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Illinois Parentage Act of 1984

Sec. 1. Short Title. This Act shall be known and may be cited as the "Illinois Parentage Act of 1984".

Sec. 1.1. Public Policy. Illinois recognizes the right of every child to the physical, mental, emotional and monetary support of his or her parents under this Act.

Sec. 2. Parent and Child Relationship Defined. As used in this Act, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

Sec. 2.5. Definitions. As used in this Act, the terms "gestational surrogacy", "gestational surrogate", and "intended parent" have the same meanings as the terms are defined in Section 10 of the Gestational Surrogacy Act.

Sec. 3. Relationship and Support Not Dependent on Marriage. The parent and child relationship, including support obligations, extends equally to every child and to every parent, regardless of the marital status of the parents.

Sec. 3.1. A child's mother or a person found to be the father of a child under this Act, is not relieved of support and maintenance obligations to the child because he or she is a minor.

Sec. 4. How Parent and Child Relationship Established. The parent and child relationship between a child and

(1) the natural mother may be established by proof of her having given birth to the child, or under this Act;

(2) the natural father may be established under this Act;

(3) an adoptive parent may be established by proof of adoption, or by records established pursuant to Section 16 of the "Vital Records Act", approved August 8, 1961,

as amended.

Sec. 4.1. Administrative paternity determinations. Notwithstanding any other provision of this Act, the Illinois Department of Public Aid may make administrative determinations of paternity and nonpaternity in accordance with Section 10-17.7 of the Illinois Public Aid Code. These determinations of paternity or nonpaternity shall have the full force and effect of judgments entered under this Act.

Sec. 5. Presumption of Paternity.

(a) A man is presumed to be the natural father of a child if:

(1) he and the child's natural mother are or have been married to each other, even though the marriage is or could be declared invalid, and the child is born or conceived during such marriage;

(2) after the child's birth, he and the child's natural mother have married each other, even though the marriage is or could be declared invalid, and he is named, with his written consent, as the child's father on the child's birth certificate;

(3) he and the child's natural mother have signed an acknowledgment of paternity in accordance with rules adopted by the Illinois Department of Public Aid under Section 10-17.7 of the Illinois Public Aid Code; or

(4) he and the child's natural mother have signed an acknowledgment of parentage or, if the natural father is someone other than one presumed to be the father under this Section, an acknowledgment of parentage and denial of paternity in accordance with Section 12 of the Vital Records Act.

(b) A presumption under subdivision (a)(1) or (a)(2) of this Section may be rebutted only by clear and convincing evidence. A presumption under subdivision (a)(3)

or (a)(4) is conclusive, unless the acknowledgment of parentage is rescinded under the process provided in Section 12 of the Vital Records Act, upon the earlier of:

(1) 60 days after the date the acknowledgment of parentage is signed, or

(2) the date of an administrative or judicial proceeding relating to the child (including a proceeding to establish a support order) in which the signatory is a party; except that if a minor has signed the acknowledgment of paternity or acknowledgment of parentage and denial of paternity, the presumption becomes conclusive 6 months after the minor reaches majority or is otherwise emancipated.

Sec. 6. Establishment of Parent and Child Relationship by Consent of the Parties.

(a) A parent and child relationship may be established voluntarily by the signing and witnessing of a voluntary acknowledgment of parentage in accordance with Section 12 of the Vital Records Act, Section 10-17.7 of the Illinois Public Aid Code, or the provisions of the Gestational Surrogacy Act. The voluntary acknowledgment of parentage shall contain the social security numbers of the persons signing the voluntary acknowledgment of parentage; however, failure to include the social security numbers of the persons signing a voluntary acknowledgment of parentage does not invalidate the voluntary acknowledgment of parentage.

(1) A parent-child relationship may be established

in the event of gestational surrogacy if all of the following conditions are met prior to the birth of the child:

(A) The gestational surrogate certifies that she is not the biological mother of the child, and that she is carrying the child for the intended parents.

(B) The husband, if any, of the gestational surrogate certifies that he is not the biological father of the child.

(C) The intended mother certifies that she provided or an egg donor donated the egg from which the child being carried by the gestational surrogate was conceived.

(D) The intended father certifies that he provided or a sperm donor donated the sperm from which the child being carried by the gestational surrogate was conceived.

(E) A physician licensed to practice medicine in all its branches in the State of Illinois certifies that the child being carried by the gestational surrogate is the biological child of the intended mother or the intended father or both and that neither the gestational surrogate nor the gestational surrogate's husband, if any, is a biological parent of the child being carried by the gestational surrogate.

(E-5) The attorneys for the intended parents and the gestational surrogate each certifies that the parties entered into a gestational surrogacy contract intended to satisfy the requirements of Section 25 of the Gestational Surrogacy Act with respect to the child.

(F) All certifications shall be in writing and witnessed by 2 competent adults who are not the gestational surrogate, gestational surrogate's husband, if any, intended mother, or intended father. Certifications shall be on forms prescribed by the Illinois Department of Public Health, shall be executed prior to the birth of the child, and shall be placed in the medical records of the gestational surrogate prior to the birth of the child. Copies of all certifications shall be delivered to the Illinois Department of Public Health prior to the birth of the child.

(2) Unless otherwise determined by order of the Circuit Court, the child shall be presumed to be the child of the gestational surrogate and of the gestational surrogate's husband, if any, if all requirements of subdivision (a)(1) are not met prior to the birth of the child. This presumption may be rebutted by clear and convincing evidence. The circuit court may order the gestational surrogate, gestational surrogate's husband, intended mother, intended father, and child to submit to such medical examinations and testing as the court deems appropriate.

(b) Notwithstanding any other provisions of this Act, paternity established in accordance with subsection (a) has the full force and effect of a judgment entered

under this Act and serves as a basis for seeking a child support order without any further proceedings to establish paternity.

(c) A judicial or administrative proceeding to ratify paternity established in accordance with subsection (a) is neither required nor permitted.

(d) A signed acknowledgment of paternity entered under this Act may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenging party. Pending outcome of the challenge to the acknowledgment of paternity, the legal responsibilities of the signatories shall remain in full force and effect, except upon order of the court upon a showing of good cause.

(e) Once a parent and child relationship is established in accordance with subsection (a), an order for support may be established pursuant to a petition to establish an order for support by consent filed with the clerk of the circuit court. A copy of the properly completed acknowledgment of parentage form shall be attached to the petition. The petition shall ask that the circuit court enter an order for support. The petition may ask that an order for visitation, custody, or guardianship be entered. The filing and appearance fees provided under the Clerks of Courts Act shall be waived for all cases in which an acknowledgment of parentage form has been properly completed by the parties and in which a petition to establish an order for support by consent has been filed with the clerk of the circuit court. This subsection shall not be construed to prohibit filing any petition for child support, visitation, or custody under this Act, the Illinois Marriage and Dissolution of Marriage Act, or the Non-Support Punishment Act. This subsection shall also not be construed to prevent the establishment of an administrative support order in cases involving persons receiving child support enforcement services under Article X of the Illinois Public Aid Code.

Sec. 7. Determination of Father and Child Relationship; Who May Bring Action; Parties.

(a) An action to determine the existence of the father and child relationship, whether or not such a relationship is already presumed under Section 5 of this Act, may be brought by the child; the mother; a pregnant woman; any person or public agency

who has custody of, or is providing or has provided financial support to, the child; the Illinois Department of Public Aid if it is providing or has provided financial support to the child or if it is assisting with child support collection services; or a man presumed or alleging himself to be the father of the child or expected child. The complaint shall be verified and shall name the person or persons alleged to be the father of the child.

(b) An action to declare the non-existence of the parent and child relationship may be brought by the child, the natural mother, or a man presumed to be the father under subdivision (a)(1) or (a)(2) of Section 5 of this Act. Actions brought by the child, the natural mother or a presumed father shall be brought by verified complaint.

After the presumption that a man presumed to be the father under subdivision (a)(1) or (a)(2) of Section 5 has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

(b-5) An action to declare the non-existence of the parent and child relationship may be brought subsequent to an adjudication of paternity in any judgment by the man adjudicated to be the father pursuant to the presumptions in Section 5 of this Act if, as a result of deoxyribonucleic acid (DNA) tests, it is discovered that the man adjudicated to be the father is not the natural father of the child. Actions brought by the adjudicated father shall be brought by verified complaint. If, as a result of the deoxyribonucleic acid (DNA) tests, the plaintiff is determined not to be the father of the child, the adjudication of paternity and any orders regarding custody, visitation, and future payments of support may be vacated.

(c) If any party is a minor, he or she may be represented by his or her general guardian or a guardian ad litem appointed by the court, which may include an appropriate agency. The court may align the parties.

(d) Regardless of its terms, an agreement, other than a settlement approved by the court, between an alleged or presumed father and the mother or child, does not bar an action under this Section.

(e) If an action under this Section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except for service or process, the

taking of depositions to perpetuate testimony, and the ordering of blood tests under appropriate circumstances.

Sec. 8. Statute of limitations.

(a) (1) An action brought by or on behalf of a child, an action brought by a party alleging that he or she is the child's natural parent, or an action brought by the Illinois Department of Public Aid, if it is providing or has provided financial support to the child or if it is assisting with child support collection services, shall be barred if brought later than 2 years after the child reaches the age of majority; however, if the action on behalf of the child is brought by a public agency, other than the Illinois Department of Public Aid if it is providing or has provided financial support to the child or if it is assisting with child support collection services, it shall be barred 2 years after the agency has ceased to provide assistance to the child.

(2) Failure to bring an action within 2 years shall not bar any party from asserting a defense in any action to declare the non-existence of the parent and child relationship.

(3) An action to declare the non-existence of the parent and child relationship brought under subsection (b) of Section 7 of this Act shall be barred if brought later than 2 years after the petitioner obtains knowledge of relevant facts. The 2-year period for bringing an action to declare the nonexistence of the parent and child relationship shall not extend beyond the date on which the child reaches the age of 18 years. Failure to bring an action within 2 years shall not bar any party from asserting a defense in any action to declare the existence of the parent and child relationship.

(4) An action to declare the non-existence of the parent and child relationship brought under subsection (b-5) of Section 7 of this Act shall be barred if brought more than 6 months after the effective date of this amendatory Act of 1998 or more than 2 years after the petitioner obtains actual knowledge of relevant facts, whichever is later. The 2-year period shall not apply to periods of time where the natural mother or the child refuses to submit to deoxyribonucleic acid (DNA) tests. The 2-year period for bringing an action to declare the nonexistence of the parent and child relationship shall not

extend beyond the date on which the child reaches the age of 18 years. Failure to bring an action within 2 years shall not bar any party from asserting a defense in any action to declare the existence of the parent and child relationship.

(b) The time during which any party is not subject to service of process or is otherwise not subject to the jurisdiction of the courts of this State shall toll the aforementioned periods.

(c) This Act does not affect the time within which any rights under the Probate Act of 1975 may be asserted beyond the time provided by law relating to distribution and closing of decedent's estates or to the determination of heirship, or otherwise.

Sec. 9. Jurisdiction; Venue.

(a) The circuit courts shall have jurisdiction of an action brought under this Act. In any civil action not brought under this Act, the provisions of this Act shall apply if parentage is at issue. The Court may join any action under this Act with any other civil action where applicable.

(b) The action may be brought in the county in which any party resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced.

(c) The summons that is served on a defendant shall include the return date on or by which the defendant must appear and shall contain the following information, in a prominent place and in conspicuous language, in addition to the information required to be provided by the laws of this State: "If you do not appear as instructed in this summons, you may be required to support the child named in this petition until the child is at least 18 years old. You may also have to pay the pregnancy and delivery costs of the mother."

Sec. 9.1. Notice to Presumed Father.

(a) In any action brought under Section 6 or 7 of this Act where the man signing the petition for an order establishing the existence of the parent and child relationship by

consent or the man alleged to be the father in a complaint is different from a man who is presumed to be father of the child under Section 5, a notice shall be served on the presumed father in the same manner as summonses are served in other civil proceedings or, in lieu of personal service, service may be made as follows:

(1) The person requesting notice shall pay to the Clerk of the Court a mailing fee of \$1.50 and furnish to the Clerk an original and one copy of a notice together with an affidavit setting forth the presumed father's last known address. The original notice shall be retained by the Clerk.

(2) The Clerk shall promptly mail to the presumed father, at the address appearing in the affidavit, the copy of the notice, certified mail, return receipt requested. The envelope and return receipt shall bear the return address of the Clerk. The receipt for certified mail shall state the name and address of the addressee, and the date of mailing, and shall be attached to the original notice.

(3) The return receipt, when returned to the Clerk, shall be attached to the original notice, and shall constitute proof of service

(4) The Clerk shall note the fact of service in a permanent record.

(b) The notice shall read as follows:

IN THE MATTER OF NOTICE TO PRESUMED FATHER.

You have been identified as the presumed father of born on

The mother of the child is

An action is being brought to establish the parent and child relationship between the named child and a man named by the mother,

Under the law, you are presumed to be the father if (1) you and the child's mother are or have been married to each other, and the child was born or conceived during the marriage; or if (2) upon the child's birth, you and the child's mother married each other and you were named, with your consent, as the child's father on the child's birth certificate.

As the presumed father, you have certain legal rights with respect to the named child, including the right to notice of the filing of proceedings instituted for the

establishment of parentage of said child and if named as the father in a petition to establish parentage, the right to submit, along with the mother and child, to deoxyribonucleic acid (DNA) tests to determine inherited characteristics. If you wish to retain your rights with respect to said child, you must file with the Clerk of this Circuit Court of County, Illinois whose address is, Illinois, within 30 days after the date of receipt of this notice, a declaration of parentage stating that you are, in fact, the father of said child and that you intend to retain your legal rights with respect to said child, or request to be notified of any further proceedings with respect to the parentage of said child.

If you do not file such declaration of parentage, or a request for notice, then whatever legal rights you have with respect to the named child, including the right to notice of any future proceedings for the establishment of parentage of the child, may be terminated without any further notice to you. When your legal rights with respect to the named child are so terminated, you will not be entitled to notice of any future proceedings.

(c) The notice to presumed fathers provided for in this Section in any action brought by a public agency shall be prepared and mailed by such public agency and the mailing fee to the Clerk shall be waived.