

SENATE BILL NO. 595

May 11, 1999, Introduced by Senators GOUGEON, SCHWARZ,
HAMMERSTROM, SHUGARS, GOSCHKA, JOHNSON, SIKKEMA and
MC COTTER and referred to the Committee on Health Policy.

A bill to amend 1956 PA 205, entitled
"The paternity act,"
by amending sections 1, 6, and 6a (MCL 722.711, 722.716, and
722.716a), sections 1 and 6 as amended and section 6a as added by
1998 PA 113.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Child born out of wedlock" means a child begotten and
3 born to a woman who was not married from the conception to the
4 date of birth of the child, or a child that the court has deter-
5 mined to be a child born or conceived during a marriage but not
6 the issue of that marriage.

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

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

1 (d) "Court" means the circuit court.

2 (E) "DNA IDENTIFICATION PROFILE" MEANS THE RESULTS OF THE
3 DNA IDENTIFICATION PROFILING OF A SAMPLE.

4 (F) "DNA IDENTIFICATION PROFILING" MEANS A VALIDATED SCIEN-
5 TIFIC METHOD OF ANALYZING COMPONENTS OF DEOXYRIBONUCLEIC ACID
6 MOLECULES IN A SAMPLE TO IDENTIFY THE PATTERN OF THE COMPONENTS'
7 CHEMICAL STRUCTURE THAT IS UNIQUE TO THE INDIVIDUAL.

8 (G) ~~(e) "Testing"~~ "GENETIC TESTING material" means ~~any~~
9 ~~substance~~ A SAMPLE or information used for or produced by gene-
10 tic paternity testing conducted under this act other than a
11 report submitted to a court for a paternity determination.

12 (H) "SAMPLE" MEANS A PORTION OF AN INDIVIDUAL'S BLOOD,
13 SALIVA, OR TISSUE COLLECTED FROM THE INDIVIDUAL.

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

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

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

6 (2) A blood or tissue typing or DNA ~~profile determination~~
7 IDENTIFICATION PROFILING shall be conducted by a person accredi-
8 ted for paternity determinations by a nationally recognized sci-
9 entific organization, including, but not limited to, the American
10 association of blood banks.

11 (3) The court shall fix the compensation of an expert at a
12 reasonable amount and may direct the compensation to be paid by
13 the county or by any other party to the case, or by both in the
14 proportions and at the times the court prescribes. Before blood
15 or tissue typing or ~~a DNA profile determination~~
16 IDENTIFICATION PROFILING is conducted, the court may order a part
17 or all of the compensation paid in advance. If the family inde-
18 pendence agency paid for the genetic testing expenses, the court
19 may order repayment by the alleged father if the court declares
20 paternity. Documentation of the genetic testing expenses is
21 admissible as evidence of the amount, which evidence constitutes
22 prima facie evidence of the amount of those expenses without
23 third party foundation testimony.

24 (4) ~~The~~ SUBJECT TO SUBSECTION (5), THE result of blood or
25 tissue typing or a DNA IDENTIFICATION profile ~~determination~~
26 and, if a determination of exclusion of paternity cannot be made,
27 a written report including, but not limited to, a calculation of

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

19 (5) IF A DNA IDENTIFICATION PROFILING IS CONDUCTED, THE
20 PERSON PREPARING THE WRITTEN REPORT REQUIRED UNDER SUBSECTION (4)
21 SHALL INCLUDE IN THE REPORT ONLY THE PROBABILITY OF PATERNITY AND
22 SHALL NOT INCLUDE ANY OTHER GENETIC INFORMATION IN THE DNA IDEN-
23 TIFICATION PROFILE.

24 (6) ~~(5)~~ If the probability of paternity determined by the
25 qualified person described in subsection (2) CONDUCTING THE BLOOD
26 OR TISSUE TYPING OR DNA IDENTIFICATION PROFILING is 99% or
27 higher, and the result and report are admissible as provided in

1 subsection (4), paternity ~~shall be~~ IS presumed. ~~If 2 or more~~
2 ~~persons are determined to have a probability of paternity of 99%~~
3 ~~or higher, paternity shall be presumed for the person with the~~
4 ~~highest probability.~~ IF THE RESULTS OF THE ANALYSIS OF GENETIC
5 TESTING MATERIAL FROM 2 OR MORE PERSONS INDICATE A PROBABILITY OF
6 PATERNITY GREATER THAN 99%, THE CONTRACTING LABORATORY SHALL CON-
7 DUCT ADDITIONAL GENETIC PATERNITY TESTING UNTIL ALL BUT 1 OF THE
8 PUTATIVE FATHERS IS ELIMINATED, UNLESS THE DISPUTE INVOLVES 2 OR
9 MORE PUTATIVE FATHERS WHO HAVE IDENTICAL DNA.

10 (7) ~~(6)~~ Upon the establishment of the presumption of
11 paternity as provided in subsection ~~(5)~~ (6), either party may
12 move for summary disposition under the court rules. ~~Nothing in~~
13 ~~this section abrogates~~ THIS SECTION DOES NOT ABROGATE the right
14 of either party to child support from the date of birth of the
15 child if applicable under section 7.

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

19 Sec. 6a. (1) Except as authorized under this act, a person
20 shall not disclose information obtained from genetic paternity
21 testing that is authorized under this act.

22 (2) If an alleged father who is tested as part of an action
23 under this act is found to be the child's father, the contracting
24 laboratory shall retain the genetic testing material of the
25 alleged father, mother, and child for no longer than the period
26 of years prescribed by the national standards under which the
27 laboratory is accredited. If a man is found not to be the

1 child's father, the court shall order THE CONTRACTING LABORATORY
2 TO DESTROY the man's genetic testing material ~~to be destroyed~~
3 after ~~its use~~ IT IS USED in the paternity action, ~~and~~ IN COM-
4 PLIANCE WITH SECTION 13811 OF THE PUBLIC HEALTH CODE, 1978 PA
5 368, MCL 333.13811, AND IN THE PRESENCE OF A WITNESS. AFTER THE
6 MAN'S GENETIC TESTING MATERIAL IS DESTROYED, THE CONTRACTING LAB-
7 ORATORY SHALL MAKE AND KEEP A WRITTEN RECORD OF THE DESTRUCTION,
8 AND HAVE THE INDIVIDUAL WHO WITNESSED THE DESTRUCTION SIGN THE
9 RECORD. THE CONTRACTING LABORATORY SHALL ALSO EXPUNGE THE CON-
10 TRACTING LABORATORY'S RECORDS REGARDING THE GENETIC PATERNITY
11 TESTING PERFORMED ON THE GENETIC TESTING MATERIAL IN ACCORDANCE
12 WITH THE NATIONAL STANDARDS UNDER WHICH THE LABORATORY IS
13 ACCREDITED. THE COURT SHALL ALSO ORDER THE CONTRACTING LABORA-
14 TORY TO RETAIN the genetic testing material of the mother and
15 child ~~to be retained~~ for no longer than the period of years
16 prescribed by the national standards under which the laboratory
17 is accredited. ~~A~~ AFTER A contracting laboratory ~~shall~~
18 ~~destroy~~ DESTROYS an individual's GENETIC testing material as
19 provided in this subsection, ~~and~~ IT shall notify the adult
20 individual, or the parent or legal guardian of a minor individu-
21 al, by certified mail that the GENETIC testing material was
22 destroyed.

23 (3) A contracting laboratory, the family independence agency
24 or its designee, or another entity involved with the genetic
25 paternity testing are all required to protect the confidentiality
26 of GENETIC testing material, except as required for a paternity
27 determination under this act. The court, its officers, and the

1 family independence agency shall not use or disclose GENETIC
2 testing material for a purpose other than the paternity determi-
3 nation as authorized by this act.

4 (4) A person shall not sell, transfer, or offer GENETIC
5 testing material obtained under this act except as authorized by
6 this act.

7 (5) THE FAMILY INDEPENDENCE AGENCY SHALL PROMULGATE RULES
8 PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA
9 306, MCL 24.201 TO 24.328, ESTABLISHING PROCEDURES FOR THE AUDIT-
10 ING OF CONTRACTING LABORATORIES' RECORDS OF BOTH THE DESTRUCTION
11 OF GENETIC TESTING MATERIAL AND THE EXPUNGEMENT OF RECORDS AS
12 REQUIRED UNDER THIS SECTION.

13 (6) ~~(5)~~ A violation of this section is a misdemeanor pun-
14 ishable by a fine of not more than \$5,000.00. A second or subse-
15 quent violation of this section is a misdemeanor punishable by
16 imprisonment for not more than 1 year or a fine of not more than
17 \$10,000.00, or both.