

Second Regular Session  
Sixty-sixth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 08-0953.01 Brita Darling

SENATE BILL 08-183

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SENATE SPONSORSHIP

Mitchell S.,

HOUSE SPONSORSHIP

(None),

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Senate Committees  
State, Veterans & Military Affairs

House Committees

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A BILL FOR AN ACT

101 CONCERNING THE EFFECT OF DNA EVIDENCE OF NONPARENTAGE ON  
102 CHILD-RELATED ORDERS.

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Bill Summary

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

Allows for an order determining parentage to be modified or set aside in certain situations based on DNA test results.

Requires the court to terminate child support obligations in certain situations if DNA test results establish that the obligor is not the child's biological parent.

Makes conforming amendments.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2           **SECTION 1.** Article 4 of title 19, Colorado Revised Statutes, is  
3 amended BY THE ADDITION OF A NEW SECTION to read:

4           **19-4-107.3. When determination of parentage is final -**  
5 **modifications - exceptions.** (1) (a) AN ORDER DETERMINING PARENTAGE  
6 PURSUANT TO THIS ARTICLE SHALL BE MODIFIED OR SET ASIDE IF GENETIC  
7 TEST RESULTS BASED ON DNA TESTING, ADMINISTERED IN ACCORDANCE  
8 WITH SECTION 13-25-126, C.R.S., ESTABLISH THE EXCLUSION OF THE  
9 INDIVIDUAL NAMED AS THE FATHER IN THE ORDER AS THE BIOLOGICAL  
10 PARENT OF THE CHILD.

11           (b) IF THE COURT MODIFIES OR SETS ASIDE AN ORDER DETERMINING  
12 PARENTAGE PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1), THEN  
13 THE COURT SHALL MODIFY THE PROVISIONS OF THE ORDER RESPECTING  
14 CHILD SUPPORT FOR INSTALLMENTS ACCRUING SUBSEQUENT TO THE FILING  
15 OF THE MOTION PURSUANT TO SECTION 14-10-122 (6), C.R.S.

16           (2) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1) OF  
17 THIS SECTION, NEITHER A DETERMINATION OF PARENTAGE NOR AN ORDER  
18 RESPECTING CHILD SUPPORT SHALL BE MODIFIED OR SET ASIDE PURSUANT  
19 TO THIS SECTION IF:

20           (a) THE INDIVIDUAL NAMED IN THE ORDER ACKNOWLEDGED  
21 PATERNITY PURSUANT TO SECTION 19-4-105 (1) (c) (I) KNOWING THAT HE  
22 WAS NOT THE FATHER OF THE CHILD;

23           (b) THE CHILD WAS ADOPTED BY THE INDIVIDUAL NAMED IN THE  
24 ORDER; OR

25           (c) THE CHILD WAS CONCEIVED BY MEANS OF ASSISTED  
26 REPRODUCTION.

1 (3) FOR PURPOSES OF THIS SECTION, "DNA" MEANS  
2 DEOXYRIBONUCLEIC ACID.

3 **SECTION 2.** 19-4-105 (2) (c), Colorado Revised Statutes, is  
4 amended to read:

5 **19-4-105. Presumption of paternity.** (2) (c) EXCEPT AS  
6 OTHERWISE PROVIDED IN SECTION 19-4-107.3, a legal finding of paternity  
7 may be challenged in court only on the basis of fraud, duress, or mistake  
8 of material fact, with the burden of proof upon the challenger. Any legal  
9 responsibilities resulting from signing an acknowledgment of paternity,  
10 including child support obligations, shall continue during any challenge  
11 to the finding of paternity, except for good cause shown.

12 **SECTION 3.** 19-4-105.5 (5), Colorado Revised Statutes, is  
13 amended to read:

14 **19-4-105.5. Commencement of proceedings - summons.** (5) A  
15 summons issued upon commencement of a proceeding under this article  
16 shall contain the following ~~advisements~~ ADVISEMENT:

17 (a) That a request for genetic tests shall not prejudice the  
18 requesting party in matters concerning allocation of parental  
19 responsibilities pursuant to section 14-10-124 (1.5), C.R.S. ~~and~~

20 (b) ~~That, if genetic tests are not obtained prior to a legal~~  
21 ~~establishment of paternity and submitted into evidence prior to the entry~~  
22 ~~of the final order establishing paternity, the genetic tests may not be~~  
23 ~~allowed into evidence at a later date.~~

24 **SECTION 4.** 19-4-106 (6), Colorado Revised Statutes, is  
25 amended to read:

26 **19-4-106. Assisted reproduction.** (6) If there is no signed  
27 consent form, the nonexistence of the father-child relationship shall be

1 determined pursuant to ~~section 19-4-107 (1) (b)~~ SECTION 19-4-107.

2           **SECTION 5.** 19-4-107 (1), Colorado Revised Statutes, is  
3 amended to read:

4           **19-4-107. Determination of father and child relationship - who**  
5 **may bring action - when action may be brought.** (1) A child, his OR  
6 HER natural mother, or a man presumed to be his OR HER father under  
7 section 19-4-105 (1) (a), (1) (b), or (1) (c) or the state, the state  
8 department of human services, or a county department of social services,  
9 pursuant to article 13 or 13.5 of title 26, C.R.S., or article 5 of title 14,  
10 C.R.S., may bring an action AT ANY TIME FOR THE PURPOSE OF DECLARING  
11 THE EXISTENCE OR NONEXISTENCE OF THE FATHER AND CHILD  
12 RELATIONSHIP PRESUMED UNDER SECTION 19-4-105 (1) (a), (1) (b), OR (1)  
13 (c). AFTER THE PRESUMPTION HAS BEEN REBUTTED, PATERNITY OF THE  
14 CHILD BY ANOTHER MAN MAY BE DETERMINED IN THE SAME ACTION, IF HE  
15 HAS BEEN MADE A PARTY.

16           (a) ~~At any time for the purpose of declaring the existence of the~~  
17 ~~father and child relationship presumed under section 19-4-105 (1) (a), (1)~~  
18 ~~(b), or (1) (c); or~~

19           (b) ~~For the purpose of declaring the nonexistence of the father and~~  
20 ~~child relationship presumed under section 19-4-105 (1) (a), (1) (b), or (1)~~  
21 ~~(c) only if the action is brought within a reasonable time after obtaining~~  
22 ~~knowledge of relevant facts but in no event later than five years after the~~  
23 ~~child's birth. After the presumption has been rebutted, paternity of the~~  
24 ~~child by another man may be determined in the same action, if he has~~  
25 ~~been made a party.~~

26           **SECTION 6.** 19-4-111 (1), Colorado Revised Statutes, is  
27 amended to read:

1           **19-4-111. Pretrial proceedings.** (1) As soon as practicable after  
2 an action to declare the existence or nonexistence of the father-child  
3 relationship has been brought, an informal hearing shall be held if it is  
4 determined by the court to be in the child's best interest. The court may  
5 order that the hearing be held before a magistrate. The public shall be  
6 barred from the hearing if it is determined by the court to be in the best  
7 interest of any of the parties. A record of the proceeding or any portion  
8 thereof shall be kept if any party requests or the court orders. Rules of  
9 evidence need not be observed. At the informal hearing, the judge or  
10 magistrate shall give a verbal advisement to the parties that a request for  
11 genetic tests shall not prejudice the requesting party in matters concerning  
12 allocation of parental responsibilities pursuant to section 14-10-124 (1.5),  
13 C.R.S. ~~The judge or magistrate shall further advise the parties that, if~~  
14 ~~genetic tests are not obtained prior to the legal establishment of paternity~~  
15 ~~and submitted into evidence prior to the entry of the final order~~  
16 ~~establishing paternity, the genetic tests may not be allowed into evidence~~  
17 ~~at a later date.~~

18           **SECTION 7.** 19-6-101 (6), Colorado Revised Statutes, is  
19 amended to read:

20           **19-6-101. Initiation of proceedings - support - repayment of**  
21 **birth-related debt.** (6) A petition filed pursuant to this article shall  
22 contain the following ~~advise~~ ADVISEMENT:

23           (a) That a request for genetic tests shall not prejudice the  
24 requesting party in matters concerning allocation of parental  
25 responsibilities pursuant to section 14-10-124 (1.5), C.R.S. ~~and~~

26           (b) ~~That, if genetic tests are not obtained prior to a legal~~  
27 ~~establishment of paternity and submitted into evidence prior to the entry~~

1 of the final order establishing paternity, the genetic tests may not be  
2 allowed into evidence at a later date.

3 **SECTION 8.** 19-6-104 (1.5), Colorado Revised Statutes, is  
4 amended to read:

5 **19-6-104. Hearing - orders.** (1.5) At the hearing, the court shall  
6 give a verbal advisement to the parties that a request for genetic tests shall  
7 not prejudice the requesting party in matters concerning allocation of  
8 parental responsibilities pursuant to section 14-10-124 (1.5), C.R.S. ~~The~~  
9 ~~judge or magistrate shall further advise the parties that, if genetic tests are~~  
10 ~~not obtained prior to the legal establishment of paternity and submitted~~  
11 ~~into evidence prior to the entry of the final order establishing paternity,~~  
12 ~~the genetic tests may not be allowed into evidence at a later date.~~

13 **SECTION 9.** 14-10-107 (4) (b) (III), Colorado Revised Statutes,  
14 is amended to read:

15 **14-10-107. Commencement - pleadings - abolition of existing**  
16 **defenses - automatic, temporary injunction - enforcement.**

17 (4) (b) (III) The summons shall contain the following advisements  
18 ADVISEMENT:

19 (A) That a request for genetic tests shall not prejudice the  
20 requesting party in matters concerning allocation of parental  
21 responsibilities pursuant to section 14-10-124 (1.5). ~~and~~

22 (B) ~~That, if genetic tests are not obtained prior to a legal~~  
23 ~~establishment of paternity and submitted into evidence prior to the entry~~  
24 ~~of the legal final decree of dissolution, the genetic tests may not be~~  
25 ~~allowed into evidence at a later date.~~

26 **SECTION 10.** 14-10-122, Colorado Revised Statutes, is amended  
27 BY THE ADDITION OF A NEW SUBSECTION to read:

1           **14-10-122. Modification and termination of provisions for**  
2           **maintenance, support, and property disposition - automatic lien.**

3           (6) (a) NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS ARTICLE, A  
4           PARTY MAY SEEK TO MODIFY OR TERMINATE AN ORDER FOR CHILD  
5           SUPPORT ENTERED PURSUANT TO THIS ARTICLE IF GENETIC TEST RESULTS  
6           BASED ON DNA TESTING, ADMINISTERED IN ACCORDANCE WITH SECTION  
7           13-25-126, C.R.S., ESTABLISH THE EXCLUSION OF THE INDIVIDUAL NAMED  
8           AS THE FATHER IN THE ORDER AS THE BIOLOGICAL PARENT OF THE CHILD  
9           FOR WHOSE BENEFIT THE CHILD SUPPORT ORDER WAS ENTERED.

10           (b) IF THE COURT FINDS PURSUANT TO PARAGRAPH (a) OF THIS  
11           SUBSECTION (6) THAT THE INDIVIDUAL NAMED AS THE FATHER IN THE  
12           ORDER IS NOT THE BIOLOGICAL PARENT OF THE CHILD FOR WHOSE BENEFIT  
13           THE CHILD SUPPORT ORDER WAS ENTERED, THE COURT SHALL MODIFY THE  
14           PROVISIONS OF THE ORDER FOR SUPPORT WITH RESPECT TO THAT CHILD BY  
15           TERMINATING THE CHILD SUPPORT OBLIGATION AS TO INSTALLMENTS  
16           ACCRUING SUBSEQUENT TO THE FILING OF THE MOTION FOR MODIFICATION  
17           OR TERMINATION.

18           (c) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPHS (a) AND  
19           (b) OF THIS SUBSECTION (6), A COURT ORDER FOR CHILD SUPPORT SHALL  
20           NOT BE MODIFIED OR TERMINATED PURSUANT TO THIS SUBSECTION (6) IF:

21           (I) THE CHILD SUPPORT OBLIGOR ACKNOWLEDGED PATERNITY  
22           PURSUANT TO SECTION 19-4-105 (1) (c) (I), C.R.S., KNOWING THAT HE  
23           WAS NOT THE FATHER OF THE CHILD;

24           (II) THE CHILD WAS ADOPTED BY THE CHILD SUPPORT OBLIGOR; OR

25           (III) THE CHILD WAS CONCEIVED BY MEANS OF ASSISTED  
26           REPRODUCTION.

27           (d) FOR PURPOSES OF THIS SUBSECTION (6), "DNA" MEANS

1 DEOXYRIBONUCLEIC ACID.

2 **SECTION 11.** 13-25-126 (1) (a), Colorado Revised Statutes, is  
3 amended to read:

4 **13-25-126. Genetic tests to determine parentage.** (1) (a) In any  
5 action, suit, or proceeding in which the parentage of ~~any~~ A child is at  
6 issue, INCLUDING BUT NOT LIMITED TO ACTIONS OR PROCEEDINGS  
7 PURSUANT TO SECTION 14-10-122(6) OR 19-4-107.3, C.R.S., upon motion  
8 of the court or any of the interested parties, the court shall order the  
9 alleged mother, the child or children, and the alleged father to submit to  
10 genetic testing and other appropriate testing of inherited characteristics,  
11 including but not limited to blood and tissue type, for the purpose of  
12 determining probability of parentage. If ~~any~~ A party refuses to submit to  
13 these tests, the court may resolve the question of parentage against ~~such~~  
14 THE party to enforce its order if the rights of others and the interests of  
15 justice so require.

16 **SECTION 12.** 26-13.5-103 (1) (a.5), Colorado Revised Statutes,  
17 is amended to read:

18 **26-13.5-103. Notice of financial responsibility issued -**  
19 **contents.** (1) The delegate child support enforcement unit shall issue a  
20 notice of financial responsibility to an obligor who owes a child support  
21 debt or who is responsible for the support of a child on whose behalf the  
22 custodian of that child is receiving support enforcement services from the  
23 delegate child support enforcement unit pursuant to article 13 of this title.  
24 The notice shall advise the obligor:

25 (a.5) That a request for genetic tests shall not prejudice the obligor  
26 in matters concerning allocation of parental responsibilities pursuant to  
27 section 14-10-124 (1.5), C.R.S.; ~~and that, if genetic tests are not obtained~~



1 ~~prior to the legal establishment of paternity and submitted into evidence~~  
2 ~~prior to the entry of the final order establishing paternity, the genetic tests~~  
3 ~~may not be allowed into evidence at a later date;~~

4           **SECTION 13. Effective date.** (1) This act shall take effect  
5 August 15, 2008.

6           (2) However, if a referendum petition is filed against this act or  
7 an item, section, or part of this act during the 90-day period after final  
8 adjournment of the general assembly that is allowed for submitting a  
9 referendum petition pursuant to article V, section 1 (3) of the state  
10 constitution, then the act, item, section, or part, shall not take effect unless  
11 approved by the people at a biennial regular general election and shall  
12 take effect on the date specified in subsection (1) or on the date of the  
13 official declaration of the vote thereon by proclamation of the governor,  
14 whichever is later.