

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 141
95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SMITH.

Offered March 31, 2009.

Senate Substitute adopted, March 31, 2009.

Taken up for Perfection March 31, 2009. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

0866S.08P

AN ACT

To repeal sections 210.826 and 210.828, RSMo, and to enact in lieu thereof three new sections relating to paternity determinations.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 210.826 and 210.828, RSMo, are repealed and three
2 new sections enacted in lieu thereof, to be known as sections 210.826, 210.828,
3 and 210.854, to read as follows:

210.826. 1. A child, his natural mother, a man presumed to be his father
2 under subsection 1 of section 210.822, a man alleging himself to be a father, any
3 person having physical or legal custody of a child for a period of more than sixty
4 days or the **family support** division [of child support enforcement] may bring
5 an action at any time for the purpose of declaring the existence or nonexistence
6 of the father and child relationship presumed under subsection 1 of section
7 210.822.

8 2. An action to determine the existence of the father and child
9 relationship with respect to a child who has no presumed father under section
10 210.822 may be brought by the child, the mother or the person who has legal
11 custody of the child, any person having physical or legal custody of a child for a
12 period of more than sixty days, the **family support** division [of child support
13 enforcement], the personal representative or a parent of the mother if the mother

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

14 has died, a man alleging himself to be the father, or the personal representative
15 or a parent of the alleged father if the alleged father has died or is a minor.

16 3. Regardless of its terms, an agreement, other than an agreement
17 approved by the court in accordance with subsection 2 of section 210.838, between
18 an alleged or presumed father and the mother or child, does not bar an action
19 under this section.

20 4. If an action under this section is brought before the birth of the child,
21 all proceedings shall be stayed until after the birth, except service of process and
22 the taking of depositions to perpetuate testimony.

23 **5. In an action to determine the existence of the father and child**
24 **relationship under this section, a notification form, as specified in this**
25 **subsection, shall be attached to the delivery of the petition through**
26 **service of process. The notification form shall prominently state in**
27 **bold face type as follows: "Important Notice. If you do not respond to**
28 **this action, a judgment of paternity may be entered against you and**
29 **you may be ordered to pay child support, medical support, or**
30 **reimburse someone for support previously provided for the child. You**
31 **have the right to contest that you are the father of the named child and**
32 **you have the right to request genetic testing to prove whether or not**
33 **you are the father."**

210.828. 1. An action to determine the existence of the father and child
2 relationship as to a child who has no presumed father under section 210.822 may
3 not be brought later than eighteen years after the birth of the child, except that
4 an action to determine the existence of the father and child relationship as to a
5 child who has no presumed father under the provisions of section 210.822 may be
6 brought by the child within three years after such child attains the age of
7 eighteen.

8 2. A parent's retroactive liability to another party for reimbursement of
9 necessary support provided by that party to the child for whom a parent and child
10 relationship is established under sections 210.817 to 210.852 is limited to a
11 period of five years next preceding the commencement of the action.

12 3. Sections 210.826 and 210.828 do not extend the time within which a
13 right of inheritance or a right to a succession may be asserted beyond the time
14 provided by law relating to distribution and closing of decedents' estates or to the
15 determination of heirship, or otherwise.

16 **4. In an action to determine the existence of the father and child**

17 relationship under this section, a notification form, as specified in this
18 subsection, shall be attached to the delivery of the petition through
19 service of process. The notification form shall prominently state in
20 bold face type as follows: "Important Notice. If you do not respond to
21 this action, a judgment of paternity may be entered against you and
22 you may be ordered to pay child support, medical support or reimburse
23 someone for support previously provided for the child. You have the
24 right to contest that you are the father of the named child and you have
25 the right to request genetic testing to prove whether or not you are the
26 father."

210.854. 1. In the event of the entry of a judgment or judgments
2 of paternity and support, whether entered in one judgment or
3 separately, a person against whom such a judgment or judgments have
4 been entered may file a petition requesting a circuit court with
5 jurisdiction over the subject child or children to set aside said
6 judgment or judgments in the interests of justice and upon the grounds
7 set forth in this section. Such a petition may be filed at any time prior
8 to December 31, 2011. After that date, the petition shall be filed within
9 two years of the entry of the original judgment of paternity and
10 support or within two years of entry of the later judgment in the case
11 of separate judgments of paternity and support and shall be filed in the
12 county which entered the judgment or judgments of paternity and
13 support. Any such petition shall be served upon the biological mother
14 and any other legal guardian or custodian in the same manner provided
15 for service of process in the rules of civil procedure. The child or
16 children shall be made a party and shall have a guardian ad litem
17 appointed for the child or children before any further proceedings are
18 had. If the child or children are recipients of IV-D services as defined
19 in subdivision (8) of section 454.460, RSMo, the family support division
20 shall also be made a party and shall be duly served.

21 2. The petition shall include an affidavit executed by the
22 petitioner alleging that evidence exists which was not considered
23 before entry of judgment and either:

24 (1) An allegation that genetic testing was conducted within
25 ninety days prior to the filing of such petition using DNA methodology
26 to determine the probability or improbability of paternity, and
27 performed by an expert as defined in section 210.834. The affidavit

28 shall also allege that the test results, which are attached thereto,
29 indicate that a person subject to the child support payment order has
30 been excluded as the child's father; or

31 (2) A request to the court for an order of genetic paternity
32 testing using DNA methodology.

33 3. The court, after a hearing wherein all interested parties have
34 been given an opportunity to present evidence and be heard, and upon
35 a finding of probable cause to believe said testing may result in a
36 determination of non-paternity, shall order the relevant parties to
37 submit to genetic paternity testing. The genetic paternity testing costs
38 shall be paid by the petitioner.

39 4. Upon a finding that the genetic test referred to herein was
40 properly conducted, accurate, and indicates that the person subject to
41 the child support payment order has been excluded as the child's
42 father, the court shall, unless it makes written findings of fact and
43 conclusions of law that it is in the best interest of the parties not to do
44 so:

45 (1) Grant relief on the petition and enter judgment setting aside
46 the previous judgment or judgements of paternity and support, or
47 acknowledgment of paternity under section 210.823 only as to the child
48 or children found not to be the biological child or children of the
49 petitioner;

50 (2) Extinguish any existing child support arrearage only as to
51 the child or children found not to be the biological child or children of
52 the petitioner; and

53 (3) Order the department of health and senior services to modify
54 the child's birth certificate accordingly.

55 5. The provisions of this section shall not apply to grant relief to
56 the parent of any adopted child.

57 6. A finding under subsection 4 of this section shall constitute a
58 material mistake of fact under section 210.823.

59 7. The provisions of this section shall not be construed to create
60 a cause of action to recover child support or state debt, under
61 subdivision (2) of subsection 1 of section 454.465, RSMo, and subsection
62 10 of section 452.340, RSMo, that was previously paid pursuant to the
63 order. The petitioner shall have no right for reimbursement for any
64 moneys previously paid pursuant to said order.

65 8. Any petitioner who has pled guilty to or been found guilty of
66 an offense for criminal nonsupport under section 568.040, RSMo, as to
67 a child or children who have been found not to be the biological child
68 or children of the petitioner, may apply to the court in which the
69 petitioner pled guilty or was sentenced for an order to expunge from
70 all official records all recordations of his arrest, plea, trial, or
71 conviction. If the court determines, after hearing, that the petitioner
72 has had a judgment or judgments of paternity and support set aside
73 under this section, the court shall enter an order of
74 expungement. Upon granting of the order of expungement under this
75 subsection, the records and files maintained in any administrative or
76 court proceeding in an associate or circuit division of the circuit court
77 under this section shall be confidential and only available to the
78 parties or by order of the court for good cause shown. The effect of
79 such order shall be to restore such person to the status he or she
80 occupied prior to such arrest, plea, or conviction and as if such event
81 had never taken place. No person as to whom such order has been
82 entered shall be held thereafter under any provision of any law to be
83 guilty of perjury or otherwise giving a false statement by reason of his
84 failure to recite or acknowledge such arrest, plea, trial, conviction, or
85 expungement in response to any inquiry made of him for any purpose
86 whatsoever and no such inquiry shall be made for information relating
87 to an expungement under this section.

88 9. Beginning in 2010, the family support division shall track and
89 report to the general assembly the number of cases known to the
90 division in which a court, within the calendar year, set aside a previous
91 judgment or judgments of paternity and support under subsection 4 of
92 this section. The family support division shall submit the report
93 annually by December 31.

✓