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THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1231 Session of 2011

INTRODUCED BY SOLOBAY, TARTAGLIONE AND FONTANA, SEPTEMBER 6, 2011

REFERRED TO JUDICIARY, SEPTEMBER 6, 2011

AN ACT

Amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for determination of paternity.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 5104 heading, (a), (b), (c), (d) and (g) of Title 23 of the Pennsylvania Consolidated Statutes are amended to read:

§ 5104. [Blood tests] Tests to determine paternity.

(a) [Short title of section.--This section shall be known and may be cited as the Uniform Act on Blood Tests to Determine Paternity.] Testing.--A test to determine paternity shall be conducted in accordance with this section. The test shall be conducted upon blood, deoxyribonucleic acid (DNA) or both.

(b) Scope of section.--

(1) Civil matters.--This section shall apply to all civil matters.

(2) Criminal proceedings.--This section shall apply to

all criminal proceedings subject to the following limitations and provisions:

(i) An order for the tests shall be made only upon application of a party or on the initiative of the court.

(ii) The compensation of the experts shall be paid by the party requesting the [blood test] tests or by the county, as the court shall direct.

(iii) The court may direct a verdict of acquittal upon the conclusions of all the experts under subsection (f). Otherwise, the case shall be submitted for determination upon all the evidence.

(iv) The refusal of a defendant to submit to the tests may not be used in evidence against the defendant.

(c) Authority for test.--In any matter subject to this section in which paternity, parentage or identity of a child is a relevant fact, the court, upon its own initiative or upon suggestion made by or on behalf of any person whose blood or DNA is involved, may or, upon motion of any party to the action made at a time so as not to delay the proceedings unduly, shall order the mother, child and alleged father to submit to blood tests, DNA tests or both. If any party refuses to submit to the tests, the court may resolve the question of paternity, parentage or identity of a child against the party or enforce its order if the rights of others and the interests of justice so require.

(d) Selection of experts.--The tests shall be made by experts qualified as examiners of blood types or DNA identification, who shall be appointed by the court. The experts shall be called by the court as witnesses to testify to their findings and shall be subject to cross-examination by the parties. Any party or person at whose suggestion the tests have

been ordered may demand that other experts qualified as examiners of blood types or DNA identification perform independent tests under order of court, the results of which may be offered in evidence. The number and qualifications of experts shall be determined by the court.

* * *

(g) Effect on presumption of [legitimacy] paternity.--The presumption of [legitimacy] paternity of a child born during wedlock as heretofore recognized in this Commonwealth is reaffirmed and made subject to the following provisions:

(1) Upon petition for testing in an action in which paternity of the child is an issue filed no later than five years after the child's birth, the court shall permit testing to rebut the presumption of paternity, provided that the overall interests of justice, including the best interests of the child, would not be unreasonably harmed and:

(i) the parties subject to the presumption are divorced or irreconcilably separated and one or both assert reasonable grounds to believe that application of the presumption is likely to result in an incorrect paternity determination; or

(ii) the parties subject to the presumption mutually agree to submit to and be bound by the testing.

(2) The presumption of paternity is overcome if the court finds that the conclusions of all the experts as disclosed by the evidence based upon the tests show that the husband is not the father of the child.

Section 2. This act shall take effect in 60 days.