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BILL ANALYSIS

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Senate Bills 557 through 560 (as introduced 6-30-11)

Sponsor: Senator Steven Bieda (S.B. 557 & 558)

Senator Rick Jones (S.B. 559 & 560)

Committee: Judiciary

Date Completed: 9-6-11

CONTENT

Senate Bill 557 would enact the "Revocation of Paternity Act" to establish procedures for actions to set aside an acknowledgment of parentage or an order of filiation and actions to determine that a presumed father was not a child's father. The bill would do the following:

- Allow an action to revoke an acknowledgment of parentage to be brought by the child's mother, the acknowledged father, the child, an alleged father, or a prosecuting attorney.
- Allow an action to set aside an order of filiation to be brought by the affiliated father, the mother, or an alleged father, if the affiliated father had failed to participate in the court proceedings that determined filiation.
- Allow a child's mother, presumed father, or alleged father, or the Department of Human Services, to file an action to determine that the child was born out of wedlock for the purpose of establishing paternity, under various sets of criteria.
- Allow a court to deny an order if it would not be in the child's best interests, and specify factors the court could consider.
- Require the court to order the parties to participate in and pay for blood or tissue typing or DNA identification profiling, and provide

that the results would not be binding on the court.

- Set deadlines for filing an action under the Act and allow the court to extend a deadline under certain circumstances.

Senate Bill 558 would amend the Acknowledgment of Parentage Act to require an acknowledgment form to indicate that a claim to revoke an acknowledgment would have to be filed under the Revocation of Paternity Act. The bill also would repeal a section of the current Act that provides for a claim of revocation of an acknowledgment.

Senate Bill 559 would amend the Paternity Act to provide that a court would have continuing jurisdiction over proceedings to determine an action to set aside an order of filiation under the Revocation of Paternity Act.

Senate Bill 560 would amend the Estates and Protected Individuals Code to provide that a man would be considered a child's natural father for purposes of intestate succession if he were determined to be the father in an action under the Revocation of Paternity Act, in the case of a child who was born out of wedlock or born or conceived during a marriage but not the issue of that marriage.

Senate Bill 557 is tie-barred to Senate Bills 558, 559, and 560, which are tie-barred to Senate Bill 557.

Senate Bill 557 is described in detail below.

Revocation of Acknowledgment of Parentage

The following provisions apply to an action to set aside an acknowledgment of parentage.

The bill would allow the mother, the acknowledged father (the man who executed the acknowledgment of parentage), the child who was the subject of the acknowledgment, an "alleged father" (a man who by his actions could have fathered the child), or a prosecuting attorney to file an action for revocation of an acknowledgment of parentage. The action would have to be filed by the child's third birthday or within one year after the date the acknowledgment was signed, whichever was later.

The action would have to be supported by an affidavit signed by the person who filed the action, stating facts that constituted one of the following:

- Mistake of fact.
- Newly discovered evidence that by due diligence could not have been found before the acknowledgment was signed.
- Fraud.
- Misrepresentation or misconduct.
- Duress in signing the acknowledgment.

If the court found that the affidavit was sufficient, the court would have to order blood or tissue typing or DNA identification profiling at the expense of the person filing the action.

The person filing the action would have the burden of proving, by clear and convincing evidence, that the acknowledged father was not the father of the child and that, considering the equities of the case, revocation of the acknowledgment was proper.

The court clerk would have to send a copy of an order of revocation to the State Registrar, who would have to vacate the acknowledgment of parentage and could amend the birth certificate as prescribed by the order.

Whether an action for revocation was brought by a complaint in an original action or by a motion in an existing action, the

prosecuting attorney, an attorney appointed by the county, or an attorney appointed by the court would not be required to represent any party regarding the action for revocation.

(These provisions are similar to the section of the Acknowledgment of Parentage Act that Senate Bill 558 would repeal (MCL 722.1011). Currently, a claim for revocation of an acknowledgment may be brought only by the mother or the man who signed it, the child, or a prosecuting attorney. The proposed requirements for an affidavit are the same as the existing requirements. Currently, however, if the affidavit is sufficient, the court is permitted, but not required, to order blood or genetic tests at the expense of the claimant. The provisions in Senate Bill 557 regarding the burden of proof, the State Registrar, and representation of a party are generally the same as current law.)

Revocation of Order of Filiation

The following provisions would apply to an action in which a child had an "affiliated father" (a man who had been determined in a court to be the child's father).

If paternity had been determined based on an affiliated father's failure to participate in the court proceedings, the mother, an alleged father, or the affiliated father could file a motion with the court that made the determination, to set aside the determination. The motion would have to be filed by the child's third birthday or within one year after the date of the order of filiation, whichever was later.

If the determination of filiation had been made in a Title IV-D case, the court would have to appoint an attorney approved by the Office of Child Support to represent the State's interests with respect to the motion. If the determination had not been made in a Title IV-D case, the court could appoint a guardian ad litem to represent the child's interests. ("Title IV-D case" would mean an action in which services are provided under Part D of the Title IV of the Social Security Act, which provides for Temporary Assistance for Needy Families.)

If the court determined that the motion to set aside the order of filiation should be denied, the court would have to order the

person who filed the motion to pay the reasonable attorney fees and costs incurred by any other party because of the motion.

Action to Establish Paternity

The following provisions would govern an action to determine that a "presumed father" was not a child's father. ("Presumed father" would mean a man who is presumed to be the child's father by virtue of his marriage to the child's mother at the time of the child's conception or birth.) An action under these provisions could be brought by a complaint filed in an original action or by a motion filed in an existing action, as appropriate under the proposed Act and rules adopted by the Supreme Court.

Action by Child's Mother. A court could determine that the child was born out of wedlock for the purpose of establishing his or her paternity if the child's mother filed an action; the mother identified the alleged father by name in the complaint or motion commencing the action; and either of the following applied:

- The presumed father, the alleged father, and the child's mother at some time mutually and openly acknowledged a biological relationship between the alleged father and the child; and the action was filed within three years after the child's birth; or
- Either 1) the presumed father had failed to support the child for at least two years or 2) the child was less than three years old and the presumed father lived separately from the child.

In addition, if the child were determined to be born out of wedlock, the court would have to determine the child's paternity or paternity would have to be established under the law of Michigan or another jurisdiction.

Action by Presumed Father. A court could determine that the child was born out of wedlock for the purpose of establishing his or her paternity if the presumed father filed an action and he, the alleged father, and the child's mother at some time mutually and openly acknowledged a biological relationship between the alleged father and the child.

Action by Alleged Father. A court could determine that a child was born out of wedlock for the purpose of establishing the child's paternity if an alleged father filed an action; the alleged father did not know or have reason to know that the mother was married at the time of conception; and either of the following applied:

- The presumed father, the alleged father, and the child's mother at some time mutually and openly acknowledged a biological relationship between the alleged father and the child; and the action was filed within three years after the child's birth; or
- Either 1) the presumed father had failed to support the child for at least two years or 2) the child was less than three years old and the presumed father lived separately from the child.

In addition, the court would have to determine the child's paternity or paternity would be established under the law of Michigan or another jurisdiction if the child were determined to be born out of wedlock.

Action by the DHS. If a child were being supported in whole or in part by public assistance, a court could determine that the child was born out of wedlock for the purpose of establishing his or her paternity if the Department of Human Services (DHS) filed an action and both of the following applied:

- Either 1) the presumed father had failed to support the child for at least two years or 2) the child was less than three years old and the presumed father lived separately from the child.
- The court determined the child's paternity or paternity would be established under the law of Michigan or another jurisdiction if the child were determined to be born out of wedlock.

Denial of Order; Child's Best Interests

A court could refuse to enter an order setting aside a paternity determination or determining that a child was born out of wedlock if the court found by clear and convincing evidence that the order would not be in the child's best interests. The court could consider the following factors:

- Whether the presumed father was estopped from denying parentage because of his conduct.
- The length of time the presumed father was on notice that he might not be the child's father.
- The facts surrounding the presumed father's discovery that he might not be the child's father.
- The nature of the relationship between the child and the presumed or alleged father.
- The child's age.
- The harm that could result to the child.
- Other factors that could affect the equities arising from the disruption of the father-child relationship.
- Any other factor that the court determined appropriate to consider.

The court would have to state on the record its reasons for refusing to enter an order.

Blood or Tissue Typing; DNA Profiling

The court would have to order the parties to an action or motion under the proposed Act to participate in and pay for blood or tissue typing or DNA identification profiling to assist the court in making a determination. Blood or tissue typing or DNA ID profiling would have to be conducted in accordance with a section of the Paternity Act. The results would not be binding on the court.

Extension of Time for Filing

A court could extend the time for filing an action or motion under the proposed Act. A request for extension would have to be supported by an affidavit signed by the person requesting the extension, stating facts that he or she satisfied all of the requirements for filing an action or motion but did not file within the time allowed 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.
- Duress.

If the court found that the affidavit was sufficient, the court could allow the action or motion to be filed and take other action it considered appropriate. The party filing the

request would have the burden of proving, by clear and convincing evidence, that granting relief under the Act would not be against the best interests of the child considering the equities of the case.

Other Provisions

An original action under the proposed Act would have to be filed in the circuit court for the county where the mother or the child resided or, if neither the mother nor the child resided in Michigan, in the circuit court for the county where the child was born. If an action for the support, custody, or parenting time of the child were pending in a circuit court of Michigan, an action under the Act would have to be brought by motion in the pending case under Supreme Court rules.

A judgment entered under the proposed Act would not relieve a man from an obligation for the child or the child's mother that was incurred before the action was filed, or prevent a person from seeking relief under applicable court rules to vacate or set aside a judgment.

A court could not issue an order under the Act that set aside a judgment or determination of a court or administrative agency of another state, even if the judgment or determination were being enforced in Michigan.

The proposed Act would not establish a basis for termination of an adoption or affect any obligation of an adoptive parent to an adoptive child.

The Act would not establish a basis for vacating a judgment establishing paternity of a child conceived under a surrogate parentage contract.

A common law action that was available before the Act's effective date to set aside a paternity determination or to determine that a child was born out of wedlock would remain available until two years after that date but then would not be available.

In its discretion, a court could order a person who filed an action or motion under the Act to post an amount of money with the court, obtain a surety, or provide other assurance that in the court's determination would secure the costs of the action and

attorney fees if the person did not prevail. The court also could order a nonprevailing party to pay the attorney fees and costs of a prevailing party.

MCL 722.1007 (S.B. 558)
722.720 (S.B. 559)
700.2114 (S.B. 560)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government. To the extent that the bills led to an increase in the caseloads of the various circuit courts, the State could incur some increase in administrative costs. Any increase in costs would, however, be offset to some degree by a corresponding increase in relevant filing fees, motion fees, and other court-imposed fees or payments.

Fiscal Analyst: Matthew Grabowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.