

SENATE BILL NO. 801

November 6, 1997, Introduced by Senator GEAKE and referred to the Committee on Families, Mental Health and Human Services.

A bill to amend 1956 PA 205, entitled "The paternity act," by amending sections 2, 4, 5, 6, and 9 (MCL 722.712, 722.714, 722.715, 722.716, and 722.719), sections 4 and 6 as amended by 1996 PA 308, section 5 as amended by 1989 PA 258, and section 9 as amended by 1996 PA 18.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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. THE COURT SHALL ADMIT IN PROCEEDINGS UNDER THIS ACT
8 BILLS FOR FUNERAL EXPENSES, EXPENSES OF THE MOTHER'S CONFINEMENT,

1 AND EXPENSES IN CONNECTION WITH THE MOTHER'S PREGNANCY WITHOUT
2 REQUIRING FOUNDATION TESTIMONY.

3 (2) ~~-(b)-~~ If the father dies, an order of filiation or a
4 judicially approved settlement made prior to his death shall be
5 enforceable against his estate in the same manner and way as a
6 divorce decree.

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

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

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

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

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

24 (5) The party filing the complaint shall name the person
25 believed to be the father of the child and state in the complaint
26 the time and place, as near as possible, when and where the
27 mother became pregnant. If the family independence agency is the

1 plaintiff, the required facts shall be stated upon information
2 and belief.

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

9 (7) It is unnecessary in any proceedings under this act com-
10 menced by or against a minor to have a next friend or guardian ad
11 litem appointed for the minor unless required by the circuit
12 judge. A minor may prosecute or defend any proceedings in the
13 same manner and with the same effect as if he or she were of
14 legal age.

15 (8) If a child born out of wedlock is being supported in
16 whole or in part by public assistance, including medical assist-
17 ance, the family independence agency may file a complaint on
18 behalf of the child in the circuit court in the county in which
19 the child resides. The mother or alleged father of the child
20 shall be made a party plaintiff and notified of the hearing on
21 the complaint by summons. The complaint made by the family inde-
22 pendence agency shall be verified by the director of the family
23 independence agency, or his or her designated representative, or
24 by the director of the county family independence agency of the
25 county in which an action is brought, or the county director's
26 designated representative.

1 (9) ~~Act No. 107 of the Public Acts of 1986~~ 1986 PA 107,
2 which added this subsection, does not affect the rights of an
3 indigent defendant in proceedings under this act as established
4 by decisions of the courts of this state before June 1, 1986.

5 (10) If a determination of paternity is made under this act,
6 the court may enter an order of filiation as provided in section
7 7. Regardless of who commences an action under this act, an
8 order of filiation entered under this act has the same effect, is
9 subject to the same provisions, and is enforced in the same
10 manner as an order of filiation entered on complaint of the
11 mother or father.

12 Sec. 5. (1) Both the mother and the alleged father of the
13 child shall be competent to testify, and if either gives evidence
14 he or she shall be subject to cross-examination. ~~Either party~~
15 ~~may demand a trial by jury.~~ The court may exclude the general
16 public from the room where proceedings are held, pursuant to this
17 act, admitting only persons directly interested in the case,
18 including the officers of the court, officers or public welfare
19 agents presenting the case, and witnesses.

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

23 Sec. 6. (1) In a proceeding under this act before trial,
24 the court, upon application made by or on behalf of either party,
25 or on its own motion, shall order that the mother, child, and
26 alleged father submit to blood or tissue typing determinations,
27 which may include, but are not limited to, determinations of red

1 cell antigens, red cell isoenzymes, human leukocyte antigens,
2 serum proteins, or DNA profiles, to determine whether the alleged
3 father is likely to be, or is not, the father of the child. If
4 the court orders a blood or tissue typing or DNA profile determi-
5 nation to be conducted and a party refuses to submit to the
6 typing or DNA profile determination, in addition to any other
7 remedies available, the court may do either of the following:

8 (a) Enter a default judgment at the request of the appropri-
9 ate party.

10 (b) If a trial is held, allow the disclosure of the fact of
11 the refusal unless good cause is shown for not disclosing the
12 fact of refusal.

13 (2) A blood or tissue typing or DNA profile determination
14 shall be conducted by a person accredited for paternity determi-
15 nations by a nationally recognized scientific organization,
16 including, but not limited to, the American association of blood
17 banks.

18 (3) The court shall fix the compensation of an expert at a
19 reasonable amount and may direct the compensation to be paid by
20 the county or by any other party to the case, or by both in the
21 proportions and at the times the court prescribes. Before blood
22 or tissue typing or a DNA profile determination is conducted, the
23 court may order a part or all of the compensation paid in
24 advance. IF THE FAMILY INDEPENDENCE AGENCY PAID FOR THE COSTS OF
25 GENETIC TESTING, THE COURT MAY ORDER REPAYMENT BY THE ALLEGED
26 FATHER IF THE COURT DECLARES PATERNITY. DOCUMENTATION OF THE
27 COSTS OF GENETIC TESTING IS ADMISSIBLE AS EVIDENCE OF THE AMOUNT

1 INCURRED FOR THOSE SERVICES WITHOUT REQUIRING FOUNDATION

2 TESTIMONY.

3 (4) The result of blood or tissue typing or a DNA profile
4 determination and, if a determination of exclusion of paternity
5 cannot be made, a written report including, but not limited to, a
6 calculation of the probability of paternity shall be filed with
7 the court and served on the mother and alleged father. Objection
8 to the result or report is waived unless made in writing, setting
9 forth the specific basis for the objection, within 14 calendar
10 days after service on the mother and alleged father. The court
11 shall not schedule a trial on the issue of paternity until after
12 the expiration of the 14-day period. If an objection is not
13 filed, the court shall admit in proceedings under this act the
14 result of the blood or tissue typing or the DNA profile and the
15 written report without requiring foundation testimony or other
16 proof of authenticity or accuracy. If an objection is filed
17 within the 14-day period, on the motion of either party, the
18 court shall hold a hearing to determine the admissibility of the
19 result or written report. The objecting party has the burden of
20 proving by clear and convincing evidence by a qualified person
21 described in subsection (2) that foundation testimony or other
22 proof of authenticity or accuracy is necessary for admission of
23 the result or written report.

24 (5) If the probability of paternity determined by the quali-
25 fied person described in subsection (2) is 99% or higher, and the
26 result and report are admissible as provided in subsection (4),
27 paternity shall be presumed. If 2 or more persons are determined

1 to have a probability of paternity of 99% or higher, paternity
2 shall be presumed for the person with the highest probability.

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

8 (7) As used in this section, "DNA profile" means the pat-
9 terns of fragments of deoxyribonucleic acid used both to identify
10 individuals and to study the relatedness of individuals.

11 Sec. 9. (1) The person so adjudged to be the father of the
12 child may be required to give bond with 1 or more sufficient
13 sureties to the satisfaction of the court, to perform the order
14 of the court, and to indemnify the county that is chargeable with
15 the confinement expenses and with the maintenance of the child.
16 The bond shall be filed with the friend of the court or the clerk
17 of the court. If on the trial he is adjudged not to be the
18 father of the child, the court shall dismiss the complaint; and
19 the judgment of the court is final.

20 (2) If default is made in the payment of an installment or a
21 part of the installment, mentioned in the bond filed under sub-
22 section (1), the judge of the court in which the bond is filed,
23 at the request of the mother, guardian, or any other person
24 interested in the support of the child, shall issue a citation to
25 the principal and sureties in the bond requiring them to appear
26 on a day specified in the citation, and show cause why execution
27 shall not issue against them for the amount of the installment

1 due and unpaid on the bond. The citation shall be served by the
2 sheriff of any county in which the principal or sureties reside
3 or may be found. If the amount due on the installment is not
4 paid on or before the time mentioned for showing cause, the judge
5 shall render judgment in favor of the complainant against the
6 principal and sureties who have been served with the citation,
7 for the amount unpaid on the installment due on the bond.

8 Execution shall issue from the court against the goods and chat-
9 tels of the person or persons against whom the judgment is
10 rendered for the amount of the judgment and costs to the sheriff
11 of any county in the state where a party to the judgment resides
12 or has property subject to the execution.

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

1 ~~-(4) If the judge considers it necessary in order to secure~~
2 ~~the payment or enforcement of the judgment, the judgment shall be~~
3 ~~made a lien upon such of the real estate of the defendant as the~~
4 ~~court directs; a certified copy of the judgment shall be made by~~
5 ~~the clerk of the court and filed and recorded in the office of~~
6 ~~the register of deeds of the county in which the real estate is~~
7 ~~located. Upon the recording of the judgment, the judgment~~
8 ~~becomes a lien on that real estate. Execution and other process~~
9 ~~may also issue for the enforcement of the judgment as in the case~~
10 ~~of other judgments in the court, and the provisions of this sec-~~
11 ~~tion, as far as applicable.~~

12 (4) ~~-(5)-~~ In order to make effective the purpose and inten-
13 tion of the bonds required under subsection (1), the court may
14 appoint a receiver of the real and personal property belonging to
15 the judgment debtors with powers not exceeding those customarily
16 exercised by receivers.