

HOUSE BILL No. 2651

By Committee on Judiciary

Requested by Representative Kessler

2-3

AN ACT concerning children and minors; relating to acknowledgment and claims of paternity; authorizing a challenge to a voluntary acknowledgment of paternity at any time after acknowledgment in cases of fraud, duress or mistake of fact; specifying that certain genetic testing results are considered a material mistake of fact; amending K.S.A. 23-2204 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 23-2204 is hereby amended to read as follows: 23-2204. (a) *The father of a child born to an unmarried mother may complete an acknowledgment of paternity that shall include the consent of such mother and the written descriptions required by subsection (b).*

(b) The state registrar of vital statistics, in conjunction with the secretary for children and families, shall review and, as needed, revise the acknowledgment of paternity forms for use under K.S.A. 23-2223 and ~~K.S.A. 65-2409a~~, and amendments thereto. The acknowledgment of paternity forms shall include or have attached a written description ~~pursuant to subsection (b)~~ of the rights and responsibilities of acknowledging paternity.

~~(b) A Such written description of the rights and responsibilities of acknowledging paternity shall state the following:~~

(1) An acknowledgment of paternity creates a permanent father and child relationship ~~which~~ that can only be ended by court order. A person who wants to revoke the acknowledgment of paternity ~~must~~ shall file the request with the court ~~before the child is one year old, unless the person was under age 18 when the acknowledgment of paternity was signed. A person under age 18 years of age when the acknowledgment was signed has until one year after his or her 18th birthday to file a request, but if the child is more than one year old then, the judge will~~ shall first consider the child's best interests. ~~The person will have to show that the acknowledgment was based on fraud, duress (threat) or an important mistake of fact, unless the request is filed within A person over 18 years of age when the acknowledgment was signed has until 60 days of after signing the acknowledgment or before any court hearing about the child prior to the date of any administrative or judicial proceeding relating to~~

1 *the child to establish a support order, whichever is earlier, to file a request.*
2 *After these deadlines, the person will have to show that the*
3 *acknowledgment was based on fraud, duress or a material mistake of fact*
4 *and the judge shall first consider the child's best interests;*

5 (2) both the father and the mother are responsible for the care and
6 support of the child. If necessary, this duty may be enforced through legal
7 action such as a child support order, an order to pay birth or other medical
8 expenses of the child or an order to repay government assistance payments
9 for the child's care. A parent's willful failure to support the parent's child is
10 a crime;

11 (3) both the father and the mother have rights of custody and
12 parenting time with the child unless a court order changes their rights.
13 Custody, residency and parenting time may be spelled out in a court order
14 and enforced;

15 (4) both the father and the mother have the right to consent to medical
16 treatment for the child unless a court order changes those rights;

17 (5) the child may inherit from the father and the father's family or
18 from the mother and the mother's family. The child may receive public
19 benefits, including, but not limited to, social security or private benefits,
20 including, but not limited to, insurance or workers compensation because
21 of the father-child or mother-child relationship;

22 (6) the father or the mother may be entitled to claim the child as a
23 dependent for tax or other purposes. The father or the mother may inherit
24 from the child or the child's descendants; and

25 (7) each parent has the right to sign or not sign an acknowledgment of
26 paternity. Each parent has the right to talk with an attorney before signing
27 an acknowledgment of paternity. Each parent has the right to be
28 represented by an attorney in any legal action involving paternity or their
29 rights or duties as a parent. Usually, each person is responsible for hiring
30 the person's own attorney.

31 (c) Any duty to disclose rights or responsibilities related to signing an
32 acknowledgment of paternity shall have been met by furnishing the written
33 disclosures of subsection (b). Any duty to disclose orally the rights or
34 responsibilities related to signing an acknowledgment of paternity may be
35 met by means of an audio recording of the disclosures of subsection (b).

36 (d) An acknowledgment of paternity completed *prior to July 1, 1994*,
37 without the written disclosures of subsection (b) is not invalid solely for
38 that reason and may create a presumption of paternity pursuant to K.S.A.
39 23-2208, and amendments thereto. Nothing in K.S.A. 23-2202 through 23-
40 2204, and amendments thereto, shall decrease the validity, force or effect
41 of an acknowledgment of paternity executed in this state prior to ~~the~~
42 ~~effective date of this act~~ *July 1, 1994*.

43 (e) Upon request, the state registrar of vital statistics shall provide a

1 certified copy of the acknowledgment of paternity to an office providing
2 IV-D program services.

3 *(f) An acknowledgment of paternity described in subsection (a)*
4 *creates a permanent father and child relationship without the requirement*
5 *of further adjudication.*

6 *(g) (1) Except as provided in subsection (h), a signed and witnessed*
7 *voluntary acknowledgment of paternity described in subsection (a) shall*
8 *be considered a legal finding of paternity subject to the right of any*
9 *signatory to revoke the acknowledgment within the earlier of the*
10 *following:*

11 *(A) 60 days after signing; or*

12 *(B) prior to the date of any administrative or judicial proceeding*
13 *relating to the child to establish a support order.*

14 *(2) After the deadline to revoke an acknowledgment of paternity*
15 *pursuant to paragraph (1) or subsection (h), such acknowledgment may be*
16 *challenged only on the basis of fraud, duress or material mistake of fact.*
17 *For purposes of this section, genetic test results that exclude a signatory*
18 *father or that rebuttably identifies another man as the father in*
19 *accordance with K.S.A. 23-2208, and amendments thereto, shall be*
20 *considered a material mistake of fact. Notwithstanding any other provision*
21 *of law, a person seeking to revoke an acknowledgment of paternity on the*
22 *basis of fraud, duress or material mistake of fact may file such request in*
23 *an appropriate district court after the fraud, duress or material mistake of*
24 *fact becomes known to such person. Such person shall have the burden of*
25 *proving the fraud, duress or material mistake of fact and the court shall*
26 *first consider the child's best interests before revoking an acknowledgment*
27 *of paternity.*

28 *(3) The provisions of this subsection shall be construed and applied*
29 *retroactively.*

30 *(h) A person who was under 18 years of age when such person signed*
31 *an acknowledgment of paternity may challenge such acknowledgment*
32 *until such person turns 19 years of age. If the child is more than one year*
33 *of age at the time of such challenge, the court shall first consider the*
34 *child's best interests before revoking such acknowledgment of paternity.*

35 Sec. 2. K.S.A. 23-2204 is hereby repealed.

36 Sec. 3. This act shall take effect and be in force from and after its
37 publication in the statute book.