

Part 5 Genetic Testing

78B-15-501 Scope of part.

This part governs genetic testing of an individual to determine parentage, whether the individual:

- (1) voluntarily submits to testing; or
- (2) is tested pursuant to an order of a tribunal or a support-enforcement agency.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-502 Order for testing.

- (1) Upon the motion of any party to the action, except as otherwise provided in this part and Part 6, Adjudication of Parentage, the tribunal shall order the child and other designated individuals to submit to genetic testing if the request for testing is supported by the sworn statement of a party to the proceeding:
 - (a) alleging paternity and stating facts establishing a reasonable probability of the requisite sexual contact between the individuals; or
 - (b) denying paternity and stating facts establishing a possibility that sexual contact between the individuals, if any, did not result in the conception of the child.
- (2) If a request for genetic testing of a child is made before birth, the tribunal may not order in-utero testing.
- (3) If two or more men are subject to an order for genetic testing, the testing may be ordered concurrently or sequentially.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-503 Requirements for genetic testing.

- (1) Genetic testing must be of a type reasonably relied upon by experts in the field of genetic testing and performed in a testing laboratory accredited by:
 - (a) the American Association of Blood Banks, or a successor to its functions;
 - (b) the American Society for Histocompatibility and Immunogenetics, or a successor to its functions; or
 - (c) an accrediting body designated by the federal Secretary of Health and Human Services.
- (2) A specimen used in genetic testing may consist of one or more samples, or a combination of samples, of blood, buccal cells, bone, hair, or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each individual undergoing genetic testing.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-504 Report of genetic testing.

- (1) A report of genetic testing must be in a record and signed under penalty of perjury by a designee of the testing laboratory. A report made under the requirements of this part is self-authenticating.
- (2) Documentation from the testing laboratory of the following information is sufficient to establish a reliable chain of custody that allows the results of genetic testing to be admissible without testimony:

- (a) the names and photographs of the individuals whose specimens have been taken;
- (b) the names of the individuals who collected the specimens;
- (c) the places and dates the specimens were collected;
- (d) the names of the individuals who received the specimens in the testing laboratory;
- (e) the dates the specimens were received; and
- (f) the finger prints of the individuals whose specimens have been taken.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-505 Genetic testing results -- Rebuttal.

- (1) Under this chapter, a man is presumed to be identified as the father of a child if the genetic testing complies with this part and the results disclose that:
 - (a) the man has at least a 99% probability of paternity, using a prior probability of 0.50, as calculated by using the combined paternity index obtained in the testing; and
 - (b) a combined paternity index of at least 100 to 1.
- (2) A man identified under Subsection (1) as the father of the child may rebut the genetic testing results only by other genetic testing satisfying the requirements of this part which:
 - (a) excludes the man as a genetic father of the child; or
 - (b) identifies another man as the possible father of the child.
- (3) If an issue is raised as to whether the appropriate ethnic or racial group database was used by the testing laboratory, the testing laboratory will be asked to rerun the test using the correct ethnic or racial group database. If the testing laboratory does not have an adequate database, another testing laboratory may be engaged to perform the calculations.
- (4) If a presumption of paternity is not rebutted by a second test, the tribunal shall issue an order establishing paternity.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-506 Costs of genetic testing.

- (1) Subject to assessment of costs under Part 6, Adjudication of Parentage, the cost of initial genetic testing shall be advanced:
 - (a) by a support-enforcement agency in a proceeding in which the support-enforcement agency is providing services;
 - (b) by the individual who made the request;
 - (c) as agreed by the parties; or
 - (d) as ordered by the tribunal.
- (2) In cases in which the cost is advanced by the support-enforcement agency, the agency may seek reimbursement from a man who is rebuttably identified as the father.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-507 Additional genetic testing.

The tribunal shall order additional genetic testing upon the request of a party who contests the result of the original testing. If the previous genetic testing identified a man as the father of the child under Section 78B-15-505, the tribunal may not order additional testing unless the party provides advance payment for the testing. If the tribunal orders a second genetic test in accordance with this section, the additional testing must be completed within 45 days of the tribunal's order or the requesting party's objection to the first test will be automatically denied. If

failure to complete the test occurs because of noncooperation of the mother or unavailability of the child, the time will be tolled.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-508 Genetic testing when specimens not available.

- (1) Subject to Subsection (2), if a genetic-testing specimen is not available from a man who may be the father of a child, for good cause and under extraordinary circumstances the tribunal considers to be just, the tribunal may order the following individuals to submit specimens for genetic testing:
 - (a) the parents of the man;
 - (b) brothers and sisters of the man;
 - (c) other children of the man and their mothers; and
 - (d) other relatives of the man necessary to complete genetic testing.
- (2) Issuance of an order under this section requires a finding that a need for genetic testing outweighs the legitimate interests of the individual sought to be tested.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-509 Deceased individual.

For good cause shown, the tribunal may order genetic testing of a deceased individual.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-510 Identical brothers.

- (1) The tribunal may order genetic testing of a brother of a man identified as the father of a child if the man is commonly believed to have an identical brother and evidence suggests that the brother may be the genetic father of the child.
- (2) If each brother satisfies the requirements as the identified father of the child under Section 78B-15-505 without consideration of another identical brother being identified as the father of the child, the tribunal may rely on nongenetic evidence to adjudicate which brother is the father of the child.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-15-511 Confidentiality of genetic testing.

Release of the report of genetic testing for parentage is controlled by Title 63G, Chapter 2, Government Records Access and Management Act.

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