

THE STATUS OF CHILDREN (AMENDMENT) BILL, 2007

EXPLANATORY NOTE

(These notes form no part of the Bill but are intended only to indicate its general purport)

This Bill seeks to amend the Status of Children Act, Chap. 46:07 to facilitate the introduction of DNA analysis to ascertain whether a party to proceedings relating to the determination of parental relationship, is the parent of another person.

Clause 1 would state the short title of the Act for which this is the Bill.

Clause 2 would speak to interpretation.

Clause 3 would delete certain definitions and introduce others to effect the required changes referred to in the first paragraph of this Explanatory Note.

Clause 4 would replace the heading "BLOOD TESTS" with the heading "DNA ANALYSIS".

Clause 5 would amend section 13 to bring that provision in line with the changed policy of replacing blood testing with DNA analysis as the method of determining parental relationships as well as to empower the Court to specifically give directions relating to certain aspects of the new system of DNA analysis.

Clause 6 would repeal section 14.

Clause 7 would insert a new section 14A to provide for the designation of qualified persons and testers for the taking of tissue samples and performing DNA analysis, respectively.

Clause 8 would repeal and replace section 15 to align the provision with the new policy in terms of dealing with failure to comply with the Court's direction for DNA analysis. This clause would also insert two new provisions that would deal with the offence of personating a qualified person and with mutual consent to DNA analysis.

Clause 9 would substitute the term "tissue sample for DNA analysis" for "blood sample for a test" in section 16(1) of the Act.

Clause 10 would repeal and replace section 17 to give the Minister the power to make regulations to give effect to the Act under the new policy.

Clause 11 would introduce new sections 17A and 17B that would, respectively, permit tissue samples to be taken from deceased persons for the purposes of the Act and empower the Minister to amend the Schedule to the Act. The Schedule would set out the laboratories approved for performing DNA analysis.

Clause 12 would insert the Schedule.

A BILL

AN ACT to amend the Status of Children Act, Chap. 46:07

- Enactment ENACTED by the Parliament of Trinidad and Tobago as follows:
- Short title 1. This Act may be cited as the Status of Children (Amendment) Act, 2007.
- Interpretation
Chap. 46:07 2. In this Act, “the Act” means the Status of Children Act.
- Section 2
amended 3. Section 2 of the Act is amended –
- (a) in subsection (1) in the definition of “Minister” by deleting the words “the administration of this Act” and substituting the words “the registration of births and deaths”;
 - (b) in subsection (2) by –
 - (i) deleting the definitions of “blood samples” and “blood tests” ;
 - (ii) inserting in the appropriate alphabetical sequence, the following definitions:
 - “DNA” means deoxyribonucleic acid;
 - “DNA analysis” means the analysis of genetic material performed by a tester;
 - “non-invasive manner” in relation to obtaining a tissue sample for DNA analysis means obtaining the sample

by –

- (A) plucking strands of hair other than pubic hair;
- (B) scraping from or under a finger- nail or a toenail;
- (C) swabbing a person's buccal cavity or any part of his body other than any part of his genitals or other bodily orifices; or
- (D) taking a skin impression,

without breaking the skin;

“qualified person” means a person designated by the Minister to take samples in respect of which DNA analysis is required to be performed;

- (c) deleting the definition of “tester” and substituting the following definitions:

Schedule

“tester” means a laboratory listed in the Schedule to the Act;

“tissue sample” means a sample of blood, saliva or hair and includes a buccal swab taken from a person in a non-invasive manner.

Act amended 4. The Act is amended by deleting the heading “BLOOD TESTS” appearing between sections 12 and 13 and substituting the heading “DNA ANALYSIS”.

Section 13 amended

5. Section 13 of the Act is amended –

- (a) by repealing subsections (1) to (3) and substituting the following subsections:

“Power of court to require DNA analysis

13.(1) Where in any civil proceeding the question of whether a person is the parent of another person (hereinafter referred to as “the subject”) falls to be determined by a court hearing the proceedings, the court may give direction for the use of DNA analysis to ascertain whether the analysis shows that a party to the proceedings is or is not the parent of the subject, and for that taking, within a period to be specified in the direction, of a tissue sample from the subject and from any person alleged to be a parent of the subject, or from any two of these persons.

(2) A Court may at any time revoke or vary a direction previously given by the Court under this section.

(3) A tester performing the analysis referred to in subsection (1) shall make a report to the court by which the direction referred to in subsection (1) was given, in which report he shall state –

- (a) the results of the analysis;

and

- (b) whether the person to whom the report relates is or is not the parent of the subject,

and the report shall be received by the Court as evidence in the proceedings of the matters stated therein.”;

- (b) in subsection (5) by deleting the words “tests taken” and “those tests” and substituting the words “DNA analysis” and “the analysis”, respectively; and
- (c) by repealing subsection (6) and substituting the following subsection:

“ (6) Where a direction is given under this section, the Court may in its discretion –

- (a) order any party to the proceedings to bear;
- (b) itself bear; or
- (c) make such other order as the Court may see fit in relation to the bearing of,

the cost of taking and analysing tissue samples for the purpose of giving effect to the direction.”;

- (d) by inserting after subsection (6), the following subsection:

“ (6A) In relation to any party to proceedings under this section, the Court may give a direction respecting the nature of identification to be provided to the person taking a tissue sample, by or for each person directed to provide such a sample and the time for providing the identification.”.

Section 14
repealed

6. The Act is amended by repealing section 14.

Section 14A
inserted

7. The Act is amended by inserting immediately before section 15, the following section:

“Designation
of qualified
person

14A. The Minister may, by Order, on the advice of the Minister to whom responsibility for health is assigned, designate qualified persons.”.

Section 15
repealed and
substituted

8. The Act is amended by repealing section 15 and substituting the following sections:

“Failure to
comply with
direction for
DNA analysis

15. Where a Court gives a direction under section 13 and any person fails to take any step required of him for the purpose of giving effect to the direction, the Court may draw such inferences, if any, from that fact as appear proper in the circumstances.

Personating a
qualified person

15A. Any person who for the purposes of this Act impersonates a qualified person commits an offence and is liable –

- (a) on conviction on indictment, to imprisonment for two years; or
- (b) on summary conviction, to a fine of five thousand dollars or to imprisonment for six months.

DNA analysis between consenting parties

15B. Nothing in this Act shall be construed as preventing parties interested in the determination of parental relationship from consenting to the use of DNA analysis, utilising services of their choice.”.

Section 16 amended

9. Section 16 of the Act is amended in subsection (1) by deleting the words “blood sample for a test” and substituting the words “tissue sample for DNA analysis”.

Section 17 repealed and substituted

10. Section 17 of the Act is repealed and the following section is substituted:

“Regulations

17. The Minister may, subject to negative resolution of Parliament, make regulations to give effect to this Act and without prejudice to the foregoing –

- (a) give effect to any direction given under section 13;
- (b) regulate the taking, identification and transport of tissue samples.”.

Act amended

11. The Act is amended by inserting after the heading “GENERAL” and immediately before section 18, the following sections:

“Tissue samples from deceased persons

17A.(1) For the purposes of this Act, a tissue sample may be taken from a deceased person on the direction of the Court.

(2) A tissue sample referred to in subsection (1) may be taken from any part of the body or from blood or bodily fluid of the deceased person.

Minister may amend Schedule

17B. The Minister may, by Order, amend the Schedule.”.

Schedule inserted

12. The Act is amended by inserting after section 18, the following Schedule:

“SCHEDULE

(Sections 2 and 17B)

LABORATORIES APPROVED FOR PERFORMING DNA ANALYSIS

GeneTree DNA Testing Center

Lab Medica Services”.

Passed in the House of Representatives this day of , 2007.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of , 2007.

Clerk of the Senate

I confirm the above.

President of the Senate