

HOUSE SUBSTITUTE FOR

SENATE BILL NO. 801

(As amended April 2, 1998)

[A bill to amend 1956 PA 205, entitled

"An act to confer upon circuit courts jurisdiction over proceedings to compel and provide support of children born out of wedlock; to prescribe the procedure for determination of such liability; to authorize agreements providing for furnishing of such support and to provide for the enforcement thereof; and to prescribe penalties for the violation of certain provisions of this act,"

by amending sections 1, 2, 4, 4a, 5, 6, and 9 (MCL 722.711, 722.712, 722.714, 722.714a, 722.715, 722.716, and 722.719), section 1 as amended by 1986 PA 107, sections 4 and 6 as amended by 1996 PA 308, section 4a as added by 1994 PA 388, section 5 as amended by 1989 PA 258, and section 9 as amended by 1996 PA 18, and by adding section 6a.]

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

[Sec. 1. As used in this act:

(a) "Child born out of wedlock" means a child begotten and born to a woman who was not married from the conception to the date of birth of the child, or a child ~~which~~ THAT the court has determined to be a child born or conceived during a marriage but not the issue of that marriage.

(b) "Child" means a child born out of wedlock.

(c) "Mother" means the mother of a child born out of wedlock.

(d) "Court" means the circuit court.

(E) "TESTING MATERIAL" MEANS ANY SUBSTANCE OR INFORMATION USED FOR OR PRODUCED BY GENETIC PATERNITY TESTING CONDUCTED UNDER THIS ACT OTHER THAN A REPORT SUBMITTED TO A COURT FOR A PATERNITY DETERMINATION.]

1 Sec. 2. (1) ~~(a)~~ The parents of a child ~~so~~ born out of
2 wedlock are liable for the necessary support and education of the
3 child. They are also liable for the child's funeral expenses.
4 The father is liable to pay the expenses of the mother's confine-
5 ment, and is also liable to pay ~~such~~ expenses in connection
6 with her pregnancy as the court in its discretion may deem
7 proper. [
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4 (2) ~~(b)~~ If the father dies, an order of filiation or a
5 judicially approved settlement made ~~prior to~~ BEFORE his death
6 ~~shall be~~ IS enforceable against his estate in the same manner
7 and way as a divorce decree.

8 Sec. 4. (1) An action under this act shall be brought in
9 the circuit court by the mother, the father, a child who became
10 18 years of age after August 15, 1984 and before June 2, 1986, or
11 the family independence agency as provided in this act. The
12 Michigan court rules for civil actions apply to all proceedings
13 under this act. A complaint shall be filed in the county where
14 the mother or child resides. If both the mother and child reside
15 outside of this state, then the complaint shall be filed in the
16 county where the putative father resides or is found. The fact
17 that the child was conceived or born outside of this state is not
18 a bar to entering a complaint against the putative father.

19 (2) An action ~~is not required~~ to DETERMINE PATERNITY SHALL
20 NOT be brought under this act if the child's father acknowledges
21 paternity under the acknowledgment of parentage act, or if the
22 child's paternity is established under the law of another state.

23 (3) An action under this act may be commenced during the
24 pregnancy of the child's mother or at any time before the child
25 reaches 18 years of age. For a child who became 18 years of age
26 after August 15, 1984 and before June 2, 1986, an action under
27 this act may be commenced before January 1, 1995. This

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1 subsection applies regardless of whether the cause of action
2 accrued before June 1, 1986 and regardless of whether the cause
3 of action was barred under this subsection before June 1, 1986.
4 A summons issued under this section shall be in the form the
5 court determines and shall be served in the same manner as is
6 provided by court rules for the service of process in civil
7 actions.

8 (4) If the county family independence agency of the county
9 in which the mother or alleged father resides first determines
10 that she or he has physical possession of the child and is eligi-
11 ble for public assistance or without means to employ an attorney;
12 if the family independence agency is the complainant; of if the
13 mother, alleged father, or child is receiving services under part
14 D of title IV of the social security act, 42 U.S.C. 651 to 667,
15 then the prosecuting attorney or an attorney employed by the
16 county under section 1 of ~~Act No. 15 of the Public Acts of 1941,~~
17 ~~being section 49.71 of the Michigan Compiled Laws~~ 1941 PA 15,
18 MCL 49.71, shall initiate and conduct proceedings under this
19 act. The prosecuting attorney shall utilize the child support
20 formula developed under section 19 of the friend of the court
21 act, ~~Act No. 294 of the Public Acts of 1982, being section~~
22 ~~552.519 of the Michigan Compiled Laws~~ 1982 PA 294, MCL 552.519,
23 as a guideline in petitioning for child support. A complaint
24 filed under this act shall be verified by oath or affirmation.

25 (5) The party filing the complaint shall name the person
26 believed to be the father of the child and state in the complaint
27 the time and place, as near as possible, when and where the

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1 mother became pregnant. If the family independence agency is the
2 plaintiff, the required facts shall be stated upon information
3 and belief.

4 (6) Upon the filing of a complaint, the court shall issue a
5 summons against the named defendant. If the defendant does not
6 file and serve a responsive pleading as required by the court
7 rules, the court ~~shall~~ MAY enter a default judgment. Neither
8 party is required to testify before entry of a default judgment
9 in a proceeding under this act.

10 (7) IF, AFTER SERVICE OF PROCESS, THE PARTIES FAIL TO CON-
11 SENT TO AN ORDER NAMING THE MAN AS THE CHILD'S FATHER AS PROVIDED
12 IN THIS ACT WITHIN THE TIME PERMITTED FOR A RESPONSIVE PLEADING,
13 THEN THE FAMILY INDEPENDENCE AGENCY OR ITS DESIGNEE MAY FILE AND
14 SERVE BOTH THE MOTHER AND THE ALLEGED FATHER WITH A NOTICE
15 REQUIRING THAT THE MOTHER, ALLEGED FATHER, AND CHILD APPEAR FOR
16 GENETIC PATERNITY TESTING AS PROVIDED IN SECTION 6.

17 (8) IF THE MOTHER, ALLEGED FATHER, OR CHILD DOES NOT APPEAR
18 FOR GENETIC PATERNITY TESTING AS PROVIDED IN SUBSECTION (7), THEN
19 THE FAMILY INDEPENDENCE AGENCY OR ITS DESIGNEE MAY APPLY TO THE
20 COURT FOR AN ORDER COMPELLING GENETIC PATERNITY TESTS AS PROVIDED
21 IN SECTION 6 OR MAY SEEK OTHER RELIEF AS PERMITTED BY STATUTE OR
22 COURT RULE.

23 (9) ~~(7)~~ It is unnecessary in any proceedings under this
24 act commenced by or against a minor to have a next friend or
25 guardian ad litem appointed for the minor unless required by the
26 circuit judge. A minor may prosecute or defend any proceedings

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1 in the same manner and with the same effect as if he or she were
2 of legal age.

3 (10) ~~-(8)-~~ If a child born out of wedlock is being supported
4 in whole or in part by public assistance, including medical
5 assistance, the family independence agency may file a complaint
6 on behalf of the child in the circuit court in the county in
7 which the child resides. The mother or alleged father of the
8 child shall be made a party plaintiff and notified of the hearing
9 on the complaint by summons. The complaint made by the family
10 independence agency shall be verified by the director of the
11 family independence agency, or his or her designated representa-
12 tive, or by the director of the county family independence agency
13 of the county in which an action is brought, or the county
14 director's designated representative.

15 (11) ~~-(9) Act No. 107 of the Public Acts of 1986-~~ 1986 PA
16 107, which added this subsection, does not affect the rights of
17 an indigent defendant in proceedings under this act as estab-
18 lished by decisions of the courts of this state before June 1,
19 1986.

20 (12) ~~-(10)-~~ If a determination of paternity is made under
21 this act, the court may enter an order of filiation as provided
22 in section 7. Regardless of who commences an action under this
23 act, an order of filiation entered under this act has the same
24 effect, is subject to the same provisions, and is enforced in the
25 same manner as an order of filiation entered on complaint of the
26 mother or father.

[Sec. 4a. (1) The summons or other initial notice to a party
in an action under this act shall contain notification that the party's
obligation to support the child will be determined and that the party's
rights to custody of and parenting time with the child may be
determined during the paternity action.

(2) THE FAMILY INDEPENDENCE AGENCY OR ITS DESIGNEE THAT
REQUIRES A PARTY TO APPEAR FOR GENETIC PATERNITY TESTING AS PROVIDED IN
SECTION 4, OR THE PARTY REQUESTING GENETIC PATERNITY TESTING IF A COURT
ORDERS GENETIC PATERNITY TESTING FOR AN INDIVIDUAL AS PROVIDED IN
SECTION 4, SHALL SERVE NOTICE OF THE TESTING ON THE MOTHER AND THE
ALLEGED FATHER. THE NOTICE SHALL INCLUDE EXPLANATIONS OF ALL OF THE
FOLLOWING:

- (A) THE TEST TO BE PERFORMED.
- (B) THE PURPOSE AND POTENTIAL USES OF THE TEST.
- (C) HOW THE TEST RESULTS WILL BE USED TO ESTABLISH PATERNITY OR
NONPATERNITY AS PROVIDED IN SECTION 6.
- (D) HOW THE INDIVIDUAL WILL BE PROVIDED WITH THE TEST RESULTS.
- (E) THE INDIVIDUAL'S RIGHT TO KEEP THE TEST RESULTS
CONFIDENTIAL AS PROVIDED IN SECTION 6A.]

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1 Sec. 5. (1) Both the mother and the alleged father of the
2 child shall be competent to testify, and if either gives evidence
3 he or she shall be subject to cross-examination. [Either party
4 may demand a trial by jury.] The court may exclude the general
5 public from the room where proceedings are held, pursuant to this
6 act, admitting only persons directly interested in the case,
7 including the officers of the court, officers or public welfare
8 agents presenting the case, and witnesses.

9 (2) If the child is not born at the time set for trial, the
10 case, unless the defendant mother or defendant father consents to
11 trial, shall be continued until the child is born.

12 Sec. 6. (1) In a proceeding under this act before trial,
13 the court, upon application made by or on behalf of either party,
14 or on its own motion, shall order that the mother, child, and
15 alleged father submit to blood or tissue typing determinations,
16 which may include, but are not limited to, determinations of red
17 cell antigens, red cell isoenzymes, human leukocyte antigens,
18 serum proteins, or DNA profiles, to determine whether the alleged
19 father is likely to be, or is not, the father of the child. If
20 the court orders a blood or tissue typing or DNA profile determi-
21 nation to be conducted and a party refuses to submit to the
22 typing or DNA profile determination, in addition to any other
23 remedies available, the court may do either of the following:

24 (a) Enter a default judgment at the request of the appropri-
25 ate party.

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1 (b) If a trial is held, allow the disclosure of the fact of
2 the refusal unless good cause is shown for not disclosing the
3 fact of refusal.

4 (2) A blood or tissue typing or DNA profile determination
5 shall be conducted by a person accredited for paternity determi-
6 nations by a nationally recognized scientific organization,
7 including, but not limited to, the American association of blood
8 banks.

9 (3) The court shall fix the compensation of an expert at a
10 reasonable amount and may direct the compensation to be paid by
11 the county or by any other party to the case, or by both in the
12 proportions and at the times the court prescribes. Before blood
13 or tissue typing or a DNA profile determination is conducted, the
14 court may order a part or all of the compensation paid in
15 advance. IF THE FAMILY INDEPENDENCE AGENCY PAID FOR THE GENETIC
16 TESTING EXPENSES, THE COURT MAY ORDER REPAYMENT BY THE ALLEGED
17 FATHER IF THE COURT DECLARES PATERNITY. DOCUMENTATION OF THE
18 GENETIC TESTING EXPENSES IS ADMISSIBLE AS EVIDENCE OF THE AMOUNT,
19 WHICH EVIDENCE CONSTITUTES PRIMA FACIE EVIDENCE OF THE AMOUNT OF
20 THOSE EXPENSES WITHOUT THIRD PARTY FOUNDATION TESTIMONY.

21 (4) The result of blood or tissue typing or a DNA profile
22 determination and, if a determination of exclusion of paternity
23 cannot be made, a written report including, but not limited to, a
24 calculation of the probability of paternity shall be filed with
25 the court and served on the mother and alleged father. Objection
26 to the result or report is waived unless made in writing, setting
27 forth the specific basis for the objection, within 14 calendar

1 days after service on the mother and alleged father. The court
2 shall not schedule a trial on the issue of paternity until after
3 the expiration of the 14-day period. If an objection is not
4 filed, the court shall admit in proceedings under this act the
5 result of the blood or tissue typing or the DNA profile and the
6 written report without requiring foundation testimony or other
7 proof of authenticity or accuracy. If an objection is filed
8 within the 14-day period, on the motion of either party, the
9 court shall hold a hearing to determine the admissibility of the
10 result or written report. The objecting party has the burden of
11 proving by clear and convincing evidence by a qualified person
12 described in subsection (2) that foundation testimony or other
13 proof of authenticity or accuracy is necessary for admission of
14 the result or written report.

15 (5) If the probability of paternity determined by the quali-
16 fied person described in subsection (2) is 99% or higher, and the
17 result and report are admissible as provided in subsection (4),
18 paternity shall be presumed. If 2 or more persons are determined
19 to have a probability of paternity of 99% or higher, paternity
20 shall be presumed for the person with the highest probability.

21 (6) Upon the establishment of the presumption of paternity
22 as provided in subsection (5), either party may move for summary
23 disposition under the court rules. Nothing in this section abro-
24 gates the right of either party to child support from the date of
25 birth of the child if applicable under section 7.

26 (7) As used in this section, "DNA profile" means the
27 patterns of fragments of deoxyribonucleic acid used both to

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1 identify individuals and to study the relatedness of
2 individuals.

[SEC. 6A. (1) EXCEPT AS AUTHORIZED UNDER THIS ACT, A PERSON SHALL NOT DISCLOSE INFORMATION OBTAINED FROM GENETIC PATERNITY TESTING THAT IS AUTHORIZED UNDER THIS ACT.

(2) IF AN ALLEGED FATHER WHO IS TESTED AS PART OF AN ACTION UNDER THIS ACT IS FOUND TO BE THE CHILD'S FATHER, THE CONTRACTING LABORATORY SHALL RETAIN THE GENETIC TESTING MATERIAL OF THE ALLEGED FATHER, MOTHER, AND CHILD FOR NO LONGER THAN THE PERIOD OF YEARS PRESCRIBED BY THE NATIONAL STANDARDS UNDER WHICH THE LABORATORY IS ACCREDITED. IF A MAN IS FOUND NOT TO BE THE CHILD'S FATHER, THE COURT SHALL ORDER THE MAN'S GENETIC TESTING MATERIAL TO BE DESTROYED AFTER ITS USE IN THE PATERNITY ACTION, AND THE GENETIC TESTING MATERIAL OF THE MOTHER AND CHILD TO BE RETAINED FOR NO LONGER THAN THE PERIOD OF YEARS PRESCRIBED BY THE NATIONAL STANDARDS UNDER WHICH THE LABORATORY IS ACCREDITED. A CONTRACTING LABORATORY SHALL DESTROY AN INDIVIDUAL'S TESTING MATERIAL AS PROVIDED IN THIS SUBSECTION AND SHALL NOTIFY THE ADULT INDIVIDUAL, OR THE PARENT OR LEGAL GUARDIAN OF A MINOR INDIVIDUAL, BY CERTIFIED MAIL THAT THE TESTING MATERIAL WAS DESTROYED.

(3) A CONTRACTING LABORATORY, THE FAMILY INDEPENDENCE AGENCY OR ITS DESIGNEE, OR ANOTHER ENTITY INVOLVED WITH THE GENETIC PATERNITY TESTING ARE ALL REQUIRED TO PROTECT THE CONFIDENTIALITY OF TESTING MATERIAL, EXCEPT AS REQUIRED FOR A PATERNITY DETERMINATION UNDER THIS ACT. THE COURT, ITS OFFICERS, AND THE FAMILY INDEPENDENCE AGENCY SHALL NOT USE OR DISCLOSE TESTING MATERIAL FOR A PURPOSE OTHER THAN THE PATERNITY DETERMINATION AS AUTHORIZED BY THIS ACT.

(4) A PERSON SHALL NOT SELL, TRANSFER, OR OFFER TESTING MATERIAL OBTAINED UNDER THIS ACT EXCEPT AS AUTHORIZED BY THIS ACT.

(5) A VIOLATION OF THIS SECTION IS A MISDEMEANOR PUNISHABLE BY A FINE OF NOT MORE THAN \$5,000.00. A SECOND OR SUBSEQUENT VIOLATION OF THIS SECTION IS A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR A FINE OF NOT MORE THAN \$10,000.00, OR BOTH.]

3 Sec. 9. (1) The person so adjudged to be the father of the
4 child may be required to give bond with 1 or more sufficient
5 sureties to the satisfaction of the court, to perform the order
6 of the court, and to indemnify the county that is chargeable with
7 the confinement expenses and with the maintenance of the child.
8 The bond shall be filed with the friend of the court or the clerk
9 of the court. If on the trial he is adjudged not to be the
10 father of the child, the court shall dismiss the complaint; and
11 the judgment of the court is final.

12 (2) If default is made in the payment of an installment or a
13 part of the installment, mentioned in the bond filed under sub-
14 section (1), the judge of the court in which the bond is filed,
15 at the request of the mother, guardian, or any other person

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16 interested in the support of the child, shall issue a citation to
17 the principal and sureties in the bond requiring them to appear

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18 on a day specified in the citation, and show cause why execution
19 shall not issue against them for the amount of the installment
20 due and unpaid on the bond. The citation shall be served by the
21 sheriff of any county in which the principal or sureties reside
22 or may be found. If the amount due on the installment is not
23 paid on or before the time mentioned for showing cause, the judge
24 shall render judgment in favor of the complainant against the
25 principal and sureties who have been served with the citation,
26 for the amount unpaid on the installment due on the bond.
27 Execution shall issue from the court against the goods and

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1 chattels of the person or persons against whom the judgment is
2 rendered for the amount of the judgment and costs to the sheriff
3 of any county in the state where a party to the judgment resides
4 or has property subject to the execution.

5 (3) The judge, in case of default in the payment, when due,
6 of any installment or any part of the installment or in the con-
7 dition of the bond, may adjudge the reputed father guilty of con-
8 tempt of court as provided in sections 31 to 39 of the support
9 and parenting time enforcement act, ~~Act No. 295 of the Public~~
10 ~~Acts of 1982, being sections 552.631 to 552.639 of the Michigan~~
11 ~~Compiled Laws~~ 1982 PA 295, MCL 552.631 TO 552.639. The commit-
12 ment of the reputed father under sections 31 to 39 of ~~Act~~
13 ~~No. 295 of the Public Acts of 1982~~ THE SUPPORT AND PARENTING
14 TIME ENFORCEMENT ACT, 1982 PA 295, MCL 552.631 TO 552.639, does
15 not operate to stay or defeat the obtaining of judgment and the
16 collection of the judgment by execution. The rendition and the
17 enforcement of decree or judgment does not bar or hinder the
18 taking of similar proceedings for subsequent defaults.

19 ~~-(4) If the judge considers it necessary in order to secure~~
20 ~~the payment or enforcement of the judgment, the judgment shall be~~
21 ~~made a lien upon such of the real estate of the defendant as the~~
22 ~~court directs; a certified copy of the judgment shall be made by~~
23 ~~the clerk of the court and filed and recorded in the office of~~
24 ~~the register of deeds of the county in which the real estate is~~
25 ~~located. Upon the recording of the judgment, the judgment~~
26 ~~becomes a lien on that real estate. Execution and other process~~
27 ~~may also issue for the enforcement of the judgment as in the case~~

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~~1 of other judgments in the court, and the provisions of this
2 section, as far as applicable.~~

3 (4) ~~(5)~~ In order to make effective the purpose and inten-
4 tion of the bonds required under subsection (1), the court may
5 appoint a receiver of the real and personal property belonging to
6 the judgment debtors with powers not exceeding those customarily
7 exercised by receivers.

[Enacting section 1. This amendatory act takes effect July 1,
1998.]

8 Enacting section [2]. This amendatory act does not take
9 effect unless Senate Bill No. 803 of the 89th Legislature is
10 enacted into law.