistics the voluntary acknowledgment of
14 paternity form as provided for by ORS 432.287.

15 (d) By filiation proceedings.

16 (e) By filing with the State Registrar of the Center for Health Statistics the voluntary ac-
17 knowledgment of paternity form as provided for by ORS 432.287. Except as otherwise provided in
18 subsections (4) to (7) of this section, this filing establishes paternity for all purposes.

19 (f) By having established paternity through a voluntary acknowledgment of paternity process in
20 another state.

21 (g) By paternity being established or declared by other provision of law.

22 (2)(a) The paternity of a child established under subsection (1)(a), (b) or (c) of this section may
23 be challenged in an action or proceeding by the husband or **the wife, or by a man claiming to be**
24 **the father of a child born out of wedlock if the child's birth took place within 300 days after**
25 **the man and the wife last had sexual relations with each other.** [*The paternity may not be*
26 *challenged by a person other than the husband or wife as long as the husband and wife are married*
27 *and cohabiting, unless the husband and wife consent to the challenge.*]

28 (b) **If blood tests have not been completed, the court shall order the parties to a chal-**
29 **lenge brought under paragraph (a) of this subsection and the child to submit to blood tests.**

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 **The court shall order the party challenging paternity to pay the costs of the blood tests.**

2 (c) **If the blood tests ordered under paragraph (b) of this subsection result in a cumula-**
 3 **tive paternity index of 99 or greater indicating that the husband is not the biological father**
 4 **of the child, the court shall enter judgment that the presumption of paternity has been re-**
 5 **butted and that paternity is disestablished in the husband.**

6 (d) **If the blood tests ordered under paragraph (b) of this subsection result in a cumula-**
 7 **tive paternity index of 99 or greater indicating that a man, other than a husband, bringing**
 8 **the challenge under paragraph (a) of this subsection is the biological father of the child, the**
 9 **court shall enter judgment that the presumption of paternity has been rebutted, that**
 10 **paternity is disestablished in the husband and that paternity is established in the man who**
 11 **brought the challenge. The court shall determine all appropriate relief to be granted, in-**
 12 **cluding but not limited to custody, parenting time and child support. The court shall order**
 13 **parenting time of at least one weekend per month between the man and the child.**

14 (3) **Except as provided in subsection (2) of this section,** if the court finds that it is just and
 15 equitable, giving consideration to the interests of the parties and the child, the court shall admit
 16 evidence offered to rebut the presumption of paternity in subsection (1)(a) or (b) of this section.

17 (4)(a) A party to a voluntary acknowledgment of paternity may rescind the acknowledgment
 18 within the earlier of:

19 (A) Sixty days after filing the acknowledgment; or

20 (B) The date of a proceeding relating to the child, including a proceeding to establish a support
 21 order, in which the party wishing to rescind the acknowledgment is also a party. For the purposes
 22 of this subparagraph, the date of a proceeding is the date on which an order is entered in the pro-
 23 ceeding.

24 (b) To rescind the acknowledgment, the party shall sign and file with the State Registrar of the
 25 Center for Health Statistics a written document declaring the rescission.

26 (5)(a) A signed voluntary acknowledgment of paternity filed in this state may be challenged and
 27 set aside in circuit court at any time after the 60-day period referred to in subsection (4) of this
 28 section on the basis of fraud, duress or a material mistake of fact.

29 (b) The challenge may be brought by:

30 (A) A party to the acknowledgment;

31 (B) The child named in the acknowledgment; [or]

32 (C) **A man claiming to be the father of a child born out of wedlock, if the child's birth**
 33 **took place within 300 days after the man and the wife last had sexual relations with each**
 34 **other; or**

35 [(C)] (D) The Department of Human Services or the administrator, as defined in ORS 25.010, if
 36 the child named in the acknowledgment is in the care and custody of the department under ORS
 37 chapter 419B and the department or the administrator reasonably believes that the acknowledgment
 38 was signed because of fraud, duress or a material mistake of fact.

39 (c) The challenge shall be initiated by filing a petition with the circuit court. Unless otherwise
 40 specifically provided by law, the challenge shall be conducted pursuant to the Oregon Rules of Civil
 41 Procedure.

42 (d) The party bringing the challenge has the burden of proof.

43 (e) Legal responsibilities arising from the acknowledgment, including child support obligations,
 44 may not be suspended during the challenge, except for good cause.

45 (f) **If blood tests have not been completed, the court shall order the parties to a challenge**

1 **brought under paragraph (a) of this subsection and the child to submit to blood tests. The**
 2 **court shall order the party challenging the acknowledgment to pay the costs of the blood**
 3 **tests.**

4 [(f)] (g) If the court finds by a preponderance of the evidence that the acknowledgment was
 5 signed because of fraud, duress or material mistake of fact, the court shall set aside the acknowl-
 6 edgment unless, giving consideration to the interests of the parties and the child, the court finds
 7 that setting aside the acknowledgment would be substantially inequitable. **Notwithstanding such**
 8 **a finding, if blood tests have been completed that result in a cumulative paternity index of**
 9 **99 or greater indicating that a man described in paragraph (b)(C) of this subsection is the**
 10 **biological father of the child, the court shall enter an order allowing for visitation between**
 11 **the man and the child of at least one weekend a month.**

12 (6) Within one year after a voluntary acknowledgment of paternity form is filed in this state and
 13 if blood tests[, *as defined in ORS 109.251,*] have not been completed, a party to the acknowledgment,
 14 or the department if the child named in the acknowledgment is in the care and custody of the de-
 15 partment under ORS chapter 419B, may apply to the administrator for an order for blood tests in
 16 accordance with ORS 416.443.

17 (7)(a) A voluntary acknowledgment of paternity is not valid if, before the party signed the ac-
 18 knowledgment:

19 (A) The party signed a consent to the adoption of the child by another individual;

20 (B) The party signed a document relinquishing the child to a public or private child-caring
 21 agency;

22 (C) The party's parental rights were terminated by a court; or

23 (D) In an adjudication, the party was determined not to be the biological parent of the child.

24 (b) Notwithstanding any provision of subsection (1)(c) or (e) of this section or ORS 432.287 to
 25 the contrary, an acknowledgment signed by a party described in this subsection and filed with the
 26 State Registrar of the Center for Health Statistics does not establish paternity and is void.

27 **(8) As used in this section:**

28 **(a) "Blood tests" has the meaning given that term in ORS 109.251.**

29 **(b) "Child born out of wedlock" has the meaning given that term in ORS 109.124.**

30 **SECTION 2. The amendments to ORS 109.070 by section 1 of this 2009 Act apply to de-**
 31 **terminations of paternity for children born before, on or after the effective date of this 2009**
 32 **Act.**