

Act No. 113
Public Acts of 1998
Approved by the Governor
June 5, 1998
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STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1998

Introduced by Senator Geake

ENROLLED SENATE BILL No. 801

AN ACT 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 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.

Sec. 2. (1) The parents of a child born out of wedlock are liable for the necessary support and education of the child. They are also liable for the child's funeral expenses. The father is liable to pay the expenses of the mother's confinement, and is also liable to pay expenses in connection with her pregnancy as the court in its discretion may deem proper. The court shall admit in proceedings under this act a bill for funeral expenses, expenses of the mother's confinement, or expenses in connection with the mother's pregnancy, which bill constitutes prima facie evidence of the amount of those expenses, without third party foundation testimony.

(2) If the father dies, an order of filiation or a judicially approved settlement made before his death is enforceable against his estate in the same manner and way as a divorce decree.

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

(2) An action to determine paternity shall not be brought under this act if the child's father acknowledges paternity under the acknowledgment of parentage act, or if the child's paternity is established under the law of another state.

(3) An action under this act may be commenced during the pregnancy of the child's mother or at any time before the child reaches 18 years of age. For a child who became 18 years of age after August 15, 1984 and before June 2, 1986, an action under this act may be commenced before January 1, 1995. This subsection applies regardless of whether the cause of action accrued before June 1, 1986 and regardless of whether the cause of action was barred under this subsection before June 1, 1986. A summons issued under this section shall be in the form the court determines and shall be served in the same manner as is provided by court rules for the service of process in civil actions.

(4) If the county family independence agency of the county in which the mother or alleged father resides first determines that she or he has physical possession of the child and is eligible for public assistance or without means to employ an attorney; if the family independence agency is the complainant; or if the mother, alleged father, or child is receiving services under part D of title IV of the social security act, 42 U.S.C. 651 to 667, then the prosecuting attorney or an attorney employed by the county under section 1 of 1941 PA 15, MCL 49.71, shall initiate and conduct proceedings under this act. The prosecuting attorney shall utilize the child support formula developed under section 19 of the friend of the court act, 1982 PA 294, MCL 552.519, as a guideline in petitioning for child support. A complaint filed under this act shall be verified by oath or affirmation.

(5) The party filing the complaint shall name the person believed to be the father of the child and state in the complaint the time and place, as near as possible, when and where the mother became pregnant. If the family independence agency is the plaintiff, the required facts shall be stated upon information and belief.

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

(7) If, after service of process, the parties fail to consent to an order naming the man as the child's father as provided in this act within the time permitted for a responsive pleading, then the family independence agency or its designee may file and serve both the mother and the alleged father with a notice requiring that the mother, alleged father, and child appear for genetic paternity testing as provided in section 6.

(8) If the mother, alleged father, or child does not appear for genetic paternity testing as provided in subsection (7), then the family independence agency or its designee may apply to the court for an order compelling genetic paternity tests as provided in section 6 or may seek other relief as permitted by statute or court rule.

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

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

(11) 1986 PA 107, which added this subsection, does not affect the rights of an indigent defendant in proceedings under this act as established by decisions of the courts of this state before June 1, 1986.

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

Sec. 5. (1) Both the mother and the alleged father of the child shall be competent to testify, and if either gives evidence he or she shall be subject to cross-examination. The court may exclude the general public from the room where

proceedings are held, pursuant to this act, admitting only persons directly interested in the case, including the officers of the court, officers or public welfare agents presenting the case, and witnesses.

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

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

(a) Enter a default judgment at the request of the appropriate party.

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

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

(3) The court shall fix the compensation of an expert at a reasonable amount and may direct the compensation to be paid by the county or by any other party to the case, or by both in the proportions and at the times the court prescribes. Before blood or tissue typing or a DNA profile determination is conducted, the court may order a part or all of the compensation paid in advance. If the family independence agency paid for the genetic testing expenses, the court may order repayment by the alleged father if the court declares paternity. Documentation of the genetic testing expenses is admissible as evidence of the amount, which evidence constitutes prima facie evidence of the amount of those expenses without third party foundation testimony.

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

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

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

(7) As used in this section, "DNA profile" means the patterns of fragments of deoxyribonucleic acid used both to identify individuals and to study the relatedness of 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.

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

(2) If default is made in the payment of an installment or a part of the installment, mentioned in the bond filed under subsection (1), the judge of the court in which the bond is filed, at the request of the mother, guardian, or any other person interested in the support of the child, shall issue a citation to the principal and sureties in the bond requiring them to appear on a day specified in the citation, and show cause why execution shall not issue against them for the amount of the installment due and unpaid on the bond. The citation shall be served by the sheriff of any county in which the principal or sureties reside or may be found. If the amount due on the installment is not paid on or before the time mentioned for showing cause, the judge shall render judgment in favor of the complainant against the principal and sureties who have been served with the citation, for the amount unpaid on the installment due on the bond. Execution shall issue from the court against the goods and chattels of the person or persons against whom the judgment is rendered for the amount of the judgment and costs to the sheriff of any county in the state where a party to the judgment resides or has property subject to the execution.

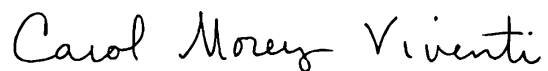
(3) The judge, in case of default in the payment, when due, of any installment or any part of the installment or in the condition of the bond, may adjudge the reputed father guilty of contempt of court as provided in sections 31 to 39 of the support and parenting time enforcement act, 1982 PA 295, MCL 552.631 to 552.639. The commitment of the reputed father under sections 31 to 39 of the support and parenting time enforcement act, 1982 PA 295, MCL 552.631 to 552.639, does not operate to stay or defeat the obtaining of judgment and the collection of the judgment by execution. The rendition and the enforcement of decree or judgment does not bar or hinder the taking of similar proceedings for subsequent defaults.

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

Enacting section 1. This amendatory act takes effect June 30, 1998.

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

This act is ordered to take immediate effect.



Secretary of the Senate.



Clerk of the House of Representatives.

Approved _____

Governor.