

**SUBSTITUTE FOR
SENATE BILL NO. 858**

A bill to amend 2012 PA 159, entitled
"Revocation of paternity act,"
by amending sections 13 and 15 (MCL 722.1443 and 722.1445), section
13 as amended by 2014 PA 374.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 13. (1) An original action under this act shall be filed
2 in the circuit court for the county in which the mother or the
3 child resides or, if neither the mother nor the child reside in
4 this state, in the circuit court for the county in which the child
5 was born. If an action for the support, custody, or parenting time
6 of the child exists at any stage of the proceedings in a circuit
7 court of this state or if an action under section 2(b) of chapter
8 XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, is
9 pending in a circuit court of this state, an action under this act

1 shall be brought by motion in the existing case under rules adopted
2 by the supreme court.

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

5 (a) Revoke an acknowledgment of parentage.

6 (b) Determine that a genetic father is not a child's father.

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

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

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

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

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

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

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

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

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

5 (e) The age of the child.

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

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

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

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

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

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

1 being enforced in this state, **OR THAT IS INCONSISTENT WITH 28 USC**
2 **1738A OR 28 USC 1738B.**

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 June 12,
11 2012 to set aside a paternity determination or to determine that a
12 child is born out of wedlock remains available until June 12, 2014,
13 but is not available after June 12, 2014.

14 (11) ~~A—EXCEPT FOR AN ACTION FILED UNDER SECTION 15(2), A~~
15 court, in its discretion, may order a person who files an action or
16 motion under this act to post an amount of money with the court,
17 obtain a surety, or provide other assurances that in the court's
18 determination will secure the costs of the action and attorney fees
19 if the person does not prevail. The court, in its discretion, may
20 order a nonprevailing party, **INCLUDING A MOTHER WHO IS A**
21 **NONPREVAILING PARTY UNDER SECTION 15(2),** to pay the reasonable
22 attorney fees and costs of a prevailing party.

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

1 action or motion within the time allowed under this act because of
2 1 of the following:

3 (a) Mistake of fact.

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

6 (c) Fraud.

7 (d) Misrepresentation or misconduct.

8 (e) Duress.

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

16 (14) An alleged father may not bring an action under this act
17 if the child is conceived as the result of acts for which the
18 alleged father was convicted of criminal sexual conduct under
19 sections 520b to 520e of the Michigan penal code, 1931 PA 328, MCL
20 750.520b to 750.520e.

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

1 the child.

2 Sec. 15. (1) If an action is brought by an alleged father who
3 proves by clear and convincing evidence that he is the child's
4 father, the court may make a determination of paternity and enter
5 an order of filiation as provided for under section 7 of the
6 paternity act, 1956 PA 205, MCL 722.717.

7 (2) IF AN ACTION IS BROUGHT BY A MOTHER WHO, AFTER A FACT-
8 FINDING HEARING, PROVES BY CLEAR AND CONVINCING EVIDENCE THAT THE
9 CHILD WAS CONCEIVED AS A RESULT OF NONCONSENSUAL SEXUAL
10 PENETRATION, THE COURT SHALL DO 1 OF THE FOLLOWING:

11 (A) REVOKE AN ACKNOWLEDGMENT OF PARENTAGE FOR AN ACKNOWLEDGED
12 FATHER.

13 (B) DETERMINE THAT A GENETIC FATHER IS NOT THE CHILD'S FATHER.

14 (C) SET ASIDE AN ORDER OF FILIATION FOR AN AFFILIATED FATHER.

15 (D) MAKE A DETERMINATION OF PATERNITY REGARDING AN ALLEGED
16 FATHER AND ENTER AN ORDER OF REVOCATION OF PATERNITY FOR THAT
17 ALLEGED FATHER.

18 (3) SUBSECTION (2) DOES NOT APPLY IF, AFTER THE DATE OF THE
19 ALLEGED NONCONSENSUAL SEXUAL PENETRATION DESCRIBED IN SUBSECTION
20 (2), THE BIOLOGICAL PARENTS COHABIT AND ESTABLISH A MUTUAL
21 CUSTODIAL ENVIRONMENT FOR THE CHILD.

22 (4) AS USED IN THIS SECTION, "SEXUAL PENETRATION" MEANS THAT
23 TERM AS DEFINED IN SECTION 520A OF THE MICHIGAN PENAL CODE, 1931 PA
24 328, MCL 750.520A.

25 Enacting section 1. This amendatory act takes effect 90 days
26 after the date it is enacted into law.