

**SENATE BILL NO. 2035**

Introduced by

Legislative Council

(Family Law Committee)

1 A BILL for an Act to provide for a paternity registry; and to provide a penalty.

2 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

3 **SECTION 1. Definitions.** As used in this Act, unless the context otherwise requires:

- 4 1. "Complete registration form" means a paternity registry registration form that  
5 provides the information required under section 4 of this Act and that meets the  
6 submission requirements under section 5 of this Act.
- 7 2. "Department" means the department of human services.
- 8 3. "Division" means the state department of health office of statistical services.
- 9 4. "Putative father" means a reputed father who has successfully submitted to the  
10 division a complete registration form.

11 **SECTION 2. Paternity registry - Purpose.**

- 12 1. The division shall establish a paternity registry.
- 13 2. The state health officer shall adopt rules as necessary to administer the paternity  
14 registry.
- 15 3. The division shall administer the paternity registry to:
- 16 a. Protect the parental rights of fathers who affirmatively assume responsibility  
17 for children they may have fathered; and
- 18 b. Expedite adoptions of children whose biological fathers are unwilling to  
19 assume responsibility for their children by registering with the registry or  
20 otherwise acknowledging their children.
- 21 4. The paternity registry does not relieve a mother of any obligation to identify the  
22 known father of her child.

5. A man is not required to register with the paternity registry in order to assert paternity and in order to receive notice of a termination of parental rights action if he:

- a. Is presumed to be the biological father of a child under chapter 14-17;
- b. Has been adjudicated to be the biological father of a child; or
- c. Has filed an acknowledgment of paternity under chapter 14-17 or 14-19.

6. This Act does not eliminate any requirement in order to terminate the parental rights of any individual if such individual meets the requirements of a legal or biological parent under chapter 14-17 or 14-19 even if such individual is not a putative father under this chapter.

### **SECTION 3. Knowledge of paternity and paternity registry.**

1. An individual who has sexual intercourse with an individual of the opposite sex is deemed to have knowledge that sexual intercourse can result in the woman's pregnancy.

2. Except as otherwise provided by this Act, a man who claims to be the father of a child shall submit with the division a paternity registry registration form to assert his right to establish paternity of a child that may result from the sexual intercourse.

3. Ignorance of a pregnancy is not a sufficient reason for a man to fail to register with the paternity registry to claim paternity of the child born of the pregnancy.

4. Ignorance of the existence of the paternity registry is not sufficient reason for a man to fail to register with the paternity registry to claim paternity of the child born of the pregnancy.

5. A man may register with the paternity registry before a child's birth even though the registrant does not have actual knowledge that a pregnancy has occurred or that a pregnancy has continued through gestation.

### **SECTION 4. Registration form - Notice.**

1. The division, with comment from the department, shall establish and distribute a paternity registry registration form. The form must provide for the registrant's signature and acknowledgment by a notary public. The form must include requests for the following information:

- 1           a.    The name, last-known address, and driver's license number of the mother of  
2                the child, if known.
- 3           b.    The name, location, and date of birth of the child, if known, or if the child has  
4                not yet been born, the probable month and year of the expected birth of the  
5                child.
- 6           c.    The registrant's name, address, and driver's license number.
- 7           d.    A statement by the registrant in which he claims he may have fathered the  
8                child he identifies or if a child has not yet been born or the father does not  
9                have actual knowledge that a pregnancy has occurred, a statement in which  
10              he claims he may have impregnated the woman he identifies.
- 11          e.    An acknowledgment by the registrant that he understands that registration  
12                does not initiate an action or proceeding to establish paternity but information  
13                disclosed on the registration form may be used in an action or a proceeding to  
14                establish paternity.
- 15          2.    If a registrant does not have an address at which he can receive notice of a  
16                termination of parental rights action, that registrant shall designate on the form  
17                another person as agent for the purpose of receiving notice. The registrant shall  
18                provide the division with the agent's name and the address at which the agent may  
19                be served. Service of notice of a termination of parental rights action upon the  
20                putative father or agent by certified mail, return receipt requested, constitutes  
21                service of notice upon the putative father.
- 22          3.    The division shall make paternity registry registration forms available to the  
23                department of human services division of child support enforcement and to every  
24                in-state:
  - 25              a.    Hospital and other birthing place;
  - 26              b.    Licensed child-placing agency;
  - 27              c.    Clerk of district court;
  - 28              d.    Municipal court clerk;
  - 29              e.    Correctional facility;
  - 30              f.    Regional child support enforcement unit;
  - 31              g.    High school, college, and university;

- h. Facility of the department of corrections and rehabilitation, including the division of juvenile services;
- i. County social service office; and
- j. Community agency as may be determined by the division.

**SECTION 5. How and when registration form submitted.** A man registering with the paternity registry shall submit to the division, in person or by facsimile transmission, mail, private courier, or express delivery service, a complete registration form. The registrant shall ensure that the division receive the complete registration form no more than three business days following the child's birth.

**SECTION 6. Information maintained in paternity registry - Search certificate - Penalty.**

- 1. The division shall maintain the following information in the paternity registry:
  - a. The required information a man provides on a paternity registry registration form;
  - b. The date on which the division receives each paternity registry registration form;
  - c. The name and affiliation of any person who submits a request that the division search the paternity registry to determine whether a man is registered in relation to a mother whose child is or may be the subject of a parental rights termination action and the date on which such request is received by the division; and
  - d. Any other information that is necessary to access the information in the paternity registry as determined by the division in consultation with the department.
- 2. Upon receipt of a request for a search certificate attesting to the results of a search of the paternity registry under this Act, the division shall issue a certificate following a search of the paternity registry, birth records, and acknowledgments of paternity maintained by the division. Unless otherwise required under this Act, the division shall issue this certificate to the requester within three business days of receipt of the request.

3. A man who purposely or knowingly submits false information with the paternity registry or a person who purposely or knowingly requests confidential information in violation of this chapter is guilty of a class A misdemeanor and may be civilly liable for damages.

**SECTION 7. Effects of being a putative father.**

1. A putative father is entitled to notice of an action to terminate his parental rights.
2. A man who attempts to register with the paternity registry more than three business days following the birth of the child may not assert an interest in the child through the paternity registry, but instead shall file to initiate an action to establish paternity before termination of the man's parental rights.
3. A paternity registry registration form may be used as evidence of paternity in a court action or an administrative proceeding of this state for any purpose.

**SECTION 8. Paternity registry search certificate required.** A petition for termination of parental rights may not be granted unless the petitioner, birth mother of the child, licensed child-placing agency, or a county social service agency requests that the division search the paternity registry to determine whether a putative father is registered in relation to a child who is or may be the subject of a termination of parental rights petition and that the division issue a search certificate. The division shall conduct the search required by this section no sooner than four business days following the birth of the child. A search certificate must be filed with the court before entry of any final order of termination of parental rights.

**SECTION 9. Furnishing of registry information - Confidentiality.**

1. If the mother's address has been provided on a paternity registry registration form, the division shall send a copy of that registration form to the mother as notification that a man has registered with the paternity registry claiming to be the father of the mother's child.
2. Upon request, the division shall furnish a search certificate attesting to the results of a search of the paternity registry. The division shall issue this search certificate to the requester within three business days.
3. Information contained in the registry is confidential; however, the division may release the information to:
  - a. A court;

- b. The mother of a child;
- c. A county social service office;
- d. A licensed child-placing agency;
- e. An attorney participating or assisting in an action affecting the parent-child relationship, including termination of parental rights or adoption of the child the registrant claims to have fathered;
- f. The department;
- g. The regional child support enforcement unit; or
- h. Any other person the division considers to have a legitimate interest in the information.

4. The division shall furnish registry information by electronic data exchange or any other means to the regional child support enforcement units and the department.

**SECTION 10. Denial of registrant's paternity - Notification.**

1. Within the first thirty days following the date of the receipt of notification from the division that a paternity registry registration form has been submitted, the mother of the child may deny the registrant's claim of paternity on a form provided by the division and signed and acknowledged before a notary public.
2. If the mother denies that the registrant is the father of the child, the division immediately shall notify the registrant of the denial and of the registrant's right to file a legal action to establish paternity.

**SECTION 11. Change or revocation of paternity registry information.**

1. A registrant promptly shall submit to the division in writing any changes in the information provided in the registration form, including a change of address.
2. A registrant may revoke his registration on the paternity registry at any time by submitting to the division a written statement signed and acknowledged by the registrant before a notary public. This statement must include a declaration that to the best of the registrant's knowledge and belief:
  - a. The registrant is not the father of the named child or if the child is not yet born, the registrant was not the person who impregnated the woman he identified;
  - b. A pregnancy did not occur or the pregnancy did not continue through gestation; or

- 1                   c. A court has adjudicated paternity and a man other than the registrant was  
2                   determined to be the father of the child.

3                   **SECTION 12. Removal of registrant's name.** If a court determines that a registrant is  
4 not the father of the child, the court shall order the division to remove the registrant's name from  
5 the paternity registry. Upon receipt of an order for removal of a registrant's name, the division  
6 shall remove the name from the paternity registry.

7                   **SECTION 13. Registry fees.**

- 8                   1. The division may not charge a registrant a fee for submitting a paternity registry  
9 registration form, notice of change of information, or revocation.  
10                  2. Except as provided under subsection 3, the division may charge a fee for  
11 processing a search of the paternity registry and for furnishing a search certificate.  
12                  3. Neither the department nor any regional child support enforcement unit may be  
13 required to pay a fee under subsection 2.

14                  **SECTION 14. Burden of putative father to reserve rights upon receipt of notice.**

- 15                  1. If a putative father receives notice that a child in whom the putative father claims a  
16 parental interest is the subject of a termination of parental rights action, the  
17 putative father shall appear at the hearing held on the petition to terminate parental  
18 rights. He shall demonstrate, at a minimum, that reasonable efforts to establish a  
19 substantial relationship with the child have been made.  
20                  a. A putative father who is not married to the child's mother but who has openly  
21 lived with the child since the child's birth or for a period of six months  
22 immediately preceding placement of the child with the adoptive parents and  
23 who has openly claimed to be the father of the child during that period is  
24 considered to have developed a substantial relationship with the child and to  
25 have otherwise met the requirements of this section.  
26                  b. A putative father may meet the minimal showing of having established a  
27 substantial relationship with regard to a child who is the subject of a  
28 termination of parental rights action if the putative father shows that the  
29 putative father:

- (1) Demonstrated a full commitment to the responsibilities of parenthood by providing financial support for the child in a fair and reasonable sum and in accordance with the putative father's ability and by either:
      - (a) Visiting the child at least monthly when physically and financially able to do so; or
      - (b) Having regular contact with the child or with the person having the care and custody of the child when the putative father is physically and financially able to do so; and
    - (2) Manifested an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the mother.
  - c. To meet the minimal showing of having established a substantial relationship with regard to a child who is the subject of a termination of parental rights action involving a child who is under six months of age at the time that the child becomes the subject of an adoption action, a putative father has the burden to show that the putative father has manifested a full commitment to parental responsibility by:
    - (1) Performing any required act under this section before the mother executed a relinquishment and consent to adopt;
    - (2) If the putative father had actual knowledge of the pregnancy, paying a fair and reasonable amount of the expenses incurred in connection with the pregnancy and the child's birth in accordance with the putative father's means when not prevented from doing so by the person having lawful custody of the child;
    - (3) Making reasonable and consistent payments in accordance with the putative father's means for the support of the child since birth;
    - (4) Visiting regularly with the child; and
    - (5) Manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the custody of the mother.
2. If the subjective intent of a putative father, whether expressed or otherwise, is unsupported by evidence of acts specified in this section, a court is not precluded

from making a determination that the father failed to meet the requirements of this section.

3. The parental rights of a putative father may be terminated by the court if the putative father failed to timely establish and maintain a substantial relationship with the child.

**SECTION 15. Fraud - Responsibility of each party to protect interests - Putative fathers - Fraud no defense.**

1. In establishing fraud, a putative father has the burden of proving by clear and convincing evidence that fraud has been committed by the mother against the putative father.
2. Each parent of a child conceived or born outside a marriage of the parents to each other is responsible for that parent's own actions and assertion of parental rights notwithstanding any action, statement, or omission of the other parent or third party.
3. A person injured by fraudulent representations or actions in connection with an adoption may pursue civil or criminal penalties. A fraudulent representation is not a defense to failure to comply with the requirements of the paternity registry and is not a basis for dismissal of a petition for termination of parental rights, adoption, vacation of an adoption decree, or an automatic grant of custody to the injured party.
4. A father who resides outside the state and is not a putative father may contest a termination of his parental rights if done before an issuance of an order of termination of parental rights, and he may assert his interest in the child. If the termination of the out-of-state father's parental rights is contested, the court shall hold an evidentiary hearing to determine if:
  - a. The out-of-state father resided and continues to reside in the state in which the mother lived or resided at the time of conception or through a portion of the pregnancy;
  - b. The mother left that state and concealed from the out-of-state father the location at which the mother could be contacted or located;

- 1                   c.    Through every reasonable means, the out-of-state father has attempted to
- 2                   locate the mother but has been unable to do so; and
- 3                   d.    The out-of-state father has complied with the requirements of the state in
- 4                   which he resides in order to protect and preserve his parental interest and
- 5                   rights concerning the child in cases of termination of parental rights or
- 6                   adoption.