

HOUSE BILL No. 2651

By Committee on Judiciary

Requested by Representative Kessler

2-3

1 AN ACT concerning children and minors; relating to acknowledgment and  
2 claims of paternity; authorizing a challenge to a voluntary  
3 acknowledgment of paternity ~~at any time after acknowledgment in~~  
4 ~~eases as soon as practicable after discovery~~ of fraud, duress or  
5 mistake of fact; specifying that certain genetic testing results ~~are~~  
6 ~~considered~~ **shall constitute a change of circumstances that**  
7 **warrants a court finding of material mistake of fact; {providing for**  
8 **recovery of actual damages in exceptional circumstances;}**  
9 amending K.S.A. 23-2204 **and 23-2209** and repealing the existing  
10 ~~section sections.~~

11  
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 23-2204 is hereby amended to read as follows: 23-  
14 2204. (a) *The father of a child born to an unmarried mother may complete*  
15 *an acknowledgment of paternity that shall include the consent of such*  
16 *mother and the written descriptions required by subsection (b).*

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

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

26 (1) An acknowledgment of paternity creates a permanent father and  
27 child relationship ~~which~~ *that* can only be ended by court order. A person  
28 who wants to revoke the acknowledgment of paternity ~~must~~ *shall* file the  
29 request with the court ~~before the child is one year old, unless the person~~  
30 ~~was under age 18 when the acknowledgment of paternity was signed.~~ A  
31 person ~~under age 18~~ *years of age* when the acknowledgment was signed  
32 has until one year after his or her 18<sup>th</sup> birthday to file a request, but if the  
33 child is more than one year old then, the judge ~~will~~ *shall* first consider the

1 child's best interests. ~~The person will have to show that the~~  
2 ~~acknowledgment was based on fraud, duress (threat) or an important~~  
3 ~~mistake of fact, unless the request is filed within~~ *A person over 18 years of*  
4 *age when the acknowledgment was signed has until 60 days* ~~of~~ *after*  
5 *signing the acknowledgment or* ~~before any court hearing about the child~~  
6 *prior to the date of any administrative or judicial proceeding relating to*  
7 *the child to establish a support order, whichever is earlier, to file a request.*  
8 *After these deadlines, the person will have to show that the*  
9 *acknowledgment was based on fraud, duress or a material mistake of fact*  
10 *and the judge shall first consider the child's best interests;*

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

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

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

23 (5) the child may inherit from the father and the father's family or  
24 from the mother and the mother's family. The child may receive public  
25 benefits, including, but not limited to, social security or private benefits,  
26 including, but not limited to, insurance or workers compensation because  
27 of the father-child or mother-child relationship;

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

31 (7) each parent has the right to sign or not sign an acknowledgment of  
32 paternity. Each parent has the right to talk with an attorney before signing  
33 an acknowledgment of paternity. Each parent has the right to be  
34 represented by an attorney in any legal action involving paternity or their  
35 rights or duties as a parent. Usually, each person is responsible for hiring  
36 the person's own attorney.

37 (c) Any duty to disclose rights or responsibilities related to signing an  
38 acknowledgment of paternity shall have been met by furnishing the written  
39 disclosures of subsection (b). Any duty to disclose orally the rights or  
40 responsibilities related to signing an acknowledgment of paternity may be  
41 met by means of an audio recording of the disclosures of subsection (b).

42 (d) An acknowledgment of paternity completed *prior to July 1, 1994,*  
43 without the written disclosures of subsection (b) is not invalid solely for

1 that reason and may create a presumption of paternity pursuant to K.S.A.  
2 23-2208, and amendments thereto. Nothing in K.S.A. 23-2202 through 23-  
3 2204, and amendments thereto, shall decrease the validity, force or effect  
4 of an acknowledgment of paternity executed in this state prior to ~~the~~  
5 ~~effective date of this act~~ July 1, 1994.

6 (e) Upon request, the state registrar of vital statistics shall provide a  
7 certified copy of the acknowledgment of paternity to an office providing  
8 IV-D program services.

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

12 ~~(g) (1) Except as provided in subsection (h), a signed and witnessed~~  
13 ~~voluntary acknowledgment of paternity described in subsection (a) shall~~  
14 ~~be considered a legal finding of paternity subject to the right of any~~  
15 ~~signatory to revoke the acknowledgment within the earlier of the~~  
16 ~~following:~~

17 ~~(A) 60 days after signing; or~~

18 ~~(B) prior to the date of any administrative or judicial proceeding~~  
19 ~~relating to the child to establish a support order.~~

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

34 ~~(3) The provisions of this subsection shall be construed and applied~~  
35 ~~retroactively.~~

36 ~~(h) A person who was under 18 years of age when such person signed~~  
37 ~~an acknowledgment of paternity may challenge such acknowledgment~~  
38 ~~until such person turns 19 years of age. If the child is more than one year~~  
39 ~~of age at the time of such challenge, the court shall first consider the~~  
40 ~~child's best interests before revoking such acknowledgment of paternity.~~

41 **Sec. 2. K.S.A. 23-2209 is hereby amended to read as follows: 23-**  
42 **2209. (a) A child or any person on behalf of such a child, may bring an**  
43 **action:**

1       **(1) At any time to determine the existence of a father and child**  
2 **relationship presumed under K.S.A. 23-2208, and amendments**  
3 **thereto; or**

4       **(2) at any time until three years after the child reaches the age of**  
5 **majority to determine the existence of a father and child relationship**  
6 **which is not presumed under K.S.A. 23-2208, and amendments**  
7 **thereto.**

8       **(b) When authorized under K.S.A. 39-755 or 39-756, and**  
9 **amendments thereto, the secretary for children and families may**  
10 **bring an action at any time during a child's minority to determine the**  
11 **existence of the father and child relationship.**

12       **(c) This section does not extend the time within which a right of**  
13 **inheritance or a right to a succession may be asserted beyond the time**  
14 **provided by law relating to the probate of estates or determination of**  
15 **heirship.**

16       **(d) Any agreement between an alleged or presumed father and**  
17 **the mother or child does not bar an action under this section.**

18       ~~(e) Except as otherwise provided in this subsection, if an~~  
19 ~~acknowledgment of paternity pursuant to K.S.A. 23-2204, and~~  
20 ~~amendments thereto, has been completed the man named as the father, the~~  
21 ~~mother or the child may bring an action to revoke the acknowledgment of~~  
22 ~~paternity at any time until one year after the child's date of birth(1) Except~~  
23 ~~as provided in paragraph (2), a signed and witnessed voluntary~~  
24 ~~acknowledgment of paternity pursuant to K.S.A. 23-2204, and~~  
25 ~~amendments thereto, shall be considered a legal finding of paternity~~  
26 ~~subject to the right of any signatory to revoke the acknowledgment within~~  
27 ~~the earlier of the following:~~

28       (A) 60 days after completion of such acknowledgment; or

29       (B) prior to the date of any administrative or judicial proceeding  
30 relating to the child in which the signatory is a party, including, but not  
31 limited to, a proceeding to establish a support order.

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

37       (3) (A) After the deadline to revoke an acknowledgment of paternity  
38 pursuant to paragraph (1) or (2), such acknowledgment may be  
39 challenged only on the basis of fraud, duress or material mistake of fact.  
40 For the purposes of this subsection, genetic test results with a verifiable  
41 chain of custody that exclude a signatory father or that rebuttably identify  
42 another man as the father in accordance with K.S.A. 23-2208, and  
43 amendments thereto, shall constitute a change of circumstances that

1 warrants a material mistake of fact finding by the court.

2 (B) Notwithstanding any other provision of law, a person seeking to  
3 revoke an acknowledgment of paternity on the basis of fraud, duress or  
4 material mistake of fact may file such request in an appropriate district  
5 court after the fraud, duress or material mistake of fact becomes known to  
6 such person and shall file such request as soon as practicable after such  
7 fraud, duress or material mistake of fact becomes known. Such person  
8 shall have the burden of proving the fraud, duress or material mistake of  
9 fact and the court shall first consider the child's best interests before  
10 revoking an acknowledgment of paternity.

11 (4) **The legal responsibilities, including any child support**  
12 **obligation, of any signatory arising from the acknowledgment of**  
13 **paternity shall not be suspended during the action, except for good**  
14 **cause shown.** ~~If the person bringing the action was a minor at the time the~~  
15 ~~acknowledgment of paternity was completed, the action to revoke the~~  
16 ~~acknowledgment of paternity may be brought at any time until one year~~  
17 ~~after that person attains age 18, unless the court finds that the child is more~~  
18 ~~than one year of age and that revocation of the acknowledgment of~~  
19 ~~paternity is not in the child's best interest.~~

20 The person requesting revocation must show, and shall have the burden  
21 of proving, that the acknowledgment of paternity was based upon fraud,  
22 duress or material mistake of fact unless the action to revoke the  
23 acknowledgment of paternity is filed before the earlier of 60 days after  
24 completion of the acknowledgment of paternity or the date of a proceeding  
25 relating to the child in which the signatory is a party, including, but not  
26 limited to, a proceeding to establish a support order.

27 (5) **If a court of this state has assumed jurisdiction over the**  
28 **matter of the child's paternity or the duty of a man to support the**  
29 **child, that court shall have exclusive jurisdiction to determine whether**  
30 **an acknowledgment of paternity may be revoked under this**  
31 **subsection.**

32 (6) ~~If an acknowledgment of paternity has been revoked under is~~  
33 ~~revoked pursuant to this subsection, it such revocation shall not give rise~~  
34 ~~to a presumption of paternity pursuant to K.S.A. 23-2208, and~~  
35 ~~amendments thereto. Nothing in this subsection shall prevent a court from~~  
36 ~~admitting a revoked acknowledgment of paternity into evidence for any~~  
37 ~~other purpose.~~

38 (7) **If there has been an assignment of the child's support rights**  
39 **pursuant to K.S.A. 39-709, and amendments thereto, the secretary for**  
40 **children and families shall be a necessary party to any action under**  
41 **this subsection.**

42 (8) *If a court orders revocation of an acknowledgment of paternity*  
43 *pursuant to this subsection and the party seeking revocation has a child*

1 *support obligation or has paid child support, any support paid prior to the*  
2 *entry of such order shall not be recoverable in any action. {The court that*  
3 **orders such revocation may make a written finding that exceptional**  
4 **circumstances warrant the award of actual damages sustained by the**  
5 **party seeking revocation. In determining such actual damages, the**  
6 **court may consider all of the facts and circumstances of the case,**  
7 **including, but not limited to, the amount of support paid prior to the**  
8 **entry of such order.}**

9 *(f) The amendments to this section by this act shall be construed and*  
10 *applied retroactively.*

11 ~~Sec. 2.~~ **3.** K.S.A. 23-2204 ~~is~~ **and 23-2209** are hereby repealed.

12 ~~Sec. 3.~~ **4.** This act shall take effect and be in force from and after its  
13 publication in the statute book.