

A bill for an act

relating to children; modifying and clarifying provisions governing parentage presumptions and right to custody; providing for prebirth parentage orders or judgments in certain cases; amending Minnesota Statutes 2008, sections 257.54; 257.541, subdivision 1; 257.55, subdivision 1; 257.57, subdivision 5.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2008, section 257.54, is amended to read:

257.54 HOW PARENT AND CHILD RELATIONSHIP ESTABLISHED.

Subdivision 1. General. The parent and child relationship between a child and:

(a) the biological mother may be established by proof of her having given birth to the child, or under sections 257.51 to 257.74 or 257.75;

(b) the biological father may be established under sections 257.51 to 257.74 or 257.75; or

(c) an adoptive parent may be established by proof of adoption.

Subd. 2. Application of paternity provisions to maternity determinations.

Provisions of sections 257.51 to 257.74 or 257.75 relating to determinations of paternity, including all presumptions and procedures, apply to determinations of maternity.

Sec. 2. Minnesota Statutes 2008, section 257.541, subdivision 1, is amended to read:

Subdivision 1. **Mother's right to custody.** (a) The biological mother of a child born to a mother who was not married to the child's father when the child was born and was not married to the child's father when the child was conceived has sole custody of the child until paternity has been established under sections 257.51 to 257.74, or until custody is determined in a separate proceeding under section 518.156.

(b) This subdivision does not apply if the pregnancy was initiated by means other than sexual intercourse pursuant to an express agreement among all known presumptive parents under which another woman is identified as the intended mother.

Sec. 3. Minnesota Statutes 2008, section 257.55, subdivision 1, is amended to read:

Subdivision 1. **Presumption.** A man is presumed to be the biological father of a child if:

(a) he and the child's biological mother are or have been married to each other and the child is born during the marriage, or within 280 days after the marriage is terminated by death, annulment, declaration of invalidity, dissolution, or divorce, or after a decree of legal separation is entered by a court. The presumption in this paragraph does not apply if the man has joined in a recognition of parentage recognizing another man as the biological father under section 257.75, subdivision 1a;

(b) before the child's birth, he and the child's biological mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared void, voidable, or otherwise invalid, and:

(1) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 280 days after its termination by death, annulment, declaration of invalidity, dissolution or divorce; or

(2) if the attempted marriage is invalid without a court order, the child is born within 280 days after the termination of cohabitation;

(c) after the child's birth, he and the child's biological mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared void, voidable, or otherwise invalid, and:

(1) he has acknowledged his paternity of the child in writing filed with the state registrar of vital statistics;

(2) with his consent, he is named as the child's father on the child's birth record; or

(3) he is obligated to support the child under a written voluntary promise or by court order;

(d) while the child is under the age of majority, he receives the child into his home and openly holds out the child as his biological child;

(e) he and the child's biological mother acknowledge his paternity of the child in a writing signed by both of them under section 257.34 and filed with the state registrar of vital statistics. If another man is presumed under this paragraph to be the child's father,

acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted;

(f) he and the child's biological mother have executed a recognition of parentage in accordance with section 257.75 and another man is presumed to be the father under this subdivision;

(g) he and the child's biological mother have executed a recognition of parentage in accordance with section 257.75 and another man and the child's mother have executed a recognition of parentage in accordance with section 257.75; ~~or~~

(h) he and the child's biological mother executed a recognition of parentage in accordance with section 257.75 when either or both of the signatories were less than 18 years of age; or

(i) he initiated the pregnancy by means other than sexual intercourse and intended at the outset of the process to be the legal parent of any resulting child pursuant to an express agreement among all known presumptive parents.

Sec. 4. Minnesota Statutes 2008, section 257.57, subdivision 5, is amended to read:

Subd. 5. **Action brought before birth of child.** (a) Except as provided in paragraph (b), if an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.

(b) The court may enter a prebirth order or judgment to establish paternity or maternity before the birth of the child if the pregnancy was initiated by means other than sexual intercourse. The order or judgment may be issued by the court ex parte without an appearance by the parties or their attorneys if the parties have filed a verified petition and stipulation requesting the order or judgment and an affidavit from the treating physician attesting that the pregnancy resulted from a procedure that the physician performed. For proceedings under this paragraph, a background study under section 245C.33, the appointment of a guardian ad litem under section 257.60, a background study under section 259.41, a search of the fathers' adoption registry under section 259.52, or an assessment and report under section 259.53 is not required.

Sec. 5. **EFFECTIVE DATE; APPLICATION.**

Sections 1 to 4 are effective the day following final enactment and apply to proceedings pending on or commenced on or after that date.