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SENATE BILL 08-183

BY SENATOR(S) Mitchell S., Cadman, Gibbs, Gordon, Schultheis, Ward, and Wiens;
also REPRESENTATIVE(S) Todd, Labuda, Mitchell V., Roberts, and Stafford.

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

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

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

19-4-107.3. When determination of parentage is final - modifications - exceptions - repeal. (1) (a) AN ORDER DETERMINING PARENTAGE PURSUANT TO THIS ARTICLE SHALL BE MODIFIED OR SET ASIDE, WITHIN THE TIME FRAMES SPECIFIED IN SUBSECTION (2) OF THIS SECTION, IF GENETIC TEST RESULTS BASED ON DNA TESTING, ADMINISTERED IN ACCORDANCE WITH SECTION 13-25-126, C.R.S., ESTABLISH THE EXCLUSION OF THE INDIVIDUAL NAMED AS THE FATHER IN THE ORDER AS THE BIOLOGICAL PARENT OF THE CHILD AND THE COURT DETERMINES THAT IT IS JUST AND PROPER UNDER THE CIRCUMSTANCES AND IN THE BEST INTERESTS OF THE CHILD.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(b) IF THE COURT MODIFIES OR SETS ASIDE AN ORDER DETERMINING PARENTAGE PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1), THEN THE COURT SHALL MODIFY THE PROVISIONS OF THE ORDER RESPECTING CHILD SUPPORT FOR INSTALLMENTS ACCRUING SUBSEQUENT TO THE FILING OF THE MOTION PURSUANT TO SECTION 14-10-122 (6), C.R.S., AND MAY VACATE OR DEEM AS SATISFIED, IN WHOLE OR IN PART, UNPAID CHILD SUPPORT OBLIGATIONS ARISING FROM OR BASED ON THE ORDER DETERMINING PARENTAGE. THE COURT SHALL NOT ORDER RESTITUTION FROM THE STATE FOR ANY SUMS PAID TO OR COLLECTED BY THE STATE FOR THE BENEFIT OF THE CHILD.

(2) (a) A MOTION TO MODIFY OR SET ASIDE AN ORDER DETERMINING PARENTAGE PURSUANT TO THIS SECTION MUST BE FILED WITHIN TWO YEARS FROM THE DATE OF THE ENTRY OF THE ORDER.

(b) (I) FOR ORDERS ENTERED BEFORE AUGUST 15, 2008, A MOTION TO MODIFY OR SET ASIDE AN ORDER DETERMINING PARENTAGE PURSUANT TO THIS SECTION MUST BE FILED ON OR BEFORE AUGUST 15, 2010.

(II) THIS PARAGRAPH (b) IS REPEALED EFFECTIVE JULY 1, 2011.

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

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

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

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

(4) A MOTION FILED PURSUANT TO THIS SECTION MAY BE BROUGHT BY THE INDIVIDUAL NAMED AS THE FATHER IN THE ORDER AND SHALL BE SERVED IN THE MANNER SET FORTH IN THE COLORADO RULES OF CIVIL

PROCEDURE UPON ALL OTHER PARTIES. THE COURT SHALL NOT MODIFY OR SET ASIDE A FINAL ORDER DETERMINING PARENTAGE PURSUANT TO THIS SECTION WITHOUT A HEARING.

(5) FOR PURPOSES OF THIS SECTION, "DNA" MEANS DEOXYRIBONUCLEIC ACID.

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

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

SECTION 3. 14-10-122, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

14-10-122. Modification and termination of provisions for maintenance, support, and property disposition - automatic lien - repeal. (6) (a) NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS ARTICLE, WITHIN THE TIME FRAMES SET FORTH IN PARAGRAPH (c) OF THIS SUBSECTION (6), THE INDIVIDUAL NAMED AS THE FATHER IN THE ORDER MAY FILE A MOTION TO MODIFY OR TERMINATE AN ORDER FOR CHILD SUPPORT ENTERED PURSUANT TO THIS ARTICLE IF GENETIC TEST RESULTS BASED ON DNA TESTING, ADMINISTERED IN ACCORDANCE WITH SECTION 13-25-126, C.R.S., ESTABLISH THE EXCLUSION OF THE INDIVIDUAL NAMED AS THE FATHER IN THE ORDER AS THE BIOLOGICAL PARENT OF THE CHILD FOR WHOSE BENEFIT THE CHILD SUPPORT ORDER WAS ENTERED.

(b) IF THE COURT FINDS PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (6) THAT THE INDIVIDUAL NAMED AS THE FATHER IN THE ORDER IS NOT THE BIOLOGICAL PARENT OF THE CHILD FOR WHOSE BENEFIT THE CHILD SUPPORT ORDER WAS ENTERED AND THAT IT IS JUST AND PROPER UNDER THE CIRCUMSTANCES AND IN THE BEST INTERESTS OF THE CHILD, THE COURT SHALL MODIFY THE PROVISIONS OF THE ORDER FOR SUPPORT WITH RESPECT TO THAT CHILD BY TERMINATING THE CHILD SUPPORT OBLIGATION

AS TO INSTALLMENTS ACCRUING SUBSEQUENT TO THE FILING OF THE MOTION FOR MODIFICATION OR TERMINATION, AND THE COURT MAY VACATE OR DEEM AS SATISFIED, IN WHOLE OR IN PART, UNPAID CHILD SUPPORT OBLIGATIONS ARISING FROM OR BASED UPON THE ORDER DETERMINING PARENTAGE. THE COURT SHALL NOT ORDER RESTITUTION FROM THE STATE FOR ANY SUMS PAID TO OR COLLECTED BY THE STATE FOR THE BENEFIT OF THE CHILD.

(c) (I) A MOTION TO MODIFY OR TERMINATE AN ORDER FOR CHILD SUPPORT PURSUANT TO THIS SUBSECTION (6) MUST BE FILED WITHIN TWO YEARS FROM THE DATE OF THE ENTRY OF THE INITIAL ORDER ESTABLISHING THE CHILD SUPPORT OBLIGATION.

(II) (A) FOR ORDERS ENTERED BEFORE AUGUST 15, 2008, A MOTION TO MODIFY OR TERMINATE AN ORDER ESTABLISHING CHILD SUPPORT PURSUANT TO THIS SUBSECTION (6) MUST BE FILED ON OR BEFORE AUGUST 15, 2010.

(B) THIS SUBPARAGRAPH (II) IS REPEALED EFFECTIVE JULY 1, 2011.

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

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

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

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

(e) A MOTION FILED PURSUANT TO THIS SECTION MAY BE BROUGHT BY THE INDIVIDUAL NAMED AS THE FATHER IN THE ORDER AND SHALL BE SERVED IN THE MANNER SET FORTH IN THE COLORADO RULES OF CIVIL PROCEDURE UPON ALL OTHER PARTIES. THE COURT SHALL NOT MODIFY OR SET ASIDE A FINAL ORDER DETERMINING PARENTAGE PURSUANT TO THIS SECTION WITHOUT A HEARING.

(f) FOR PURPOSES OF THIS SUBSECTION (6), "DNA" MEANS DEOXYRIBONUCLEIC ACID.

SECTION 4. 13-25-126 (1) (a), Colorado Revised Statutes, is amended to read:

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

SECTION 5. 13-32-101, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

13-32-101. Docket fees in civil actions - judicial stabilization cash fund - support registry fund created. (8) AT THE TIME OF FILING A MOTION PURSUANT TO SECTION 19-4-107.3 OR 14-10-122 (6), C.R.S., SEEKING TO SET ASIDE A FINAL OR PERMANENT ORDER CONCERNING PARENTAGE BASED UPON DNA EVIDENCE ESTABLISHING THE EXCLUSION OF THE PETITIONER AS THE BIOLOGICAL FATHER OF A CHILD, OR TO TERMINATE AN ORDER REQUIRING THE PETITIONER TO PAY CHILD SUPPORT FOR THAT CHILD, THE PETITIONER SHALL PAY A FEE OF SEVENTY DOLLARS. THE FEE COLLECTED PURSUANT TO THIS SUBSECTION (8) SHALL BE TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT IN THE JUDICIAL STABILIZATION CASH FUND CREATED IN SUBSECTION (1.5) OF THIS SECTION.

SECTION 6. Effective date. (1) This act shall take effect August 15, 2008.

(2) However, if a referendum petition is filed against this act or an item, section, or part of this act during the 90-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state

constitution, then the act, item, section, or part, shall not take effect unless approved by the people at a biennial regular general election and shall take effect on the date specified in subsection (1) or on the date of the official declaration of the vote thereon by proclamation of the governor, whichever is later.

Peter C. Groff
PRESIDENT OF
THE SENATE

Andrew Romanoff
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO