

SUBSTITUTE FOR
SENATE BILL NO. 557

A bill to provide procedures to determine the paternity of children in certain circumstances; to allow acknowledgments, determinations, and judgments relating to paternity to be set aside in certain circumstances; to provide for the powers and duties of certain state and local governmental officers and entities; and to provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "revocation of paternity act".

3 Sec. 3. (1) "Acknowledged father" means a man who has
4 affirmatively held himself out to be the child's father by
5 executing an acknowledgment of parentage under the acknowledgment
6 of parentage act, 1996 PA 305, MCL 722.1001 to 722.1013.

7 (2) "Affiliated father" means a man who has been determined in

1 a court to be the child's father.

2 (3) "Alleged father" means a man who by his actions could have
3 fathered the child.

4 (4) "Presumed father" means a man who is presumed to be the
5 child's father by virtue of his marriage to the child's mother at
6 the time of the child's conception or birth.

7 (5) "Order of filiation" means a judicial order establishing
8 an affiliated father.

9 (6) "Title IV-D case" means an action in which services are
10 provided under part D of title IV of the social security act, 42
11 USC 651 to 669b.

12 Sec. 5. (1) Section 7 governs an action to set aside an
13 acknowledgment of parentage.

14 (2) Section 9 governs an action to set aside an order of
15 filiation.

16 (3) Section 11 governs an action to determine that a presumed
17 father is not a child's father.

18 Sec. 7. (1) The mother, the acknowledged father, an alleged
19 father, or a prosecuting attorney may file an action for revocation
20 of an acknowledgment of parentage. An action under this section
21 shall be filed within 3 years after the child's birth or within 1
22 year after the date that the acknowledgment of parentage was
23 signed, whichever is later. The requirement that an action be filed
24 within 3 years after the child's birth or within 1 year after the
25 date the acknowledgment is signed does not apply to an action filed
26 on or before 1 year after the effective date of this act.

27 (2) An action for revocation under this section shall be

1 supported by an affidavit signed by the person filing the action
2 that states facts that constitute 1 of the following:

3 (a) Mistake of fact.

4 (b) Newly discovered evidence that by due diligence could not
5 have been found before the acknowledgment was signed.

6 (c) Fraud.

7 (d) Misrepresentation or misconduct.

8 (e) Duress in signing the acknowledgment.

9 (3) If the court in an action for revocation under this
10 section finds that an affidavit under subsection (2) is sufficient,
11 the court shall order blood or tissue typing or DNA identification
12 profiling as required under section 13(5). The person filing the
13 action has the burden of proving, by clear and convincing evidence,
14 that the acknowledged father is not the father of the child.

15 (4) The clerk of the court shall forward a copy of an order of
16 revocation entered under this section to the state registrar. The
17 state registrar shall vacate the acknowledgment of parentage and
18 may amend the birth certificate as prescribed by the order of
19 revocation.

20 (5) Whether an action for revocation under this section is
21 brought by a complaint in an original action or by a motion in an
22 existing action, the prosecuting attorney, an attorney appointed by
23 the county, or an attorney appointed by the court is not required
24 to represent any party regarding the action for revocation.

25 Sec. 9. (1) If a child has an affiliated father and paternity
26 was determined based on the affiliated father's failure to
27 participate in the court proceedings, the mother, an alleged

1 father, or the affiliated father may file a motion with the court
2 that made the determination to set aside the determination.

3 (2) A motion under this section shall be filed within 3 years
4 after the child's birth or within 1 year after the date of the
5 order of filiation, whichever is later. The requirement that an
6 action be filed within 3 years after the child's birth or within 1
7 year after the date of the order of filiation does not apply to an
8 action filed on or before 1 year after the effective date of this
9 act.

10 (3) If the court determines that a motion under this section
11 should be denied and the order of filiation not be set aside, the
12 court shall order the person who filed the motion to pay the
13 reasonable attorney fees and costs incurred by any other party
14 because of the motion.

15 Sec. 11. (1) If a child has a presumed father, a court may
16 determine that the child is born out of wedlock for the purpose of
17 establishing the child's paternity if an action is filed by the
18 child's mother and either of the following applies:

19 (a) All of the following apply:

20 (i) The mother identifies the alleged father by name in the
21 complaint or motion commencing the action.

22 (ii) The presumed father, the alleged father, and the child's
23 mother at some time mutually and openly acknowledged a biological
24 relationship between the alleged father and the child.

25 (iii) The action is filed within 3 years after the child's
26 birth. The requirement that an action be filed within 3 years after
27 the child's birth does not apply to an action filed on or before 1

1 year after the effective date of this act.

2 (iv) Either the court determines the child's paternity or the
3 child's paternity will be established under the law of this state
4 or another jurisdiction if the child is determined to be born out
5 of wedlock.

6 (b) All of the following apply:

7 (i) The mother identifies the alleged father by name in the
8 complaint or motion commencing the action.

9 (ii) Either of the following applies:

10 (A) The presumed father, having the ability to support or
11 assist in supporting the child, has failed or neglected, without
12 good cause, to provide regular and substantial support for the
13 child for a period of 2 years or more before the filing of the
14 action or, if a support order has been entered, has failed to
15 substantially comply with the order for a period of 2 years or more
16 before the filing of the action.

17 (B) The child is less than 3 years of age and the presumed
18 father lives separately and apart from the child. The requirement
19 that the child is less than 3 years of age at the time an action is
20 filed does not apply to an action filed on or before 1 year after
21 the effective date of this act.

22 (iii) Either the court determines the child's paternity or the
23 child's paternity will be established under the law of this state
24 or another jurisdiction if the child is determined to be born out
25 of wedlock.

26 (2) If a child has a presumed father, a court may determine
27 that the child is born out of wedlock for the purpose of

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1 establishing the child's paternity if an action is filed by the
2 presumed father within 3 years after the child's birth or if the
3 presumed father raises the issue in [an action for divorce or separate
4 maintenance] between the
5 presumed father and the mother. The requirement that an action be
6 filed within 3 years after the child's birth does not apply to an
7 action filed on or before 1 year after the effective date of this
8 act.

8 (3) If a child has a presumed father, a court may determine
9 that the child is born out of wedlock for the purpose of
10 establishing the child's paternity if an action is filed by an
11 alleged father and any of the following applies:

12 (a) All of the following apply:

13 (i) The alleged father did not know or have reason to know that
14 the mother was married at the time of conception.

15 (ii) The presumed father, the alleged father, and the child's
16 mother at some time mutually and openly acknowledged a biological
17 relationship between the alleged father and the child.

18 (iii) The action is filed within 3 years after the child's
19 birth. The requirement that an action be filed within 3 years after
20 the child's birth does not apply to an action filed on or before 1
21 year after the effective date of this act.

22 (iv) Either the court determines the child's paternity or the
23 child's paternity will be established under the law of this state
24 or another jurisdiction if the child is determined to be born out
25 of wedlock.

26 (b) All of the following apply:

27 (i) The alleged father did not know or have reason to know that

1 the mother was married at the time of conception.

2 (ii) Either of the following applies:

3 (A) The presumed father, having the ability to support or
4 assist in supporting the child, has failed or neglected, without
5 good cause, to provide regular and substantial support for the
6 child for a period of 2 years or more before the filing of the
7 action or, if a support order has been entered, has failed to
8 substantially comply with the order for a period of 2 years or more
9 before the filing of the action.

10 (B) The child is less than 3 years of age and the presumed
11 father lives separately and apart from the child. The requirement
12 that the child is less than 3 years of age at the time an action is
13 filed does not apply to an action filed on or before 1 year after
14 the effective date of this act.

15 (iii) Either the court determines the child's paternity or the
16 child's paternity will be established under the law of this state
17 or another jurisdiction if the child is determined to be born out
18 of wedlock.

19 (c) Both of the following apply:

20 (i) The mother was not married at the time of conception.

21 (ii) The action is filed within 3 years after the child's
22 birth. The requirement that an action be filed within 3 years after
23 the child's birth does not apply to an action filed on or before 1
24 year after the effective date of this act.

25 (4) If a child has a presumed father and the child is being
26 supported in whole or in part by public assistance, a court may
27 determine that the child is born out of wedlock for the purpose of

1 establishing the child's paternity if an action is filed by the
2 department of human services and both of the following apply:

3 (a) Either of the following applies:

4 (i) The presumed father, having the ability to support or
5 assist in supporting the child, has failed or neglected, without
6 good cause, to provide regular and substantial support for the
7 child for a period of 2 years or more before the filing of the
8 action or, if a support order has been entered, has failed to
9 substantially comply with the order for a period of 2 years or more
10 before the filing of the action.

11 (ii) The child is less than 3 years of age and the presumed
12 father lives separately and apart from the child. The requirement
13 that the child is less than 3 years of age at the time an action is
14 filed does not apply to an action filed on or before 1 year after
15 the effective date of this act.

16 (b) Either the court determines the child's paternity or the
17 child's paternity will be established under the law of this state
18 or another jurisdiction if the child is determined to be born out
19 of wedlock.

20 (5) An action under this section may be brought by a complaint
21 filed in an original action or by a motion filed in an existing
22 action, as appropriate under this act and rules adopted by the
23 supreme court.

24 Sec. 13. (1) An original action under this act shall be filed
25 in the circuit court for the county in which the mother or the
26 child resides or, if neither the mother nor the child reside in
27 this state, in the circuit court for the county in which the child

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1 was born. If an action for the support, custody, or parenting time
 2 of the child exists at any stage of the proceedings in a circuit
 3 court of this state [or if an action under section 2(b) of chapter XIIA
 of the probate code of 1939, 1939 PA 288, MCL 712A.2, is pending in a
 circuit court of this state], an action under this act shall be brought
 by
 4 motion in the existing case under rules adopted by the supreme
 5 court.

6 (2) In an action filed under this act, the court may do any of
 7 the following:

8 (a) Revoke an acknowledgment of parentage.

9 (b) Set aside an order of filiation or a paternity order.

10 (c) Determine that a child was born out of wedlock.

11 (d) Make a determination of paternity and enter an order of
 12 filiation as provided for under section 7 of the paternity act,
 13 1956 PA 205, MCL 722.717.

14 (3) A judgment entered under this act does not relieve a man
 15 from a [] support obligation for the child or the child's mother
 16 that was incurred before the action was filed or prevent a person
 17 from seeking relief under applicable court rules to vacate or set
 18 aside a judgment.

19 (4) A court may refuse to enter an order setting aside a
 20 paternity determination or determining that a child is born out of
 21 wedlock if the court finds [] evidence that
 22 the order would not be in the best interests of the child. The
 23 court shall state its reasons for refusing to enter an order on the
 24 record. The court may consider the following factors:

25 (a) Whether the presumed father is estopped from denying
 26 parentage because of his conduct.

27 (b) The length of time the presumed father was on notice that

1 he might not be the child's father.

2 (c) The facts surrounding the presumed father's discovery that
3 he might not be the child's father.

4 (d) The nature of the relationship between the child and the
5 presumed or alleged father.

6 (e) The age of the child.

7 (f) The harm that may result to the child.

8 (g) Other factors that may affect the equities arising from
9 the disruption of the father-child relationship.

10 (h) Any other factor that the court determines appropriate to
11 consider.

12 (5) The court shall order the parties to an action or motion
13 under this act to participate in and pay for blood or tissue typing
14 or DNA identification profiling to assist the court in making a
15 determination under this act. Blood or tissue typing or DNA
16 identification profiling shall be conducted in accordance with
17 section 6 of the paternity act, 1956 PA 205, MCL 722.716. The
18 results of blood or tissue typing or DNA identification profiling
19 are not binding on a court in making a determination under this
20 act.

21 (6) If the case is a title IV-D case, the court may appoint an
22 attorney approved by the office of child support to represent this
23 state's interests with respect to an action or a motion under this
24 act. The court may appoint a guardian ad litem to represent the
25 child's interests with respect to the action or motion.

26 (7) A court shall not issue an order under this act that sets
27 aside a judgment or determination of a court or administrative

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1 agency of another state, even if the judgment or determination is
2 being enforced in this state.

3 (8) This act does not establish a basis for termination of an
4 adoption and does not affect any obligation of an adoptive parent
5 to an adoptive child.

6 (9) This act does not establish a basis for vacating a
7 judgment establishing paternity of a child conceived under a
8 surrogate parentage contract as that term is defined in section 3
9 of the surrogate parenting act, 1988 PA 199, MCL 722.853.

10 (10) A common law action that was available before the
11 effective date of this act to set aside a paternity determination
12 or to determine that a child is born out of wedlock remains
13 available until 2 years after the effective date of this act but is
14 not available after that date.

15 (11) A court, in its discretion, may order a person who files
16 an action or motion under this act to post an amount of money with
17 the court, obtain a surety, or provide other assurances that in the
18 court's determination will secure the costs of the action and
19 attorney fees if the person does not prevail. The court, in its
20 discretion, may order a nonprevailing party to pay the [reasonable]
21 attorney fees and costs of a prevailing party.

22 (12) A court may extend the time for filing an action or
23 motion under this act. A request for extension shall be supported
24 by an affidavit signed by the person requesting the extension
25 stating facts that the person satisfied all the requirements for
26 filing an action or motion under this act but did not file the
27 action or motion within the time allowed under this act because of

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1 1 of the following:

2 (a) Mistake of fact.

3 (b) Newly discovered evidence that by due diligence could not
4 have been found earlier.

5 (c) Fraud.

6 (d) Misrepresentation or misconduct.

7 (e) Duress.

8 (13) If the court finds that an affidavit under subsection
9 (12) is sufficient, the court may allow the action or motion to be
10 filed and take other action the court considers appropriate. The
11 party filing the request to extend the time for filing has the
12 burden of proving, by clear and convincing evidence, that granting
13 relief under this act will not be against the best interests of the
14 child considering the equities of the case.

15 (14) An alleged father may not bring an action under this act
16 if the child is conceived as the result of acts for which the
17 alleged father was convicted of criminal sexual conduct under
18 sections 520b to 520e of the Michigan penal code, 1931 PA 328, MCL
19 750.520b to 750.520e.

[(15) An action may not be brought under this act if the child is
under court jurisdiction under chapter XIIIA of the probate code of 1939,
1939 PA 288, MCL 712A.1 to 712A.32, and a petition has been filed to
terminate the parental rights to the child, unless the court having
jurisdiction under chapter XIIIA of the probate code of 1939, 1939 PA 288,
MCL 712A.1 to 712A.32, first finds that allowing an action under this act
would be in the best interests of the child.]

20 Sec. 15. If an action is brought by an alleged father who
21 proves by clear and convincing evidence that he is the child's
22 father, the court may make a determination of paternity and enter
23 an order of filiation as provided for under section 7 of the
24 paternity act, 1956 PA 205, MCL 722.717.