

SENATE BILL No. 557

June 30, 2011, Introduced by Senators BIEDA, JONES, ROCCA, ROBERTSON, GLEASON and SCHUITMAKER and referred to the Committee on Judiciary.

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, the child who
19 is the subject of the acknowledgment, an alleged father, or a
20 prosecuting attorney may file an action for revocation of an
21 acknowledgment of parentage. An action under this section shall be
22 filed by the child's third birthday or within 1 year after the date
23 that the acknowledgment of parentage was signed, whichever is
24 later.

25 (2) An action for revocation under this section shall be
26 supported by an affidavit signed by the person filing the action
27 that states facts that constitute 1 of the following:

1 (a) Mistake of fact.

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

4 (c) Fraud.

5 (d) Misrepresentation or misconduct.

6 (e) Duress in signing the acknowledgment.

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

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 by the child's
4 third birthday or within 1 year after the date of the order of
5 filiation, whichever is later.

6 (3) If the determination was made in a title IV-D case, the
7 court shall appoint an attorney approved by the office of child
8 support to represent this state's interests with respect to a
9 motion under this section. If the determination was not made in a
10 title IV-D case, the court may appoint a guardian ad litem to
11 represent the child's interests with respect to the motion.

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

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

21 (a) All of the following apply:

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

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

27 (iii) The action is filed within 3 years after the child's

1 birth.

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 has failed to support the child for a
11 period of 2 years or more.

12 (B) The child is less than 3 years of age and the presumed
13 father lives separately and apart from the child.

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

18 (2) If a child has a presumed father, a court may determine
19 that the child is born out of wedlock for the purpose of
20 establishing the child's paternity if an action is filed by the
21 presumed father and the presumed father, the alleged father, and
22 the child's mother at some time mutually and openly acknowledged a
23 biological relationship between the alleged father and the child.

24 (3) If a child has a presumed father, a court may determine
25 that the child is born out of wedlock for the purpose of
26 establishing the child's paternity if an action is filed by an
27 alleged father and either of the following applies:

1 (a) All of the following apply:

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

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

7 (iii) The action is filed within 3 years after the child's
8 birth.

9 (iv) Either the court determines the child's paternity or the
10 child's paternity will be established under the law of this state
11 or another jurisdiction if the child is determined to be born out
12 of wedlock.

13 (b) All of the following apply:

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

16 (ii) Either of the following applies:

17 (A) The presumed father has failed to support the child for a
18 period of 2 years or more.

19 (B) The child is less than 3 years of age and the presumed
20 father lives separately and apart from the child.

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

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 has failed to support the child for a
5 period of 2 years or more.

6 (ii) The child is less than 3 years of age and the presumed
7 father lives separately and apart from the child.

8 (b) Either the court determines the child's paternity or the
9 child's paternity will be established under the law of this state
10 or another jurisdiction if the child is determined to be born out
11 of wedlock.

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

16 Sec. 13. (1) An original action under this act shall be filed
17 in the circuit court for the county in which the mother or the
18 child resides or, if neither the mother nor the child reside in
19 this state, in the circuit court for the county in which the child
20 was born. If an action for the support, custody, or parenting time
21 of the child is pending in a circuit court of this state, an action
22 under this act shall be brought by motion in the pending case under
23 rules adopted by the supreme court.

24 (2) A judgment entered under this act does not relieve a man
25 from an obligation for the child or the child's mother that was
26 incurred before the action was filed or prevent a person from
27 seeking relief under applicable court rules to vacate or set aside

1 a judgment.

2 (3) A court may refuse to enter an order setting aside a
3 paternity determination or determining that a child is born out of
4 wedlock if the court finds by clear and convincing evidence that
5 the order would not be in the best interests of the child. The
6 court shall state its reasons for refusing to enter an order on the
7 record. The court may consider the following factors:

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

10 (b) The length of time the presumed father was on notice that
11 he might not be the child's father.

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

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

16 (e) The age of the child.

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

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

20 (h) Any other factor that the court determines appropriate to
21 consider.

22 (4) The court shall order the parties to an action or motion
23 under this act to participate in and pay for blood or tissue typing
24 or DNA identification profiling to assist the court in making a
25 determination under this act. Blood or tissue typing or DNA
26 identification profiling shall be conducted in accordance with
27 section 6 of the paternity act, 1956 PA 205, MCL 722.716. The

1 results of blood or tissue typing or DNA identification profiling
2 are not binding on a court in making a determination under this
3 act.

4 (5) A court shall not issue an order under this act that sets
5 aside a judgment or determination of a court or administrative
6 agency of another state, even if the judgment or determination is
7 being enforced in this state.

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

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

15 (8) A common law action that was available before the
16 effective date of this act to set aside a paternity determination
17 or to determine that a child is born out of wedlock remains
18 available until 2 years after the effective date of this act but is
19 not available after that date.

20 (9) A court, in its discretion, may order a person who files
21 an action or motion under this act to post an amount of money with
22 the court, obtain a surety, or provide other assurances that in the
23 court's determination will secure the costs of the action and
24 attorney fees if the person does not prevail. The court, in its
25 discretion, may order a nonprevailing party to pay the attorney
26 fees and costs of a prevailing party.

27 (10) A court may extend the time for filing an action or

1 motion under this act. A request for extension shall be supported
2 by an affidavit signed by the person requesting the extension
3 stating facts that the person satisfied all the requirements for
4 filing an action or motion under this act but did not file the
5 action or motion within the time allowed under this act because of
6 1 of the following:

7 (a) Mistake of fact.

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

10 (c) Fraud.

11 (d) Misrepresentation or misconduct.

12 (e) Duress.

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

20 Enacting section 1. This act does not take effect unless all
21 of the following bills of the 96th Legislature are enacted into
22 law:

23 (a) Senate Bill No. 558.

24

25 (b) Senate Bill No. 560.

26

27 (c) Senate Bill No. 559.