

UNIFORM PARENTAGE ACT AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: V. Lowry Snow

LONG TITLE

General Description:

This bill makes technical amendments to the Utah Uniform Parentage Act regarding parents and married couples.

Highlighted Provisions:

This bill:

- makes changes throughout the act to allow the application of the act to same gender couples; and
- makes conforming and technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-6-110, as last amended by Laws of Utah 2014, Chapter 410

78B-6-120, as last amended by Laws of Utah 2013, Chapter 458

78B-15-102, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-15-104, as last amended by Laws of Utah 2010, Chapter 237

78B-15-107, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-15-111, as renumbered and amended by Laws of Utah 2008, Chapter 3



28 **78B-15-112**, as renumbered and amended by Laws of Utah 2008, Chapter 3
29 **78B-15-113**, as renumbered and amended by Laws of Utah 2008, Chapter 3
30 **78B-15-114**, as renumbered and amended by Laws of Utah 2008, Chapter 3
31 **78B-15-115**, as renumbered and amended by Laws of Utah 2008, Chapter 3
32 **78B-15-201**, as renumbered and amended by Laws of Utah 2008, Chapter 3
33 **78B-15-202**, as renumbered and amended by Laws of Utah 2008, Chapter 3
34 **78B-15-204**, as renumbered and amended by Laws of Utah 2008, Chapter 3
35 **78B-15-301**, as renumbered and amended by Laws of Utah 2008, Chapter 3
36 **78B-15-302**, as renumbered and amended by Laws of Utah 2008, Chapter 3
37 **78B-15-303**, as renumbered and amended by Laws of Utah 2008, Chapter 3
38 **78B-15-304**, as renumbered and amended by Laws of Utah 2008, Chapter 3
39 **78B-15-305**, as renumbered and amended by Laws of Utah 2008, Chapter 3
40 **78B-15-306**, as renumbered and amended by Laws of Utah 2008, Chapter 3
41 **78B-15-307**, as renumbered and amended by Laws of Utah 2008, Chapter 3
42 **78B-15-308**, as renumbered and amended by Laws of Utah 2008, Chapter 3
43 **78B-15-310**, as renumbered and amended by Laws of Utah 2008, Chapter 3
44 **78B-15-311**, as renumbered and amended by Laws of Utah 2008, Chapter 3
45 **78B-15-312**, as renumbered and amended by Laws of Utah 2008, Chapter 3
46 **78B-15-401**, as renumbered and amended by Laws of Utah 2008, Chapter 3
47 **78B-15-402**, as renumbered and amended by Laws of Utah 2008, Chapter 3
48 **78B-15-404**, as renumbered and amended by Laws of Utah 2008, Chapter 3
49 **78B-15-405**, as renumbered and amended by Laws of Utah 2008, Chapter 3
50 **78B-15-410**, as renumbered and amended by Laws of Utah 2008, Chapter 3
51 **78B-15-505**, as renumbered and amended by Laws of Utah 2008, Chapter 3
52 **78B-15-507**, as renumbered and amended by Laws of Utah 2008, Chapter 3
53 **78B-15-602**, as renumbered and amended by Laws of Utah 2008, Chapter 3
54 **78B-15-603**, as renumbered and amended by Laws of Utah 2008, Chapter 3
55 **78B-15-605**, as renumbered and amended by Laws of Utah 2008, Chapter 3
56 **78B-15-606**, as renumbered and amended by Laws of Utah 2008, Chapter 3
57 **78B-15-607**, as renumbered and amended by Laws of Utah 2008, Chapter 3
58 **78B-15-608**, as renumbered and amended by Laws of Utah 2008, Chapter 3

59 **78B-15-609**, as renumbered and amended by Laws of Utah 2008, Chapter 3
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64 **78B-15-617**, as renumbered and amended by Laws of Utah 2008, Chapter 3
65 **78B-15-618**, as renumbered and amended by Laws of Utah 2008, Chapter 3
66 **78B-15-620**, as renumbered and amended by Laws of Utah 2008, Chapter 3
67 **78B-15-622**, as renumbered and amended by Laws of Utah 2008, Chapter 3
68 **78B-15-623**, as renumbered and amended by Laws of Utah 2008, Chapter 3
69 **78B-15-705**, as renumbered and amended by Laws of Utah 2008, Chapter 3
70 **78B-15-801**, as renumbered and amended by Laws of Utah 2008, Chapter 3
71 **78B-15-802**, as renumbered and amended by Laws of Utah 2008, Chapter 3
72 **78B-15-803**, as renumbered and amended by Laws of Utah 2008, Chapter 3
73 **78B-15-806**, as renumbered and amended by Laws of Utah 2008, Chapter 3
74 **78B-15-808**, as renumbered and amended by Laws of Utah 2008, Chapter 3

76 *Be it enacted by the Legislature of the state of Utah:*

77 Section 1. Section **78B-6-110** is amended to read:

78 **78B-6-110. Notice of adoption proceedings.**

79 (1) (a) An unmarried biological father, by virtue of the fact that he has engaged in a
80 sexual relationship with a woman:

81 (i) is considered to be on notice that a pregnancy and an adoption proceeding regarding
82 the child may occur; and

83 (ii) has a duty to protect his own rights and interests.

84 (b) An unmarried biological father is entitled to actual notice of a birth or an adoption
85 proceeding with regard to his child only as provided in this section or Section **78B-6-110.5**.

86 (2) Notice of an adoption proceeding shall be served on each of the following persons:

87 (a) any person or agency whose consent or relinquishment is required under Section
88 **78B-6-120** or **78B-6-121**, unless that right has been terminated by:

89 (i) waiver;

90 (ii) relinquishment;
91 (iii) actual consent, as described in Subsection (12); or
92 (iv) judicial action;

93 (b) any person who has initiated a paternity proceeding and filed notice of that action
94 with the state registrar of vital statistics within the Department of Health, in accordance with
95 Subsection (3);

96 (c) any legally appointed custodian or guardian of the adoptee;

97 (d) the petitioner's spouse, if any, only if the petitioner's spouse has not joined in the
98 petition;

99 (e) the adoptee's spouse, if any;

100 (f) any person who, prior to the time the mother executes her consent for adoption or
101 relinquishes the child for adoption, is recorded on the birth certificate as the child's father, with
102 the knowledge and consent of the mother;

103 (g) a person who is:

104 (i) openly living in the same household with the child at the time the consent is
105 executed or relinquishment made; and

106 (ii) holding himself out to be the child's father; and

107 (h) any person who is married to the child's mother at the time she executes her consent
108 to the adoption or relinquishes the child for adoption, unless the court finds that the mother's
109 spouse is not the child's ~~father~~ parent under Section 78B-15-607.

110 (3) (a) In order to preserve any right to notice, an unmarried biological father shall,
111 consistent with Subsection (3)(d):

112 (i) initiate proceedings in a district court of Utah to establish paternity under Title 78B,
113 Chapter 15, Utah Uniform Parentage Act; and

114 (ii) file a notice of commencement of the proceedings described in Subsection (3)(a)(i)
115 with the office of vital statistics within the Department of Health.

116 (b) If the unmarried, biological father does not know the county in which the birth
117 mother resides, he may initiate his action in any county, subject to a change in trial pursuant to
118 Section 78B-3-307.

119 (c) The Department of Health shall provide forms for the purpose of filing the notice
120 described in Subsection (3)(a)(ii), and make those forms available in the office of the county

health department in each county.

(d) When the state registrar of vital statistics receives a completed form, the registrar shall:

(i) record the date and time the form was received; and

(ii) immediately enter the information provided by the unmarried biological father in the confidential registry established by Subsection 78B-6-121(3)(c).

(e) The action and notice described in Subsection (3)(a):

(i) may be filed before or after the child's birth; and

(ii) shall be filed prior to the mother's:

(A) execution of consent to adoption of the child; or

(B) relinquishment of the child for adoption.

(4) Notice provided in accordance with this section need not disclose the name of the mother of the child who is the subject of an adoption proceeding.

(5) The notice required by this section:

(a) may be served at any time after the petition for adoption is filed, but may not be served on a birth mother before she has given birth to the child who is the subject of the petition for adoption;

(b) shall be served at least 30 days prior to the final dispositional hearing;

(c) shall specifically state that the person served shall fulfill the requirements of Subsection (6)(a), within 30 days after the day on which the person receives service if the person intends to intervene in or contest the adoption;

(d) shall state the consequences, described in Subsection (6)(b), for failure of a person to file a motion for relief within 30 days after the day on which the person is served with notice of an adoption proceeding;

(e) is not required to include, nor be accompanied by, a summons or a copy of the petition for adoption; and

(f) shall state where the person may obtain a copy of the petition for adoption.

(6) (a) A person who has been served with notice of an adoption proceeding and who wishes to contest the adoption shall file a motion to intervene in the adoption proceeding:

(i) within 30 days after the day on which the person was served with notice of the adoption proceeding;

(ii) setting forth specific relief sought; and
(iii) accompanied by a memorandum specifying the factual and legal grounds upon which the motion is based.

(b) A person who fails to fully and strictly comply with all of the requirements described in Subsection (6)(a) within 30 days after the day on which the person was served with notice of the adoption proceeding:

(i) waives any right to further notice in connection with the adoption;
(ii) forfeits all rights in relation to the adoptee; and
(iii) is barred from thereafter bringing or maintaining any action to assert any interest in the adoptee.

(7) Service of notice under this section shall be made as follows:

(a) (i) Subject to Subsection (5)(e), service on a person whose consent is necessary under Section 78B-6-120 or 78B-6-121 shall be in accordance with the provisions of the Utah Rules of Civil Procedure.

(ii) If service of a person described in Subsection (7)(a)(i) is by publication, the court shall designate the content of the notice regarding the identity of the parties.

(iii) The notice described in this Subsection (7)(a) may not include the name of a person seeking to adopt the adoptee.

(b) (i) Except as provided in Subsection (7)(b)(ii) to any other person for whom notice is required under this section, service by certified mail, return receipt requested, is sufficient.

(ii) If the service described in Subsection (7)(b)(i) cannot be completed after two attempts, the court may issue an order providing for service by publication, posting, or by any other manner of service.

(c) Notice to a person who has initiated a paternity proceeding and filed notice of that action with the state registrar of vital statistics in the Department of Health in accordance with the requirements of Subsection (3), shall be served by certified mail, return receipt requested, at the last address filed with the registrar.

(8) The notice required by this section may be waived in writing by the person entitled to receive notice.

(9) Proof of service of notice on all persons for whom notice is required by this section shall be filed with the court before the final dispositional hearing on the adoption.

(10) Notwithstanding any other provision of law, neither the notice of an adoption proceeding nor any process in that proceeding is required to contain the name of the person or persons seeking to adopt the adoptee.

(11) Except as to those persons whose consent to an adoption is required under Section 78B-6-120 or 78B-6-121, the sole purpose of notice under this section is to enable the person served to:

(a) intervene in the adoption; and

(b) present evidence to the court relevant to the best interest of the child.

(12) In order to be excused from the requirement to provide notice as described in Subsection (2)(a) on the grounds that the person has provided consent to the adoption proceeding under Subsection (2)(a)(iii), the consent may not be implied consent, as described in Section 78B-6-120.1.

Section 2. Section 78B-6-120 is amended to read:

78B-6-120. Necessary consent to adoption or relinquishment for adoption.

(1) Except as provided in Subsection (2), consent to adoption of a child, or relinquishment of a child for adoption, is required from:

(a) the adoptee, if the adoptee is more than 12 years of age, unless the adoptee does not have the mental capacity to consent;

(b) a ~~man~~ person who:

(i) by operation of law under Section 78B-15-204, is recognized as the ~~father~~ parent of the proposed adoptee, unless:

(A) the presumption is rebutted under Section 78B-15-607; or

(B) the man was not married to the mother of the proposed adoptee until after the mother consented to adoption, or relinquishment for adoption, of the proposed adoptee; or

(ii) is the father of the adoptee by a previous legal adoption;

(c) the mother of the adoptee;

(d) a biological parent who has been adjudicated to be the child's biological father by a court of competent jurisdiction prior to the mother's execution of consent to adoption or her relinquishment of the child for adoption;

(e) consistent with Subsection (3), a biological parent who has executed and filed a voluntary declaration of paternity with the state registrar of vital statistics within the

Department of Health in accordance with Title 78B, Chapter 15, Utah Uniform Parentage Act, prior to the mother's execution of consent to adoption or her relinquishment of the child for adoption;

(f) an unmarried biological father, of an adoptee, whose consent is not required under Subsection (1)(d) or (1)(e), only if he fully and strictly complies with the requirements of Sections 78B-6-121 and 78B-6-122; and

(g) the person or agency to whom an adoptee has been relinquished and that is placing the child for adoption.

(2) (a) The consent of a person described in Subsections (1)(b) through (g) is not required if the adoptee is 18 years of age or older.

(b) The consent of a person described in Subsections (1)(b) through (f) is not required if the person's parental rights relating to the adoptee have been terminated.

(3) For purposes of Subsection (1)(e), a voluntary declaration of paternity is considered filed when it is entered into a database that:

(a) can be accessed by the Department of Health; and

(b) is designated by the state registrar of vital statistics as the official database for voluntary declarations of paternity.

Section 3. Section 78B-15-102 is amended to read:

78B-15-102. Definitions.

As used in this chapter:

(1) "Adjudicated ~~[father]~~ parent" means a ~~[man]~~ person who has been adjudicated by a tribunal to be ~~[the father]~~ a parent of a child.

(2) "Alleged father" means a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined.

(3) "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse. The term includes:

(a) intrauterine insemination;

(b) donation of eggs;

(c) donation of embryos;

(d) in vitro fertilization and transfer of embryos; and

(e) intracytoplasmic sperm injection.

(4) "Birth expenses" means all medical costs associated with the birth of a child, including the related expenses for the ~~[biological]~~ birth mother during her pregnancy and delivery.

(5) "Birth mother" means the ~~[biological mother of]~~ woman who gives birth to a child.

(6) "Child" means an individual of any age whose parentage may be determined under this chapter.

(7) "Commence" means to file the initial pleading seeking an adjudication of parentage in the appropriate tribunal of this state.

(8) "Declarant father" means a male who, along with the biological mother claims to be the genetic father of a child, and signs a voluntary declaration of paternity to establish the man's paternity.

(9) "Determination of parentage" means the establishment of the parent-child relationship by the signing of a valid declaration of paternity under Part 3, Voluntary Declaration of Paternity Act, or adjudication by a tribunal.

(10) "Donor" means an individual who produces eggs or sperm used for assisted reproduction, whether or not for consideration. The term does not include:

(a) a husband who provides sperm, or a wife who provides eggs, to be used for assisted reproduction by the wife;

(b) a woman who gives birth to a child by means of assisted reproduction, except as otherwise provided in Part 8, Gestational Agreement; or

(c) a parent under Part 7, Assisted Reproduction, or an intended parent under Part 8, Gestational Agreement.

(11) "Ethnic or racial group" means, for purposes of genetic testing, a recognized group that an individual identifies as all or part of the individual's ancestry or that is so identified by other information.

(12) "Financial support" means a base child support award as defined in Section 78B-12-102, all past-due support which accrues under an order for current periodic payments, and sum certain judgments for past-due support.

(13) "Genetic testing" means an analysis of genetic markers to exclude or identify a man as the father or a woman as the mother of a child. The term includes an analysis of one or

a combination of the following:

(a) deoxyribonucleic acid; or

(b) blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins, or red-cell enzymes.

(14) "Gestational mother" means an adult woman who gives birth to a child under a gestational agreement.

(15) "Man," as defined in this chapter, means a male individual of any age.

(16) "Medical support" means a provision in a support order that requires the purchase and maintenance of appropriate insurance for health and dental expenses of dependent children, and assigns responsibility for uninsured medical expenses.

(17) "Parent" means an individual who has established a parent-child relationship under Section 78B-15-201.

(18) "Parent-child relationship" means the legal relationship between a child and a parent of the child. The term includes the mother-child relationship and the father-child relationship.

(19) "Paternity index" means the likelihood of paternity calculated by computing the ratio between:

(a) the likelihood that the tested man is the father, based on the genetic markers of the tested man and child, conditioned on the hypothesis that the tested man is the father of the child; and

(b) the likelihood that the tested man is not the father, based on the genetic markers of the tested man and child, conditioned on the hypothesis that the tested man is not the father of the child and that the father is of the same ethnic or racial group as the tested man.

(20) "Presumed ~~[father]~~ parent" means a ~~[man]~~ person who, by operation of law under Section 78B-15-204, is recognized as ~~[the father]~~ a parent of a child until that status is rebutted or confirmed as set forth in this chapter.

(21) "Probability of paternity" means the measure, for the ethnic or racial group to which the alleged father belongs, of the probability that the man in question is the father of the child, compared with a random, unrelated man of the same ethnic or racial group, expressed as a percentage incorporating the paternity index and a prior probability.

(22) "Record" means information that is inscribed on a tangible medium or that is

stored in an electronic or other medium and is retrievable in perceivable form.

(23) "Signatory" means an individual who authenticates a record and is bound by its terms.

(24) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, any territory, Native American Tribe, or insular possession subject to the jurisdiction of the United States.

(25) "Support-enforcement agency" means a public official or agency authorized under Title IV-D of the Social Security Act which has the authority to seek:

(a) enforcement of support orders or laws relating to the duty of support;

(b) establishment or modification of child support;

(c) determination of parentage; or

(d) location of child-support obligors and their income and assets.

(26) "Tribunal" means a court of law, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.

Section 4. Section **78B-15-104** is amended to read:

78B-15-104. Adjudication -- Jurisdiction.

(1) The district court, the juvenile court, and the Office of Recovery Services in accordance with Section [62A-11-304.2](#) and Title 63G, Chapter 4, Administrative Procedures Act, are authorized to adjudicate parentage under Part 1, General Provisions, Part 2, Parent and Child Relationship, Part 3, Voluntary Declaration of Paternity Act, Part 4, Registry, Part 5, Genetic Testing, Part 6, Adjudication of Parentage, and Part 9, Miscellaneous.

(2) The district court and the juvenile court have jurisdiction over proceedings under Part 7, Assisted Reproduction, and Part 8, Gestational Agreement.

(3) The court shall, without adjudicating [~~paternity~~] parentage, dismiss a petition that is filed under this chapter by an unmarried biological father if he is not entitled to consent to the adoption of the child under Sections [78B-6-121](#) and [78B-6-122](#).

Section 5. Section **78B-15-107** is amended to read:

78B-15-107. Effect.

An adjudication of parentage or declaration of paternity shall be filed with the state registrar in accordance with Section [26-2-5](#).

Section 6. Section **78B-15-111** is amended to read:

78B-15-111. Default judgment.

Utah Rule of Civil Procedure 55, Default Judgment, shall apply to ~~[paternity]~~ parentage actions commenced under this chapter.

Section 7. Section **78B-15-112** is amended to read:

78B-15-112. Standard of proof.

The standard of proof in a trial to determine ~~[paternity]~~ parentage is "by clear and convincing evidence."

Section 8. Section **78B-15-113** is amended to read:

78B-15-113. Parent-time rights.

(1) If the tribunal determines that the alleged ~~[father is the father, it]~~ parent is a parent, the tribunal may upon its own motion or upon motion of the ~~[father]~~ adjudicated parent, order parent-time rights in accordance with Sections ~~30-3-32~~ through ~~30-3-37~~ as it considers appropriate under the circumstances.

(2) Parent-time rights may not be granted to ~~[a father]~~ the adjudicated parent if the child has been subsequently adopted.

Section 9. Section **78B-15-114** is amended to read:

78B-15-114. Social security number in tribunal records.

The social security number of any individual who is subject to a ~~[paternity]~~ parentage determination shall be placed in the records relating to the matter.

Section 10. Section **78B-15-115** is amended to read:

78B-15-115. Settlement agreements.

An agreement of settlement with ~~[the]~~ an alleged ~~[father]~~ parent is binding only when approved by the tribunal.

Section 11. Section **78B-15-201** is amended to read:

78B-15-201. Establishment of parent-child relationship.

~~[(1)]~~ The ~~[mother-child]~~ parent-child relationship is established between a ~~[woman]~~ parent and a child by:

~~[(a)]~~ (1) ~~[the woman's having given]~~ a woman giving birth to the child, except as otherwise provided in Part 8, Gestational Agreement;

~~[(b)]~~ (2) an adjudication of ~~[the woman's maternity]~~ parentage;

~~[(c)]~~ (3) adoption of the child ~~[by the woman, or];~~

369 ~~[(d)]~~ (4) an adjudication confirming the ~~[woman]~~ person as a parent of a child born to a
370 gestational mother if the agreement was validated under Part 8, Gestational Agreement, or is
371 enforceable under other law~~[-]~~;

372 ~~[(2) The father-child relationship is established between a man and a child by:]~~

373 ~~[(a)]~~ (5) an unrebutted presumption of ~~[the man's paternity]~~ parentage of the child
374 under Section **78B-15-204**;

375 ~~[(b)]~~ (6) an effective declaration of paternity by the man under Part 3, Voluntary
376 Declaration of Paternity Act, unless the declaration has been rescinded or successfully
377 challenged; or

378 ~~[(c) an adjudication of the man's paternity;]~~

379 ~~[(d) adoption of the child by the man;]~~

380 ~~[(e)]~~ (7) the man having consented to assisted reproduction by a woman under Part 7,
381 Assisted Reproduction, which resulted in the birth of the child~~[-or]~~.

382 ~~[(f) an adjudication confirming the man as a parent of a child born to a gestational~~
383 ~~mother if the agreement was validated under Part 8, Gestational Agreement, or is enforceable~~
384 ~~under other law.]~~

385 Section 12. Section **78B-15-202** is amended to read:

386 **78B-15-202. No discrimination based on marital status.**

387 A child born to parents who are not married to each other whose ~~[paternity]~~ parentage
388 has been determined under this chapter has the same rights under the law as a child born to
389 parents who are married to each other.

390 Section 13. Section **78B-15-204** is amended to read:

391 **78B-15-204. Presumption of parentage.**

392 (1) A ~~[man]~~ person is presumed to be ~~[the father]~~ a parent of a child if:

393 (a) ~~[he]~~ the person and the birth mother of the child are married to each other and the
394 child is born during the marriage;

395 (b) ~~[he]~~ the person and the birth mother of the child were married to each other and the
396 child is born within 300 days after the marriage is terminated by death, annulment, declaration
397 of invalidity, or divorce, or after a decree of separation;

398 (c) before the birth of the child, ~~[he]~~ the person and the birth mother of the child
399 married each other in apparent compliance with law, even if the attempted marriage is or could

be declared invalid, and the child is born during the invalid marriage or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce or after a decree of separation; or

(d) after the birth of the child, ~~[he]~~ the person and the birth mother of the child married each other in apparent compliance with law, whether or not the marriage is, or could be declared, invalid, ~~[he]~~ the person voluntarily asserted ~~[his paternity]~~ parentage of the child, and there is no other presumptive ~~[father]~~ parent of the child, and:

(i) the assertion is in a record filed with the Office of Vital Records;

(ii) ~~[he]~~ the person agreed to be and is named as the child's ~~[father]~~ parent on the child's birth certificate; or

(iii) ~~[he]~~ the person promised in a record to support the child as ~~[his]~~ the person's own.

(2) A presumption of ~~[paternity]~~ parentage established under this section may only be rebutted in accordance with Section 78B-15-607.

(3) If a child has an adjudicated ~~[father]~~ parent, the results of genetic testing are inadmissible to challenge ~~[paternity]~~ parentage except as set forth in Section 78B-15-607.

Section 14. Section 78B-15-301 is amended to read:

78B-15-301. Declaration of paternity.

The birth mother of a child and a man claiming to be the genetic father of the child may sign a declaration of paternity to establish the paternity of the child.

Section 15. Section 78B-15-302 is amended to read:

78B-15-302. Execution of declaration of paternity.

(1) A declaration of paternity ~~[must]~~ shall:

(a) be in a record;

(b) be signed, or otherwise authenticated, under penalty of perjury, by the birth mother and by the declarant father;

(c) be signed by the birth mother and declarant father in the presence of two witnesses who are not related by blood or marriage; and

(d) state that the child whose paternity is being declared:

(i) does not have a presumed ~~[father]~~ parent, or has a presumed ~~[father]~~ parent whose full name is stated; and

(ii) does not have another declarant father or adjudicated ~~[father]~~ parent;

(e) state whether there has been genetic testing and, if so, that the declarant man's claim of paternity is consistent with the results of the testing; and

(f) state that the signatories understand that the declaration is the equivalent of a legal finding of paternity of the child and that a challenge to the declaration is permitted only under the limited circumstances described in Section 78B-15-307.

(2) If either the birth mother or the declarant father is a minor, the voluntary declaration ~~[must]~~ shall also be signed by that minor's parent or legal guardian.

(3) A declaration of paternity is void if it:

(a) states that another ~~[man]~~ person is a presumed ~~[father]~~ parent, unless a denial of ~~[paternity]~~ parentage signed or otherwise authenticated by the presumed ~~[father]~~ parent is filed with the Office of Vital Records in accordance with Section 78B-15-303;

(b) states that another ~~[man]~~ person is a declarant father or adjudicated ~~[father]~~ parent; or

(c) falsely denies the existence of a ~~[presumed,]~~ declarant~~[-]~~ father or presumed or adjudicated ~~[father]~~ parent of the child.

(4) A presumed father may sign or otherwise authenticate ~~[an acknowledgment]~~ a declaration of paternity.

(5) The declaration of paternity shall be in a form prescribed by the Office of Vital Records and shall be accompanied with a written and verbal notice of the alternatives to, the legal consequences of, and the rights and responsibilities that arise from signing the declaration.

(6) The social security number of any person who is subject to declaration of paternity shall be placed in the records relating to the matter.

(7) The declaration of paternity shall become an amendment to the original birth certificate. The original certificate and the declaration shall be marked as to be distinguishable. The declaration may be included as part of subsequently issued certified copies of the birth certificate. Alternatively, electronically issued copies of a certificate may reflect the amended information and the date of the amendment only.

(8) A declaration of paternity may be completed and signed any time after the birth of the child. A declaration of paternity may not be signed or filed after consent to or relinquishment for adoption has been signed.

(9) A declaration of paternity shall be considered effective when filed and entered into a database established and maintained by the Office of Vital Records.

Section 16. Section **78B-15-303** is amended to read:

78B-15-303. Denial of parentage.

A presumed ~~[or declarant father]~~ parent may sign a denial of ~~[his paternity]~~ parentage. The denial is valid only if:

(1) a declaration of paternity signed, or otherwise authenticated, by another man is filed pursuant to Section **78B-15-305**;

(2) the denial is in a form prescribed by and filed with the Office of Vital Records, and is signed, or otherwise authenticated, under penalty of perjury; and

(3) the presumed ~~[or declarant father]~~ parent has not previously:

(a) declared his paternity, unless the previous declaration has been rescinded pursuant to Section **78B-15-306** or successfully challenged pursuant to Section **78B-15-307**; or

(b) been adjudicated to be ~~[the father]~~ a parent of the child.

Section 17. Section **78B-15-304** is amended to read:

78B-15-304. Rules for declaration of paternity and denial of parentage.

(1) A declaration of paternity and a denial of ~~[paternity]~~ parentage shall be contained in a single document. If the declaration and denial are both necessary, neither is valid until both are signed and filed.

(2) A declaration of paternity or a denial of ~~[paternity]~~ parentage may not be signed before the birth of the child.

(3) Subject to Subsection (1), a declaration of paternity or denial of ~~[paternity]~~ parentage takes effect ~~[on the birth of the child or]~~ upon the filing of the document with the Office of Vital Records~~[, whichever occurs later]~~.

(4) A declaration of paternity or denial of ~~[paternity]~~ parentage signed by a minor and by the minor's parent or legal guardian is valid if it is otherwise in compliance with this chapter.

Section 18. Section **78B-15-305** is amended to read:

78B-15-305. Effect of declaration of paternity or denial of parentage.

(1) Except as otherwise provided in Sections **78B-15-306** and **78B-15-307**, a valid declaration of paternity filed with the Office of Vital Records is equivalent to a legal finding of

[paternity] parentage of a child and confers upon the declarant father all of the rights and duties of a parent.

(2) When a declaration of paternity is filed, it shall be recognized as a basis for a child support order without any further requirement or proceeding regarding the establishment of [paternity] parentage.

(a) The liabilities of the father include, but are not limited to, the reasonable expense of the birth mother's pregnancy and confinement and for the education, necessary support, and any funeral expenses for the child.

(b) When a father declares paternity, his liability for past amounts due is limited to the period of four years immediately preceding the date that the voluntary declaration of paternity was filed.

(3) Except as otherwise provided in Sections 78B-15-306 and 78B-15-307, a valid denial of [paternity] parentage by a presumed [~~or declarant father~~] parent filed with the Office of Vital Records in conjunction with a valid declaration of paternity is equivalent to a legal finding of the [~~nonpaternity~~] nonparentage of the presumed [~~or declarant father~~] parent and discharges the presumed [~~or declarant father~~] parent from all rights and duties of a parent. If a valid denial of [paternity] parentage is filed with the Office of Vital Records, the [~~declarant or~~] presumed [~~father~~] parent may not recover child support [~~he~~] paid prior to the time of filing.

Section 19. Section 78B-15-306 is amended to read:

78B-15-306. Proceeding for rescission.

(1) A signatory may rescind a declaration of paternity or denial of [paternity] parentage by filing a voluntary rescission document with the Office of Vital Records in a form prescribed by the office before the earlier of:

(a) 60 days after the effective date of the declaration or denial, as provided in Sections 78B-15-303 and 78B-15-304; or

(b) the date of notice of the first adjudicative proceeding to which the signatory is a party, before a tribunal to adjudicate an issue relating to the child, including a proceeding that establishes support.

(2) Upon receiving a voluntary rescission document from a signatory under Subsection (1), the Office of Vital Records shall provide notice of the rescission, by mail, to the other signatory at the last-known address of that signatory.

Section 20. Section **78B-15-307** is amended to read:

78B-15-307. Challenge after expiration of period for rescission.

(1) After the period for rescission under Section **78B-15-306** has expired, a signatory of a declaration of paternity or denial of ~~[paternity]~~ parentage, or a support-enforcement agency, may commence a proceeding to challenge the declaration or denial only on the basis of fraud, duress, or material mistake of fact.

(2) A party challenging a declaration of paternity or denial of ~~[paternity]~~ parentage has the burden of proof.

(3) A challenge brought on the basis of fraud or duress may be commenced at any time.

(4) A challenge brought on the basis of a material mistake of fact may be commenced within four years after the declaration is filed with the Office of Vital Records. For the purposes of this Subsection (4), if the declaration of paternity was filed with the Office of Vital Records prior to May 1, 2005, a challenge may be brought within four years after May 1, 2005.

(5) For purposes of Subsection (4), genetic test results that exclude a declarant father or that rebuttably identify another man as the father in accordance with Section **78B-15-505** constitute a material mistake of fact.

Section 21. Section **78B-15-308** is amended to read:

78B-15-308. Procedure for rescission or challenge.

(1) Every signatory to a declaration of paternity and any related denial of ~~[paternity must]~~ parentage shall be made a party to a proceeding to rescind or challenge the declaration or denial.

(2) For the purpose of rescission of, or challenge to, a declaration of paternity or denial of ~~[paternity]~~ parentage, a signatory submits to personal jurisdiction of this state by signing the declaration or denial, effective upon the filing of the document with the Office of Vital Records.

(3) Except for good cause shown, during the pendency of a proceeding to rescind or challenge a declaration of paternity or denial of ~~[paternity]~~ parentage, the tribunal may not suspend the legal responsibilities of a signatory arising from the declaration, including the duty to pay child support.

(4) A proceeding to rescind or to challenge a declaration of paternity or denial of ~~[paternity must]~~ parentage shall be conducted in the same manner as a proceeding to adjudicate

parentage under Part 6, Adjudication of Parentage.

(5) At the conclusion of a proceeding to rescind or challenge a declaration of paternity or denial of ~~[paternity]~~ parentage, the tribunal shall order the Office of Vital Records to amend the birth record of the child, if appropriate.

(6) If the declaration is rescinded, the declarant father may not recover child support he paid prior to the entry of an order of rescission.

Section 22. Section **78B-15-310** is amended to read:

78B-15-310. Full faith and credit.

A tribunal of this state shall give full faith and credit to a declaration of paternity or denial of ~~[paternity]~~ parentage effective in another state if the declaration or denial has been signed and is otherwise in compliance with the law of the other state.

Section 23. Section **78B-15-311** is amended to read:

78B-15-311. Forms for declaration of paternity and denial of parentage and for rescission of parentage.

(1) To facilitate compliance with this part, the Office of Vital Records shall prescribe forms for the declaration of paternity, denial of parentage, and rescission of ~~[paternity]~~ parentage.

(2) A valid declaration of paternity or denial of ~~[paternity]~~ parentage is not affected by a later modification of the prescribed form.

Section 24. Section **78B-15-312** is amended to read:

78B-15-312. Release of information.

The Office of Vital Records may release information relating to the declaration of paternity or denial of ~~[paternity]~~ parentage to a signatory of the declaration or denial and to tribunals and federal, tribal, and state support-enforcement agencies of this or another state.

Section 25. Section **78B-15-401** is amended to read:

78B-15-401. Maintenance of records.

(1) The Office of Vital Records shall register the following records, which are filed with the office:

(a) all declarations of paternity;

(b) all judicial and administrative determinations of ~~[paternity]~~ parentage; and

(c) all notices of proceedings to establish ~~[paternity which]~~ parentage that are filed

pursuant to Sections 78B-6-110, 78B-6-120, 78B-6-121, and 78B-6-122.

(2) A notice of initiation of [paternity] parentage proceedings may not be accepted into the registry unless accompanied by a copy of the pleading, which has been filed with the court to establish [paternity] parentage.

(3) A notice of initiation of [paternity] parentage proceedings may not be filed if another [man] person is the adjudicated parent or declarant father.

Section 26. Section 78B-15-402 is amended to read:

78B-15-402. Effect of registration.

(1) An unmarried biological father who desires to be notified of a proceeding for adoption of a child [must] shall file a notice of the initiation of [paternity] parentage proceedings as required by Sections 78B-6-110, 78B-6-120, 78B-6-121, and 78B-6-122.

(2) A registrant shall promptly notify the registry in a record of any change in the information registered. The Office of Vital Records shall incorporate all new information received into its records but need not affirmatively seek to obtain current information for incorporation in the registry.

Section 27. Section 78B-15-404 is amended to read:

78B-15-404. Required form.

(1) The Office of Vital Records shall prepare a form to be filed with the agency. The form shall require the signature of the registrant and state that the form is signed under penalty of perjury.

(2) The form shall also state that:

(a) a timely filing of notice of the initiation of [paternity] parentage proceedings, which is filed pursuant to Subsection 78B-15-402(1), entitles the registrant to notice of a proceeding for adoption of the child;

(b) a timely filing does not commence a proceeding to establish [paternity] parentage;

(c) the information disclosed on the form may be used against the registrant to establish [paternity] parentage;

(d) services to assist in establishing [paternity] parentage of a child who is not placed for adoption are available to the registrant through the Office of Recovery Services;

(e) the registrant should also file in another state if conception or birth of the child occurred in the other state;

(f) information on registries of other states is available from the Office of Vital Records; and

(g) procedures exist to remove the filing of a proceeding to establish [paternity] parentage if the proceeding is dismissed, or if a finding of [paternity] parentage is rescinded or set aside under this chapter.

Section 28. Section **78B-15-405** is amended to read:

78B-15-405. Furnishing of information -- Confidentiality.

(1) The Office of Vital Records shall send a copy of the filing to a person or entity set forth in Subsection (2), who has requested a copy. The copy of the filing shall be sent to the most recent address provided by the requestor.

(2) Information contained in records which are filed pursuant to Section **78B-15-401** is confidential and may be released on request only to:

(a) a tribunal or a person designated by the tribunal;

(b) the birth mother of the child who is the subject of the filing;

(c) an agency authorized by other law to receive the information;

(d) a licensed child-placing agency;

(e) the Office of Recovery Services, the Office of the Attorney General, or a support-enforcement agency of another state or tribe;

(f) a party or the party's attorney of record in a proceeding under this chapter or in a proceeding for adoption of, or for termination of parental rights regarding, a child who is the subject of the filing; and

(g) the registry of paternity or its equivalent in another state.

Section 29. Section **78B-15-410** is amended to read:

78B-15-410. Admissibility of information.

A certificate of search of the registry of paternity or its equivalent in this or another state is admissible in a proceeding for adoption of a child and, if relevant, in other legal proceedings.

Section 30. Section **78B-15-505** is amended to read:

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]~~ parentage is not rebutted by a second test, the tribunal shall issue an order establishing ~~[paternity]~~ parentage.

Section 31. Section **78B-15-507** is amended to read:

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]~~ shall 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 birth mother or unavailability of the child, the time will be tolled.

Section 32. Section **78B-15-602** is amended to read:

78B-15-602. Standing to maintain proceeding.

Subject to Part 3, Voluntary Declaration of Paternity Act, and Sections **78B-15-607** and **78B-15-609**, a proceeding to adjudicate parentage may be maintained by:

(1) the child;

(2) the birth mother of the child;

(3) a ~~[man]~~ person whose ~~[paternity]~~ parentage of the child is to be adjudicated;

(4) the support-enforcement agency or other governmental agency authorized by other law;

(5) an authorized adoption agency or licensed child-placing agency;

(6) a representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor; or

(7) an intended parent under Part 8, Gestational Agreement.

Section 33. Section **78B-15-603** is amended to read:

78B-15-603. Parties to proceeding.

The following individuals shall be joined as parties in a proceeding to adjudicate parentage:

(1) the birth mother of the child;

(2) a [~~man~~] person whose [~~paternity~~] parentage of the child is to be adjudicated; and

(3) the state pursuant to Section **78B-12-113**.

Section 34. Section **78B-15-605** is amended to read:

78B-15-605. Venue.

Venue for a judicial proceeding to adjudicate parentage is in the county of this state in which:

(1) the child resides or is found;

(2) the respondent resides or is found if the child does not reside in this state; or

(3) a proceeding for probate or administration of the presumed or alleged [~~father's~~] parent's estate has been commenced.

Section 35. Section **78B-15-606** is amended to read:

78B-15-606. No limitation -- Child having no declarant father or adjudicated parent.

A proceeding to adjudicate the parentage of a child having no declarant father or adjudicated [~~father~~] parent may be commenced at any time. If initiated after the child becomes an adult, only the child may initiate the proceeding.

Section 36. Section **78B-15-607** is amended to read:

78B-15-607. Limitation -- Child having presumed parent.

(1) [~~Paternity~~] Parentage of a child conceived or born during a marriage with a presumed [~~father~~] parent as described in Subsection **78B-15-204**(1)(a), (b), or (c), may be

710 raised by the presumed [~~father or~~] parent, the birth mother, or a support enforcement agency at
711 any time prior to filing an action for divorce or in the pleadings at the time of the divorce of the
712 parents.

713 (a) If the issue is raised prior to the adjudication, genetic testing may be ordered by the
714 tribunal in accordance with Section 78B-15-608. Failure of the birth mother of the child to
715 appear for testing may result in an order allowing a motherless calculation of paternity. Failure
716 of [~~the mother~~] a parent to make the child available may not result in a determination that the
717 presumed [~~father~~] parent is not [~~the father~~] a parent, but shall allow for appropriate proceedings
718 to compel the cooperation of the [~~mother~~] noncompliant parent. If the question of [~~paternity~~]
719 parentage has been raised in the pleadings in a divorce and the tribunal addresses the issue and
720 enters an order, the parties are estopped from raising the issue again, and the order of the
721 tribunal may not be challenged on the basis of material mistake of fact.

722 (b) If the presumed [~~father~~] parent seeks to rebut the presumption of [~~paternity~~]
723 parentage, then denial of a motion seeking an order for genetic testing or a decision to
724 disregard genetic test results shall be based on a preponderance of the evidence.

725 (c) If the birth mother seeks to rebut the presumption of [~~paternity~~] parentage, the birth
726 mother has the burden to show by a preponderance of the evidence that it would be in the best
727 interests of the child to disestablish the parent-child relationship.

728 (d) If a support enforcement agency seeks to rebut the presumption of parentage, then
729 denial of a motion seeking an order for genetic testing or a decision to disregard genetic test
730 results shall be based on a preponderance of the evidence, taking into account the best interests
731 of the child.

732 (2) For the presumption outside of marriage described in Subsection 78B-15-204(1)(d),
733 the presumption may be rebutted at any time if the tribunal determines that the presumed
734 [~~father~~] parent and the birth mother of the child neither cohabited nor engaged in sexual
735 intercourse with each other during the probable time of conception.

736 (3) The presumption may be rebutted by:

737 (a) genetic test results that exclude the presumed [~~father~~] parent;

738 (b) genetic test results that rebuttably identify another [~~man~~] person as the [~~father~~]
739 parent in accordance with Section 78B-15-505;

740 (c) evidence that the presumed [~~father~~] parent and the birth mother of the child neither

741 cohabited nor engaged in sexual intercourse with each other during the probable time of
742 conception; or

743 (d) an adjudication under this part.

744 (4) There is no presumption to rebut if the presumed ~~[father]~~ parent was properly
745 served and there has been a final adjudication of the issue.

746 Section 37. Section **78B-15-608** is amended to read:

747 **78B-15-608. Authority to deny motion for genetic testing or disregard test results.**

748 (1) In a proceeding to adjudicate the parentage of a child having a presumed ~~[father]~~
749 parent or to challenge the paternity of a child having a declarant father, the tribunal may deny a
750 motion seeking an order for genetic testing of the birth mother, the child, ~~[and]~~ the presumed
751 parent, or the declarant father, or if testing has been completed, the tribunal may disregard
752 genetic test results that exclude the presumed parent or declarant father if the tribunal
753 determines that:

754 (a) the conduct of the birth mother or the presumed parent or declarant father estops
755 that party from denying parentage; and

756 (b) it would be inequitable to disrupt the ~~[father-child]~~ parent-child relationship
757 between the child and the presumed parent or declarant father.

758 (2) In determining whether to deny a motion seeking an order for genetic testing or to
759 disregard genetic test results under this section, the tribunal shall consider the best interest of
760 the child, including the following factors:

761 (a) the length of time between the proceeding to adjudicate parentage and the time that
762 the presumed parent or declarant father was placed on notice that ~~[he]~~ said parent might not be
763 the genetic ~~[father]~~ parent;

764 (b) the length of time during which the presumed parent or declarant father has
765 assumed the role of ~~[father]~~ parent of the child;

766 (c) the facts surrounding the presumed parent or declarant father's discovery of ~~[his]~~
767 possible ~~[nonpaternity]~~ nonparentage;

768 (d) the nature of the relationship between the child and the presumed parent or
769 declarant father;

770 (e) the age of the child;

771 (f) the harm that may result to the child if presumed parentage or declared paternity is

successfully disestablished;

(g) the nature of the relationship between the child and any alleged ~~[father]~~ parent;

(h) the extent to which the passage of time reduces the chances of establishing the ~~[paternity]~~ parentage of another ~~[man]~~ person and a child-support obligation in favor of the child; and

(i) other factors that may affect the equities arising from the disruption of the ~~[father-child]~~ parent-child relationship between the child and the presumed parent or declarant father or the chance of other harm to the child.

(3) If the tribunal denies a motion seeking an order for genetic testing or disregards genetic test results that exclude the presumed parent or declarant father, ~~[it]~~ the tribunal shall issue an order adjudicating the presumed parent or declarant father to be ~~[the father]~~ a parent of the child.

Section 38. Section **78B-15-609** is amended to read:

78B-15-609. Limitation -- Child having declarant father.

(1) If a child has a declarant father, a signatory to the declaration of paternity or denial of ~~[paternity]~~ parentage or a support-enforcement agency may commence a proceeding seeking to rescind the declaration or denial or challenge the ~~[paternity]~~ parentage of the child only within the time allowed under Section **78B-15-306** or **78B-15-307**.

(2) A proceeding under this section is subject to the application of the principles of estoppel established in Section **78B-15-608**.

Section 39. Section **78B-15-613** is amended to read:

78B-15-613. Admissibility of results of genetic testing -- Expenses.

(1) Except as otherwise provided in Subsection (3), a record of a genetic-testing expert is admissible as evidence of the truth of the facts asserted in the report unless a party objects to its admission within 14 days after its receipt by the objecting party and cites specific grounds for exclusion. Unless a party files a timely objection, testimony shall be in affidavit form. The admissibility of the report is not affected by whether the testing was performed:

(a) voluntarily or pursuant to an order of the tribunal; or

(b) before or after the commencement of the proceeding.

(2) A party objecting to the results of genetic testing may call one or more genetic-testing experts to testify in person or by telephone, video conference, deposition, or

another method approved by the tribunal. Unless otherwise ordered by the tribunal, the party offering the testimony bears the expense for the expert testifying.

(3) If a child has a presumed parent or declarant father, the results of genetic testing are inadmissible to adjudicate parentage unless performed:

- (a) pursuant to Section 78B-15-503;
- (b) within the time periods set forth in this chapter; and
- (c) pursuant to a tribunal order or administrative process; or
- (d) with the consent of both the birth mother and the presumed parent or declarant father.

(4) If a child has an adjudicated [~~father~~] parent, the results of genetic testing are inadmissible to challenge [~~paternity~~] the parentage except as set forth in Sections 78B-15-607 and 78B-15-608.

(5) Copies of bills for genetic testing and for prenatal and postnatal health care for the birth mother and child [~~which~~] that are furnished to the adverse party not less than 10 days before the date of a hearing are admissible to establish:

- (a) the amount of the charges billed; and
- (b) that the charges were reasonable, necessary, and customary.

Section 40. Section 78B-15-614 is amended to read:

78B-15-614. Consequences of failing to submit to genetic testing.

- (1) An order for genetic testing is enforceable by contempt.
- (2) If an individual whose [~~paternity~~] parentage is being determined fails to submit to genetic testing ordered by the tribunal, the tribunal for that reason may adjudicate parentage contrary to the position of that individual.

(3) Genetic testing of the birth mother of a child is not a condition precedent to testing the child and a [~~man~~] person whose [~~paternity~~] parentage is being determined. If the birth mother is unavailable or fails to submit to genetic testing, the tribunal may order the testing of the child and every [~~man~~] person who is potentially the [~~father~~] parent of the child.

Section 41. Section 78B-15-615 is amended to read:

78B-15-615. Admission of parentage authorized.

- (1) A respondent in a proceeding to adjudicate parentage may admit to the [~~paternity~~] parentage of a child by filing a pleading to that effect or by admitting [~~paternity~~] parentage

under penalty of perjury when making an appearance or during a hearing.

(2) If the tribunal finds that the admission of [paternity] parentage satisfies the requirements of this section and finds that there is no reason to question the admission, the tribunal shall issue an order adjudicating the child to be the child of the [man] person admitting [paternity] parentage.

Section 42. Section **78B-15-616** is amended to read:

78B-15-616. Temporary order.

(1) In a proceeding under this part, the tribunal shall issue a temporary order for support of a child if the order is appropriate and the individual ordered to pay support is:

- (a) a presumed [father] parent of the child;
- (b) petitioning to have his [paternity] or her parentage adjudicated;
- (c) identified as the [father] parent through genetic testing under Section **78B-15-505**;
- (d) an alleged [father] parent who has failed to submit to genetic testing;
- (e) shown by clear and convincing evidence to be [the father] a parent of the child; or
- (f) the birth mother of the child.

(2) A temporary tribunal order may include provisions for custody and visitation as provided by other laws of this state.

Section 43. Section **78B-15-617** is amended to read:

78B-15-617. Rules for adjudication of parentage.

The tribunal shall apply the following rules to adjudicate the [paternity] parentage of a child:

(1) The [paternity] parentage of a child having a [presumed,] declarant[;] father or presumed or adjudicated [father] parent may be disproved only by admissible results of genetic testing excluding that [man-as-the] declarant father or presumed or adjudicated parent as a parent of the child or identifying another [man] person as [the father] a parent of the child.

(2) Unless the results of genetic testing are admitted to rebut other results of genetic testing, a [man] person identified as [the father] a parent of a child under Section **78B-15-505** [must] shall be adjudicated [the father] a parent of the child, unless an exception is granted under Section **78B-15-608**.

(3) If the tribunal finds that genetic testing under Section **78B-15-505** neither identifies nor excludes a [man] person as [the father] a parent of a child, the tribunal may not dismiss the

proceeding. In that event, the tribunal shall order further testing.

(4) Unless the results of genetic testing are admitted to rebut other results of genetic testing, a ~~[man]~~ parent properly excluded as ~~[the father]~~ a parent of a child by genetic testing ~~[must]~~ shall be adjudicated not to be ~~[the father]~~ a parent of the child.

Section 44. Section **78B-15-618** is amended to read:

78B-15-618. Adjudication of parentage -- Jury trial prohibited.

A jury trial is prohibited to adjudicate ~~[paternity]~~ parentage of a child.

Section 45. Section **78B-15-620** is amended to read:

78B-15-620. Adjudication of parentage -- Order on default.

The tribunal shall issue an order adjudicating ~~[the paternity of a man]~~ a person to be a parent who:

(1) after service of process, is in default; and

(2) is found by the tribunal to be ~~[the father of]~~ a parent of the child.

Section 46. Section **78B-15-622** is amended to read:

78B-15-622. Order adjudicating parentage.

(1) The tribunal shall issue an order adjudicating whether a ~~[man]~~ person alleged or claiming to be ~~[the father]~~ a parent is ~~[the]~~ a parent of the child.

(2) An order adjudicating parentage ~~[must]~~ shall identify the child by name and date of birth.

(3) Except as otherwise provided in Subsection (4), the tribunal may assess filing fees, reasonable attorney fees, fees for genetic testing, other costs, necessary travel, and other reasonable expenses incurred in a proceeding under this part. The tribunal may award attorney fees, which may be paid directly to the attorney, who may enforce the order in the attorney's own name.

(4) The tribunal may not assess fees, costs, or expenses against the support-enforcement agency of this state or another state, except as provided by law.

(5) On request of a party and for good cause shown, the tribunal may order that the name of the child be changed.

(6) If the order of the tribunal is at variance with the child's birth certificate, the tribunal shall order the Office of Vital Records to issue an amended birth registration.

Section 47. Section **78B-15-623** is amended to read:

78B-15-623. Binding effect of determination of parentage.

(1) Except as otherwise provided in Subsection (2), a determination of parentage is binding on:

(a) all signatories to a declaration of paternity or denial of ~~[paternity]~~ parentage as provided in Part 3, Voluntary Declaration of Paternity Act; and

(b) all parties to an adjudication by a tribunal acting under circumstances that satisfy the jurisdictional requirements of Section [78B-14-201](#).

(2) A child is not bound by a determination of parentage under this chapter unless:

(a) the determination was based on an unrescinded declaration of paternity and the declaration is consistent with the results of genetic testing;

(b) the adjudication of parentage was based on a finding consistent with the results of genetic testing and the consistency is declared in the determination or is otherwise shown; or

(c) the child was a party or was represented in the proceeding determining parentage by a guardian ad litem.

(3) In a proceeding to dissolve a marriage, the tribunal is considered to have made an adjudication of the parentage of a child if the question of ~~[paternity]~~ parentage is raised and the tribunal adjudicates according to Part 6, Adjudication of Parentage, and the final order:

(a) expressly identifies a child as a "child of the marriage," "issue of the marriage," or similar words indicating that the ~~[husband is the father]~~ spouse is a parent of the child; or

(b) provides for support of the child by the ~~[husband]~~ spouse unless ~~[paternity]~~ parentage is specifically disclaimed in the order.

(4) The tribunal is not considered to have made an adjudication of the parentage of a child if the child was born at the time of entry of the order and other children are named as children of the marriage, but that child is specifically not named.

(5) Once the ~~[paternity]~~ parentage of a child has been adjudicated, an individual who was not a party to the ~~[paternity]~~ parentage proceeding may not challenge the ~~[paternity]~~ parentage, unless:

(a) the party seeking to challenge can demonstrate a fraud upon the tribunal;

(b) the challenger can demonstrate by clear and convincing evidence that the challenger did not know about the adjudicatory proceeding or did not have a reasonable opportunity to know of the proceeding; and

927 (c) there would be harm to the child to leave the order in place.

928 (6) A party to an adjudication of [~~paternity~~] parentage may challenge the adjudication
929 only under law of this state relating to appeal, vacation of judgments, or other judicial review.

930 Section 48. Section **78B-15-705** is amended to read:

931 **78B-15-705. Limitation on spouse's dispute of parentage.**

932 (1) Except as otherwise provided in Subsection (2), the [~~husband~~] spouse of a [~~wife~~]
933 birth mother who gives birth to a child by means of assisted reproduction may not challenge
934 [~~his paternity~~] the spouse's parentage of the child unless:

935 (a) within two years after learning of the birth of the child [~~he~~] the spouse commences
936 a proceeding to adjudicate [~~his paternity~~] parentage of the child; and

937 (b) the tribunal finds that [~~he~~] the spouse did not consent to the assisted reproduction,
938 before or after the birth of the child.

939 (2) A proceeding to adjudicate [~~paternity~~] parentage may be maintained at any time if
940 the tribunal determines that:

941 (a) the husband did not provide sperm for, or before or after the birth of the child
942 consent to, assisted reproduction by his wife;

943 (b) the [~~husband~~] spouse and the birth mother of the child have not cohabited since the
944 probable time of assisted reproduction; and

945 (c) the [~~husband~~] spouse never openly treated the child as [~~his~~] the spouse's own.

946 (3) The limitation provided in this section applies to a marriage declared invalid after
947 assisted reproduction.

948 Section 49. Section **78B-15-801** is amended to read:

949 **78B-15-801. Gestational agreement authorized.**

950 (1) A prospective gestational mother, her [~~husband~~] spouse if she is married, a donor or
951 the donors, and the intended parents may enter into a written agreement providing that:

952 (a) the prospective gestational mother agrees to pregnancy by means of assisted
953 reproduction;

954 (b) the prospective gestational mother, her [~~husband~~] spouse if she is married, and the
955 donors relinquish all rights and duties as the parents of a child conceived through assisted
956 reproduction; and

957 (c) the intended parents become the parents of the child.

(2) The intended gestational mother may not currently be receiving Medicaid or any other state assistance.

(3) The intended parents shall be married, and both spouses [~~must~~] shall be parties to the gestational agreement.

(4) A gestational agreement is enforceable only if validated as provided in Section **78B-15-803**.

(5) A gestational agreement does not apply to the birth of a child conceived by means of sexual intercourse or if neither intended parent is a donor.

(6) The parties to a gestational agreement shall be 21 years of age or older.

(7) The gestational mother's eggs may not be used in the assisted reproduction procedure.

(8) If the gestational mother is married, her [~~husband's~~] spouse's sperm or eggs may not be used in the assisted reproduction procedure.

Section 50. Section **78B-15-802** is amended to read:

78B-15-802. Requirements of petition.

(1) The intended parents and the prospective gestational mother may file a petition in the district tribunal to validate a gestational agreement.

(2) A petition to validate a gestational agreement may not be maintained unless either the gestational mother or intended parents have been residents of this state for at least 90 days.

(3) The prospective gestational mother's [~~husband~~] spouse, if she is married, [~~must~~] shall join in the petition.

(4) A copy of the gestational agreement [~~must~~] shall be attached to the petition.

Section 51. Section **78B-15-803** is amended to read:

78B-15-803. Hearing to validate gestational agreement.

(1) If the requirements of Subsection (2) are satisfied, a tribunal may issue an order validating the gestational agreement and declaring that the intended parents will be the parents of a child born during the term of the agreement.

(2) The tribunal may issue an order under Subsection (1) only on finding that:

(a) the residence requirements of Section **78B-15-802** have been satisfied and the parties have submitted to jurisdiction of the tribunal under the jurisdictional standards of this part;

(b) medical evidence shows that the intended mother is unable to bear a child or is unable to do so without unreasonable risk to her physical or mental health or to the unborn child;

(c) unless waived by the tribunal, a home study of the intended parents has been conducted in accordance with Sections 78B-6-128 through 78B-6-131, and the intended parents meet the standards of fitness applicable to adoptive parents;

(d) all parties have participated in counseling with a licensed mental health professional as evidenced by a certificate signed by the licensed mental health professional which affirms that all parties have discussed options and consequences of the agreement and presented to the tribunal;

(e) all parties have voluntarily entered into the agreement and understand its terms;

(f) the prospective gestational mother has had at least one pregnancy and delivery and her bearing another child will not pose an unreasonable health risk to the unborn child or to the physical or mental health of the prospective gestational mother;

(g) adequate provision has been made for all reasonable health-care expense associated with the gestational agreement until the birth of the child, including responsibility for those expenses if the agreement is terminated;

(h) the consideration, if any, paid to the prospective gestational mother is reasonable;

(i) all the parties to the agreement are 21 years of age or older;

(j) the gestational mother's eggs are not being used in the assisted reproduction procedure; and

(k) if the gestational mother is married, her ~~[husband's]~~ spouse's sperm ~~[is]~~ or eggs are not being used in the assisted reproduction procedure.

(3) Whether to validate a gestational agreement is within the discretion of the tribunal, subject only to review for abuse of discretion.

Section 52. Section 78B-15-806 is amended to read:

78B-15-806. Termination of gestational agreement.

(1) After issuance of an order under this part, but before the prospective gestational mother becomes pregnant by means of assisted reproduction, the prospective gestational mother, her ~~[husband]~~ spouse, or either of the intended parents may terminate the gestational agreement only by giving written notice of termination to all other parties.

1020 (2) The tribunal for good cause shown also may terminate the gestational agreement.

1021 (3) An individual who terminates an agreement shall file notice of the termination with
1022 the tribunal. On receipt of the notice, the tribunal shall vacate the order issued under this part.

1023 An individual who does not notify the tribunal of the termination of the agreement is subject to
1024 appropriate sanctions.

1025 (4) Neither a prospective gestational mother nor her ~~[husband]~~ spouse, if any, is liable
1026 to the intended parents for terminating an agreement pursuant to this section.

1027 Section 53. Section **78B-15-808** is amended to read:

1028 **78B-15-808. Gestational agreement -- Miscellaneous provisions.**

1029 (1) A gestational agreement may provide for payment of consideration.

1030 (2) A gestational agreement may not limit the right of the gestational mother to make
1031 decisions to safeguard her health or that of the embryo or fetus.

1032 (3) After the issuance of an order under this part, subsequent marriage of the
1033 gestational mother does not affect the validity of a gestational agreement, and her ~~[husband's]~~
1034 spouse's consent to the agreement is not required, nor is her ~~[husband]~~ spouse a presumed
1035 ~~[father]~~ parent of the resulting child.

Legislative Review Note
Office of Legislative Research and General Counsel