

HOUSE BILL No. 4911

September 29, 2015, Introduced by Reps. Crawford, Webber, Jacobsen and Brett Roberts and referred to the Committee on Judiciary.

A bill to amend 1939 PA 288, entitled "Probate code of 1939," by amending sections 36 and 56 of chapter X (MCL 710.36 and 710.56), section 36 as amended by 1996 PA 409 and section 56 as amended by 2014 PA 118.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1
2
3
4
5
6
7
8

CHAPTER X

Sec. 36. (1) If a child is claimed to be born out of wedlock and the mother executes or proposes to execute a release or consent relinquishing her rights to the child or joins in a petition for adoption filed by her ~~husband~~, **SPOUSE**, and the release or consent of the natural father cannot be obtained, the judge shall hold a hearing as soon as practical to determine whether the child was born out of wedlock, to determine the identity of the father, and

1 to determine or terminate the rights of the father as provided in
2 this section and sections 37 and 39 of this chapter.

3 (2) Proof of service of a notice of intent to release or
4 consent or the putative father's verified acknowledgment of notice
5 of intent to release or consent shall be filed with the court, if
6 the notice was given to the putative father. The court shall
7 request the vital records division of the department of ~~public~~
8 ~~health~~ to send to the court a copy of any notice of intent to claim
9 paternity of the particular child ~~which~~ **THAT** the division has
10 received.

11 (3) Notice of the hearing shall be served upon the following:

12 (a) A putative father who has timely filed a notice of intent
13 to claim paternity as provided in section 33 or 34 of this chapter.

14 (b) A putative father who was not served a notice of intent to
15 release or consent at least 30 days before the expected date of
16 confinement specified in the notice of intent to release or
17 consent.

18 (c) Any other male who was not served ~~pursuant~~ **ACCORDING** to
19 section 34(1) of this chapter with a notice of intent to release or
20 consent and who the court has reason to believe may be the **CHILD'S**
21 father. ~~of the child.~~

22 (4) The notice of hearing shall inform the putative father
23 that his failure to appear at the hearing ~~shall constitute~~
24 **CONSTITUTES** a denial of his interest in custody of the child, which
25 denial shall result in the court's termination of his rights to the
26 child.

27 (5) Proof of service of the notice of hearing required by

1 subsection (3) shall be filed with the court. A verified
2 acknowledgment of service by the party to be served is proof of
3 personal service. Notice of the hearing ~~shall~~**IS** not ~~be~~ required if
4 the putative father is present at the hearing. A waiver of notice
5 of hearing by a person entitled to receive it is sufficient.

6 (6) The court shall receive evidence as to the identity of the
7 father of the child. **IN LIEU OF THE MOTHER'S LIVE TESTIMONY, THE**
8 **COURT SHALL RECEIVE AN AFFIDAVIT OR A VERIFIED WRITTEN DECLARATION**
9 **FROM THE MOTHER AS EVIDENCE OF THE IDENTITY AND WHEREABOUTS OF THE**
10 **CHILD'S FATHER. IF THE COURT DETERMINES THAT THE AFFIDAVIT OR**
11 **VERIFIED WRITTEN DECLARATION IS INSUFFICIENT, THE COURT SHALL ALLOW**
12 **AMENDMENT OF THE AFFIDAVIT OR VERIFIED WRITTEN DECLARATION.** Based
13 upon the evidence received, the court shall enter a finding
14 identifying the father or declaring that the identity of the father
15 cannot be determined.

16 (7) If the court finds that the **CHILD'S** father ~~of the child is~~
17 a person who did not receive either a timely notice of intent to
18 release or consent ~~pursuant~~**ACCORDING** to section 34(1) of this
19 chapter or a notice required ~~pursuant to~~**UNDER** subsection (3) ~~and~~
20 who has neither waived his right to notice of hearing nor is
21 present at the hearing, the court shall adjourn further proceedings
22 until that person is served with a notice of hearing.

23 Sec. 56. (1) Except as otherwise provided in this subsection,
24 6 months after formal placement under section 51 of this chapter,
25 unless the court determines that circumstances have arisen that
26 make adoption undesirable, the court may enter an order of
27 adoption. Upon the motion of the petitioner, the court may waive

1 the 6-month period, or any portion of that period, if the waiver is
2 in the adoptee's best interests. If, after a hearing, the court
3 finds that the adoptee's best interests will be served, it may
4 extend the 6-month period for an additional period of time not
5 exceeding 18 months from the time of formal placement for adoption.
6 In an adoption proceeding for which an adoption order is not
7 entered within 18 months after formal placement, the court shall
8 hold a hearing and determine whether an order of adoption shall be
9 entered or the petition denied. If a child is formally placed
10 according to section 41(2) of this chapter, the court may extend
11 the 6-month period for an additional period, that may exceed 18
12 months from the time of formal placement, until an order for
13 adoption may be entered under subsection (2). For an adoptee who is
14 less than 1 year old at the time of filing, 3 months after formal
15 placement under section 51 of this chapter, unless the court
16 determines that circumstances have arisen that make adoption
17 undesirable, the court may enter an order of adoption. **UPON THE**
18 **MOTION OF THE PETITIONER, THE COURT MAY WAIVE THE 3-MONTH PERIOD,**
19 **OR ANY PORTION OF THAT PERIOD, IF THE WAIVER IS IN THE ADOPTEE'S**
20 **BEST INTERESTS.**

21 (2) Except as provided in subsection (3), if a petition for
22 rehearing or an appeal as of right from an order terminating
23 parental rights has been filed, the court shall not order an
24 adoption until 1 of the following occurs:

25 (a) The petition for rehearing is granted, and at the
26 rehearing the order terminating parental rights is not modified or
27 set aside, and subsequently the period for appeal as of right to

1 the court of appeals has expired without an appeal being filed.

2 (b) The petition for rehearing is denied and the period for
3 appeal as of right to the court of appeals has expired without an
4 appeal being filed.

5 (c) The court of appeals affirms the order terminating
6 parental rights.

7 (3) If an application for leave to appeal has been filed with
8 the supreme court, the court shall not order an adoption until 1 or
9 more of the following occurs:

10 (a) The application for leave to appeal is denied.

11 (b) The supreme court affirms the order terminating parental
12 rights.

13 (4) If a motion brought under section 45 of this chapter has
14 been filed, the court shall not order an adoption until 1 of the
15 following occurs:

16 (a) The motion is decided and subsequently the period for
17 appeal as of right to the court of appeals has expired without an
18 appeal being filed.

19 (b) The motion is decided, an appeal as of right to the court
20 of appeals has been filed, the court of appeals issues an opinion,
21 and subsequently the period for filing an application for leave to
22 the supreme court has expired without an application being filed.

23 (c) The supreme court denies an application for leave or, if
24 an application is granted, the supreme court issues an opinion.

25 (5) If the person to be adopted is an adult, the court may
26 enter an order of adoption after all of the following occur:

27 (a) The person to be adopted consents to the adoption

1 according to section 43(3) of this chapter.

2 (b) The written report of investigation required by section
3 46(2) of this chapter is filed.

4 (c) Notice has been served upon interested parties described
5 in section 24a of this chapter.

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