

Legislative Analysis



ACKNOWLEDGMENT OF PARENTAGE REVISIONS

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House Bill 5328 as introduced
Sponsor: Rep. Matt Lori

House Bill 5329 as introduced
Sponsor: Rep. Pat Somerville

Senate Bill 557 (Substitute S-2 as passed by the Senate)
Sponsor: Sen. Steven Bieda

Senate Bill 560 as passed by the Senate
Sponsor: Sen. Rick Jones

House Committee: Judiciary
Senate Committee: Judiciary (SB 557 and 560)

Complete to 3-26-12

A SUMMARY OF HOUSE BILLS 5328–5329 AND SENATE BILLS 557 AND 560 AS REPORTED BY HOUSE COMMITTEE 3-22-12

Senate Bill 557 would enact the Revocation of Paternity Act and the other bills would amend various related statutes in order to establish procedures for actions to determine that a presumed father was not a child's father, for actions to set aside an acknowledgment of parentage, and for actions to set aside an order of filiation.

Senate Bill 557 would create the Revocation of Paternity Act to do the following:

- Allow the mother, acknowledged father, alleged father, or prosecuting attorney to file an action for revocation of an acknowledgment of parentage. An alleged father (man who by his actions could have fathered the child) could not bring an action if the child had been conceived as the result of acts for which he had been convicted of criminal sexual conduct.
- Require the action to be filed within three years after the child's birth or within one year after the acknowledgment of parentage had been signed, whichever was later. This would not apply to actions filed within one year after the bill's effective date.
- Require the plaintiff (person filing the action) to also file an affidavit stating one of the following: mistake of fact; fraud; misrepresentation or misconduct; duress in signing the acknowledgment; or newly discovered evidence that by due diligence could not have been found before the acknowledgment was signed. The plaintiff would carry the burden to prove, by clear and convincing evidence, that

the acknowledged father (man who had signed an acknowledgment of parentage) was not the child's father.

- Upon finding the affidavit was sufficient, the court would be required to order blood or tissue typing or DNA identification profiling. The results of the typing or DNA profiling would not be binding on the court making a determination under the bill.
- Allow a court, in an action filed under the bill, to revoke an acknowledgment of parentage, set aside an order of filiation or a paternity order, determine that a child was born out of wedlock, and/or make a determination of paternity and enter an order of filiation under provisions of the Paternity Act.
- Require the court to forward a copy of an order of revocation to the State Registrar and require the registrar to vacate the acknowledgment of parentage. The registrar could amend the birth certificate as prescribed by the order and revocation.
- Provide a similar procedure in an action filed by the mother, an alleged father, or the affiliated father to set aside the paternity determination if paternity had been determined based on the affiliated father's (man who had been determined in a court to be the child's father) failure to participate in the court proceedings.
- Allow a court to determine that a child is born out of wedlock for the purpose of establishing paternity under conditions specified in the bill if the child has a presumed father (man presumed to be the father by virtue of his marriage to the child's mother at the time of the child's conception or birth) in an action filed by either the mother or the presumed father.
- Allow a court to extend the time for filing an action or motion under the bill if the request were supported by a signed affidavit stating that the plaintiff satisfied all the requirements for filing an action but did not file within the allowed time period because of one of the following: mistake of fact; newly discovered evidence that by due diligence could not have been found earlier; fraud; misrepresentation or misconduct; or duress. The plaintiff would have the burden to prove, by clear and convincing evidence, that granting relief under the bill would not be against the best interests of the child.
- Allow the Department of Human Services (DHS) to file an action to establish paternity if the child has a presumed father and the child was being supported in whole or in part by public assistance.
- Require an original action under the bill to be filed in the circuit court for the county in which the mother or the child resides. If neither resides in the state, the action would have to be filed in the circuit court in the county in which the child was born. If an action for the support, custody, or parenting time of the child

exists at any stage of the proceedings in a circuit court in the state, the action would have to be brought by motion in the existing case under court rules.

- Specify that a judgment entered under the bill would not relieve a man from a child support obligation for the child or the child's mother incurred before the action was filed or prevent a person from seeking relief under applicable court rules to vacate or set aside a judgment.
- Allow a court to refuse to enter an order to set aside a paternity determination or a determination that a child is born out of wedlock if – by clear and convincing evidence – the court finds that doing so would not be in the best interests of the child. The court would have to state its reasons for the refusal on the record. Factors the court could consider would include the child's age, the harm that may result to the child, and the nature of the relationship between the child and the presumed or alleged father.
- Allow a court to appoint an attorney to represent the state and to appoint a guardian ad litem to represent the child's interests in Title IV-D cases (services that are provided under the Part D of Title IV of the Social Security Act, which provides for Temporary Assistance for Needy Families or TANF).
- Prohibit a court from setting aside a judgment or determination of a court or administrative agency from another state, even if the judgment or determination is being enforced in this state.
- Specify that the bill would not establish a basis for termination of an adoption or for vacating a judgment establishing paternity of a child conceived under a surrogate parentage contract.
- Allow a common law action available before the bill's effective date to set aside a paternity determination or to determine that a child is born out of wedlock to remain available for two years after the bill takes effect and then expire.
- Allow the court to order the plaintiff to post a bond to secure costs and attorney fees if he or she loses. A nonprevailing party could be ordered to pay the prevailing party's attorney fees and costs.

House Bill 5328 would amend the Acknowledgment of Parentage Act (MCL 722.1007) to require that in order to revoke an acknowledgment of parentage, an individual must file a claim as provided under the Revocation of Paternity Act (proposed Senate Bill 557) instead of Section 11 of the Acknowledgment of Parentage Act. Section 11, which provides for a claim of revocation of an acknowledgment, would be repealed. The bill is tie-barred to Senate Bill 557.

House Bill 5329 would amend the Paternity Act (MCL 722.720) to provide that the court has continuing jurisdiction to determine an action to set aside the order of filiation under

the Revocation of Paternity Act (proposed Senate Bill 557). The bill is also tie-barred to Senate Bill 557.

Senate Bill 560 would amend the Estates and Protected Individuals Code (MCL 700.2114) to provide that a man would be considered to be a child's natural father for purposes of intestate succession if he had been determined to be the father in an action under the Revocation of Paternity Act (Senate Bill 557), in the case of a child born out of wedlock or a child conceived during a marriage but who was not the issue of that marriage. The bill is tie-barred to Senate Bill 557.

FISCAL IMPACT:

These bills would have an indeterminate fiscal impact on state and local government. Caseloads may be increased by an indeterminate amount for circuit courts, resulting in increased costs. Revenue from various fees, including filing and motion fees, could partially or fully offset this increased cost.

POSITIONS:

A representative of the National Family Justice Association testified and submitted written testimony in support of the bills. (3-22-12)

A representative of the Friend of the Court Association testified in support of the bills. (3-22)

A representative of the Department of Human Services testified the agency supports the bill in concept. (3-22-12)

The Michigan Probate Judges Association indicated support for the bills. (3-22-12)

The Family Law Section - State Bar of Michigan indicated support for the bills. (3-22-12)

A representative of the Michigan National Organization for Women testified in opposition to the bills. (3-22-12)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Erik Jonasson

■ 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.