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REBUTTING PRESUMPTION OF PATERNITY

House Bill 4635

Sponsor: Rep. James Koetje

House Bill 4636

Sponsor: Rep. Doug Hart

Committee: Civil Law and the Judiciary

Complete to 4-30-01

A SUMMARY OF HOUSE BILLS 4635 AND 4636 AS INTRODUCED 4-19-01

The bills would amend the Support and Parenting Time Enforcement Act to allow men to file motions to have paternity determinations vacated and child support orders terminated under certain circumstances, as well as have child support arrearages cancelled under certain circumstances.

House Bill 4635 would add a new section to the Support and Parenting Time Enforcement Act (MCL 710.5) to allow a man to file a motion for relief from a court order that stated that he was a child's father or that required him to pay child support. Except as otherwise provided in the bill (see below), a court would be required to vacate an order stating that someone was a child's father or to terminate a child support order if the court found both that the individual was not the child's adoptive father and genetic testing results were admitted into evidence excluding the individual as the child's father. The court would not be allowed to admit into evidence genetic testing results from a test conducted more than six months before the motion was filed. (The bill would define "genetic testing" to mean blood or tissue typing, or DNA identification profiling, as described in and prescribed by the Paternity Act, Public Act 204 of 1956.)

The court would be prohibited from granting a motion for relief under the bill if the court found that any of the following had occurred after an individual knew that he was not a child's biological father:

- the individual acknowledged paternity of the child in writing;
- the individual consented to his name being entered as the child's biological father on the child's birth certificate;
- the individual was determined to be the child's father in an action under the Paternity Act;
- the state registrar filed an acknowledgement of parentage in which the individual declared himself to be the child's biological father; or
- the individual otherwise admitted that he was, or acknowledged himself as, the child's biological father.

House Bills 4635 and 4636 (4-30-01)

(The bill also says that the provision above would not apply, however, if any of the listed events occurred before the individual knew that he was not the child's biological father.)

An individual would be required to file a motion under the bill with the court that had issued the order from which the moving party sought relief. On the court's own motion or that of an adverse party, the court could change venue if it found that the original venue presented a hardship for an adverse party.

In a proceeding under the bill, the court – upon application made by or on behalf of either party, or on its own – would be required to order the child, its mother, and the individual filing the motion to submit to genetic testing within 30 days after the order was issued.

If the court granted a motion to vacate or terminate an order, and the moving party and child also were the subjects of a parenting time order, the court would have to determine if the parenting time order was terminated, modified, or continued. If the court granted a motion to terminate a child support order and an arrearage existed under that order, the court could cancel the arrearage.

If a motion made under the bill was to terminate a child support order and the court did not grant the motion, the court would be required to order the moving party to pay the costs of the action and each opposing party's reasonable attorney fees.

House Bill 4636 would amend the act (MCL 710.603) to specify that a cancellation of child support arrearages as a result of the termination of a support order under the provisions of House Bill 4635 would be considered to be a correction of a mistake and not a retroactive modification of the order. House Bill 4636 could not be enacted unless House Bill 4635 was enacted.

Analyst: S. Ekstrom

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.