



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB5691

by Rep. Paul D. Froehlich

SYNOPSIS AS INTRODUCED:

305 ILCS 5/10-17.7

750 ILCS 45/11

750 ILCS 45/14

from Ch. 40, par. 2511

from Ch. 40, par. 2514

Amends the Illinois Public Aid Code and the Illinois Parentage Act of 1984. Provides that in a proceeding under the Illinois Parentage Act of 1984, except in a case in which a party is in default, the court shall (instead of may, and upon request of a party shall) order or direct the mother, child, and alleged father to submit to DNA tests; provides an exception if both the mother and the alleged father have signed a waiver stating that (i) they have been informed of the requirement of DNA testing and (ii) they expressly waive that requirement. Provides that the Department of Healthcare and Family Services may not make an administrative determination of paternity, and the court may not enter a judgment of parentage, unless (1) the results of DNA tests of the mother, child, and alleged father have been admitted into evidence (provided that if a party is in default, the results of a DNA test need not be admitted into evidence) or (2) both the mother and the alleged father have signed a waiver stating that they have been informed of the requirement of DNA testing and they expressly waive that requirement. Requires the Department of Healthcare and Family Services to prescribe the form of the waiver and distribute copies of the waiver form to the circuit courts of the State. Effective immediately.

LRB095 19738 DRJ 46107 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 (a) 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. Any presumption provided
22 for under the Illinois Parentage Act of 1984 shall apply to
23 cases in which paternity is determined under the rules of the

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

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

19 (c) Notwithstanding any other provision of this Article,
20 the Illinois Department may not make an administrative
21 determination of paternity under this Section unless:

22 (1) the results of deoxyribonucleic acid (DNA) tests of
23 the mother, child, and alleged father have been admitted
24 into evidence; provided that if a party is in default, the
25 results of a DNA test need not be admitted into evidence;
26 or

1 (2) both the mother and the alleged father have signed
2 a waiver stating that (i) they have been informed of the
3 requirement of DNA testing under Section 11 of the Illinois
4 Parentage Act of 1984 and (ii) they expressly waive that
5 requirement.

6 A waiver under paragraph (2) of this subsection shall be
7 signed under penalty of perjury and shall be filed with the
8 Illinois Department. The Illinois Department shall prescribe
9 the form of the waiver.

10 (d) Notwithstanding any other provision of this Article, a
11 default determination of paternity may be made if service of
12 the notice under Section 10-4 was made by publication under the
13 rules for administrative paternity determination authorized by
14 this Section. The rules as they pertain to service by
15 publication shall (i) be based on the provisions of Section
16 2-206 and 2-207 of the Code of Civil Procedure, (ii) provide
17 for service by publication in cases in which the whereabouts of
18 the alleged father are unknown after diligent location efforts
19 by the Child and Spouse Support Unit, and (iii) provide for
20 publication of a notice of default paternity determination in
21 the same manner that the notice under Section 10-4 was
22 published.

23 (e) The Illinois Department may implement this Section
24 through the use of emergency rules in accordance with Section
25 5-45 of the Illinois Administrative Procedure Act. For purposes
26 of the Illinois Administrative Procedure Act, the adoption of

1 rules to implement this Section shall be considered an
2 emergency and necessary for the public interest, safety, and
3 welfare.

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

5 Section 10. The Illinois Parentage Act of 1984 is amended
6 by changing Sections 11 and 14 as follows:

7 (750 ILCS 45/11) (from Ch. 40, par. 2511)

8 Sec. 11. Tests to determine inherited characteristics.

9 (a) As soon as practicable, except in a case in which a
10 party is in default, the court or Administrative Hearing
11 Officer in an Expedited Child Support System shall ~~may, and~~
12 ~~upon request of a party shall,~~ order or direct the mother,
13 child and alleged father to submit to deoxyribonucleic acid
14 (DNA) tests to determine inherited characteristics, unless
15 both the mother and the alleged father have signed a waiver
16 stating that (i) they have been informed of the requirement of
17 DNA testing under this Section and (ii) they expressly waive
18 that requirement. The waiver shall be signed under penalty of
19 perjury and shall be filed with the court. The Department of
20 Healthcare and Family Services shall prescribe the form of the
21 waiver and shall distribute copies of the waiver form to the
22 circuit courts of the State. If any party refuses to submit to
23 the tests, the court may resolve the question of paternity
24 against that party or enforce its order if the rights of others

1 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 (c) The expert shall prepare a written report of the test
17 results. If the test results show that the alleged father is
18 not excluded, the report shall contain a combined paternity
19 index relating to the probability of paternity. The expert may
20 be called by the court as a witness to testify to his or her
21 findings and, if called, shall be subject to cross-examination
22 by the parties. If the test results show that the alleged
23 father is not excluded, any party may demand that other
24 experts, qualified as examiners of blood or tissue types,
25 perform independent tests under order of court, including, but
26 not limited to, blood types or other tests of genetic markers

1 such as those found by Human Leucocyte Antigen (HLA) tests. The
2 results of the tests may be offered into evidence. The number
3 and qualifications of the experts shall be determined by the
4 court.

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

9 (e) The report of the test results prepared by the
10 appointed expert shall be made by affidavit or by certification
11 as provided in Section 1-109 of the Code of Civil Procedure and
12 shall be mailed to all parties. A proof of service shall be
13 filed with the court. The verified report shall be admitted
14 into evidence at trial without foundation testimony or other
15 proof of authenticity or accuracy, unless a written motion
16 challenging the admissibility of the report is filed by either
17 party within 28 days of receipt of the report, in which case
18 expert testimony shall be required. A party may not file such a
19 motion challenging the admissibility of the report later than
20 28 days before commencement of trial. Before trial, the court
21 shall determine whether the motion is sufficient to deny
22 admission of the report by verification. Failure to make that
23 timely motion constitutes a waiver of the right to object to
24 admission by verification and shall not be grounds for a
25 continuance of the hearing to determine paternity.

26 (f) Tests taken pursuant to this Section shall have the

1 following effect:

2 (1) If the court finds that the conclusion of the
3 expert or experts, as disclosed by the evidence based upon
4 the tests, is that the alleged father is not the parent of
5 the child, the question of paternity shall be resolved
6 accordingly.

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

10 (3) If the tests show that the alleged father is not
11 excluded and that the combined paternity index is less than
12 500 to 1, this evidence shall be admitted by the court and
13 shall be weighed with other competent evidence of
14 paternity.

15 (4) If the tests show that the alleged father is not
16 excluded and that the combined paternity index is at least
17 500 to 1, the alleged father is presumed to be the father,
18 and this evidence shall be admitted. This presumption may
19 be rebutted by clear and convincing evidence.

20 (g) Any presumption of parentage as set forth in Section 5
21 of this Act is rebutted if the court finds that the conclusion
22 of the expert or experts excludes paternity of the presumed
23 father.

24 (h) The expense of the tests shall be paid by the party who
25 requests the tests. Where the tests are requested by the party
26 seeking to establish paternity and that party is found to be

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

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

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

1 least 30 days before any hearing set to determine the issue of
2 parentage.

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

4 (750 ILCS 45/14) (from Ch. 40, par. 2514)

5 Sec. 14. Judgment.

6 (a) (1) The judgment shall contain or explicitly reserve
7 provisions concerning any duty and amount of child support and
8 may contain provisions concerning the custody and guardianship
9 of the child, visitation privileges with the child, the
10 furnishing of bond or other security for the payment of the
11 judgment, which the court shall determine in accordance with
12 the relevant factors set forth in the Illinois Marriage and
13 Dissolution of Marriage Act and any other applicable law of
14 Illinois, to guide the court in a finding in the best interests
15 of the child. In determining custody, joint custody, removal,
16 or visitation, the court shall apply the relevant standards of
17 the Illinois Marriage and Dissolution of Marriage Act,
18 including Section 609. Specifically, in determining the amount
19 of any child support award or child health insurance coverage,
20 the court shall use the guidelines and standards set forth in
21 subsection (a) of Section 505 and in Section 505.2 of the
22 Illinois Marriage and Dissolution of Marriage Act. For purposes
23 of Section 505 of the Illinois Marriage and Dissolution of
24 Marriage Act, "net income" of the non-custodial parent shall
25 include any benefits available to that person under the

1 Illinois Public Aid Code or from other federal, State or local
2 government-funded programs. The court shall, in any event and
3 regardless of the amount of the non-custodial parent's net
4 income, in its judgment order the non-custodial parent to pay
5 child support to the custodial parent in a minimum amount of
6 not less than \$10 per month, as long as such an order is
7 consistent with the requirements of Title IV, Part D of the
8 Social Security Act. In an action brought within 2 years after
9 a child's birth, the judgment or order may direct either parent
10 to pay the reasonable expenses incurred by either parent
11 related to the mother's pregnancy and the delivery of the
12 child. The judgment or order shall contain the father's social
13 security number, which the father shall disclose to the court;
14 however, failure to include the father's social security number
15 on the judgment or order does not invalidate the judgment or
16 order.

17 (2) If a judgment of parentage contains no explicit award
18 of custody, the establishment of a support obligation or of
19 visitation rights in one parent shall be considered a judgment
20 granting custody to the other parent. If the parentage judgment
21 contains no such provisions, custody shall be presumed to be
22 with the mother; however, the presumption shall not apply if
23 the father has had physical custody for at least 6 months prior
24 to the date that the mother seeks to enforce custodial rights.

25 (b) The court shall order all child support payments,
26 determined in accordance with such guidelines, to commence with

1 the date summons is served. The level of current periodic
2 support payments shall not be reduced because of payments set
3 for the period prior to the date of entry of the support order.
4 The Court may order any child support payments to be made for a
5 period prior to the commencement of the action. In determining
6 whether and the extent to which the payments shall be made for
7 any prior period, the court shall consider all relevant facts,
8 including the factors for determining the amount of support
9 specified in the Illinois Marriage and Dissolution of Marriage
10 Act and other equitable factors including but not limited to:

11 (1) The father's prior knowledge of the fact and
12 circumstances of the child's birth.

13 (2) The father's prior willingness or refusal to help
14 raise or support the child.

15 (3) The extent to which the mother or the public agency
16 bringing the action previously informed the father of the
17 child's needs or attempted to seek or require his help in
18 raising or supporting the child.

19 (4) The reasons the mother or the public agency did not
20 file the action earlier.

21 (5) The extent to which the father would be prejudiced
22 by the delay in bringing the action.

23 For purposes of determining the amount of child support to
24 be paid for any period before the date the order for current
25 child support is entered, there is a rebuttable presumption
26 that the father's net income for the prior period was the same

1 as his net income at the time the order for current child
2 support is entered.

3 If (i) the non-custodial parent was properly served with a
4 request for discovery of financial information relating to the
5 non-custodial parent's ability to provide child support, (ii)
6 the non-custodial parent failed to comply with the request,
7 despite having been ordered to do so by the court, and (iii)
8 the non-custodial parent is not present at the hearing to
9 determine support despite having received proper notice, then
10 any relevant financial information concerning the
11 non-custodial parent's ability to provide child support that
12 was obtained pursuant to subpoena and proper notice shall be
13 admitted into evidence without the need to establish any
14 further foundation for its admission.

15 (c) Any new or existing support order entered by the court
16 under this Section shall be deemed to be a series of judgments
17 against the person obligated to pay support thereunder, each
18 judgment to be in the amount of each payment or installment of
19 support and each such judgment to be deemed entered as of the
20 date the corresponding payment or installment becomes due under
21 the terms of the support order. Each judgment shall have the
22 full force, effect and attributes of any other judgment of this
23 State, including the ability to be enforced. A lien arises by
24 operation of law against the real and personal property of the
25 noncustodial parent for each installment of overdue support
26 owed by the noncustodial parent.

1 (d) If the judgment or order of the court is at variance
2 with the child's birth certificate, the court shall order that
3 a new birth certificate be issued under the Vital Records Act.

4 (e) On request of the mother and the father, the court
5 shall order a change in the child's name. After hearing
6 evidence the court may stay payment of support during the
7 period of the father's minority or period of disability.

8 (e-5) The court may not enter a judgment of parentage
9 unless:

10 (1) the results of deoxyribonucleic acid (DNA) tests of
11 the mother, child, and alleged father have been admitted
12 into evidence; provided that if a party is in default, the
13 results of a DNA test need not be admitted into evidence;
14 or

15 (2) both the mother and the alleged father have signed
16 a waiver stating that (i) they have been informed of the
17 requirement of DNA testing under Section 11 of this Act and
18 (ii) they expressly waive that requirement.

19 A waiver under paragraph (2) of this subsection shall be
20 signed under penalty of perjury and shall be filed with the
21 court. The Department of Healthcare and Family Services shall
22 prescribe the form of the waiver and shall distribute copies of
23 the waiver form to the circuit courts of the State.

24 (f) If, upon a showing of proper service, the father fails
25 to appear in court, or otherwise appear as provided by law, the
26 court may proceed to hear the cause upon testimony of the

1 mother or other parties taken in open court and shall enter a
2 judgment by default. The court may reserve any order as to the
3 amount of child support until the father has received notice,
4 by regular mail, of a hearing on the matter.

5 (g) A one-time charge of 20% is imposable upon the amount
6 of past-due child support owed on July 1, 1988 which has
7 accrued under a support order entered by the court. The charge
8 shall be imposed in accordance with the provisions of Section
9 10-21 of the Illinois Public Aid Code and shall be enforced by
10 the court upon petition.

11 (h) All orders for support, when entered or modified, shall
12 include a provision requiring the non-custodial parent to
13 notify the court and, in cases in which party is receiving
14 child support enforcement services under Article X of the
15 Illinois Public Aid Code, the Department of Healthcare and
16 Family Services, within 7 days, (i) of the name and address of
17 any new employer of the non-custodial parent, (ii) whether the
18 non-custodial parent has access to health insurance coverage
19 through the employer or other group coverage and, if so, the
20 policy name and number and the names of persons covered under
21 the policy, and (iii) of any new residential or mailing address
22 or telephone number of the non-custodial parent. In any
23 subsequent action to enforce a support order, upon a sufficient
24 showing that a diligent effort has been made to ascertain the
25 location of the non-custodial parent, service of process or
26 provision of notice necessary in the case may be made at the

1 last known address of the non-custodial parent in any manner
2 expressly provided by the Code of Civil Procedure or this Act,
3 which service shall be sufficient for purposes of due process.

4 (i) An order for support shall include a date on which the
5 current support obligation terminates. The termination date
6 shall be no earlier than the date on which the child covered by
7 the order will attain the age of 18. However, if the child will
8 not graduate from high school until after attaining the age of
9 18, then the termination date shall be no earlier than the
10 earlier of the date on which the child's high school graduation
11 will occur or the date on which the child will attain the age
12 of 19. The order for support shall state that the termination
13 date does not apply to any arrearage that may remain unpaid on
14 that date. Nothing in this subsection shall be construed to
15 prevent the court from modifying the order or terminating the
16 order in the event the child is otherwise emancipated.

17 (i-5) If there is an unpaid arrearage or delinquency (as
18 those terms are defined in the Income Withholding for Support
19 Act) equal to at least one month's support obligation on the
20 termination date stated in the order for support or, if there
21 is no termination date stated in the order, on the date the
22 child attains the age of majority or is otherwise emancipated,
23 the periodic amount required to be paid for current support of
24 that child immediately prior to that date shall automatically
25 continue to be an obligation, not as current support but as
26 periodic payment toward satisfaction of the unpaid arrearage or

1 delinquency. That periodic payment shall be in addition to any
2 periodic payment previously required for satisfaction of the
3 arrearage or delinquency. The total periodic amount to be paid
4 toward satisfaction of the arrearage or delinquency may be
5 enforced and collected by any method provided by law for
6 enforcement and collection of child support, including but not
7 limited to income withholding under the Income Withholding for
8 Support Act. Each order for support entered or modified on or
9 after the effective date of this amendatory Act of the 93rd
10 General Assembly must contain a statement notifying the parties
11 of the requirements of this subsection. Failure to include the
12 statement in the order for support does not affect the validity
13 of the order or the operation of the provisions of this
14 subsection with regard to the order. This subsection shall not
15 be construed to prevent or affect the establishment or
16 modification of an order for support of a minor child or the
17 establishment or modification of an order for support of a
18 non-minor child or educational expenses under Section 513 of
19 the Illinois Marriage and Dissolution of Marriage Act.

20 (j) An order entered under this Section shall include a
21 provision requiring the obligor to report to the obligee and to
22 the clerk of court within 10 days each time the obligor obtains
23 new employment, and each time the obligor's employment is
24 terminated for any reason. The report shall be in writing and
25 shall, in the case of new employment, include the name and
26 address of the new employer. Failure to report new employment

1 or the termination of current employment, if coupled with
2 nonpayment of support for a period in excess of 60 days, is
3 indirect criminal contempt. For any obligor arrested for
4 failure to report new employment bond shall be set in the
5 amount of the child support that should have been paid during
6 the period of unreported employment. An order entered under
7 this Section shall also include a provision requiring the
8 obligor and obligee parents to advise each other of a change in
9 residence within 5 days of the change except when the court
10 finds that the physical, mental, or emotional health of a party
11 or that of a minor child, or both, would be seriously
12 endangered by disclosure of the party's address.

13 (Source: P.A. 94-923, eff. 1-1-07; 94-1061, eff. 1-1-07;
14 95-331, eff. 8-21-07.)

15 Section 99. Effective date. This Act takes effect upon
16 becoming law.