

Act No. 159
Public Acts of 2012
Approved by the Governor
June 12, 2012
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**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Senators Bieda, Jones, Rocca, Robertson, Gleason, Schuitmaker, Brandenburg, Casperson, Emmons, Hansen, Hildenbrand, Hopgood, Johnson, Kowall, Marleau, Moolenaar, Nofs, Pappageorge, Proos and Richardville

ENROLLED SENATE BILL No. 557

AN ACT 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:

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

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

(2) “Affiliated father” means a man who has been determined in a court to be the child’s father.

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

(4) “Presumed father” means 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.

(5) “Order of filiation” means a judicial order establishing an affiliated father.

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

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

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

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

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

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

(a) Mistake of fact.

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

- (c) Fraud.
- (d) Misrepresentation or misconduct.
- (e) Duress in signing the acknowledgment.

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

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

(5) Whether an action for revocation under this section is 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 is not required to represent any party regarding the action for revocation.

Sec. 9. (1) If a child has an affiliated father and paternity was determined based on the affiliated father's failure to participate in the court proceedings, the mother, an alleged father, or the affiliated father may file a motion with the court that made the determination to set aside the determination.

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

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

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

(a) All of the following apply:

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

(ii) 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.

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

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

(b) All of the following apply:

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

(ii) Either of the following applies:

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

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

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

(2) If a child has a presumed father, a court may determine that the child is born out of wedlock for the purpose of establishing the child's paternity if an action is filed by the presumed father within 3 years after the child's birth or if the presumed father raises the issue in an action for divorce or separate maintenance between the presumed father and the mother. The requirement that an action be filed within 3 years after the child's birth does not apply to an action filed on or before 1 year after the effective date of this act.

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

(a) All of the following apply:

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

(ii) 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.

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

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

(b) All of the following apply:

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

(ii) Either of the following applies:

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

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

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

(c) Both of the following apply:

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

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

(4) If a child has a presumed father and the child is being supported in whole or in part by public assistance, a court may determine that the child is born out of wedlock for the purpose of establishing the child's paternity if an action is filed by the department of human services and both of the following apply:

(a) Either of the following applies:

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

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

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

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

Sec. 13. (1) An original action under this act shall be filed in the circuit court for the county in which the mother or the child resides or, if neither the mother nor the child reside in this state, in the circuit court for 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 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 motion in the existing case under rules adopted by the supreme court.

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

(a) Revoke an acknowledgment of parentage.

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

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

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

(3) A judgment entered under this act does not relieve a man from a support 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.

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

- (a) Whether the presumed father is estopped from denying parentage because of his conduct.
- (b) The length of time the presumed father was on notice that he might not be the child's father.
- (c) The facts surrounding the presumed father's discovery that he might not be the child's father.
- (d) The nature of the relationship between the child and the presumed or alleged father.
- (e) The age of the child.
- (f) The harm that may result to the child.
- (g) Other factors that may affect the equities arising from the disruption of the father-child relationship.
- (h) Any other factor that the court determines appropriate to consider.

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

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

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

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

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

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

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

(12) A court may extend the time for filing an action or motion under this act. A request for extension shall be supported by an affidavit signed by the person requesting the extension stating facts that the person satisfied all the requirements for filing an action or motion under this act but did not file the action or motion within the time allowed under this act because of 1 of the following:

- (a) Mistake of fact.
- (b) Newly discovered evidence that by due diligence could not have been found earlier.
- (c) Fraud.
- (d) Misrepresentation or misconduct.
- (e) Duress.

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

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

(15) An action may not be brought under this act if the child is under court jurisdiction under chapter XIIA 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 XIIA 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.

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

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Gay E. Randall

Clerk of the House of Representatives

Approved

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Governor