

HOUSE BILL No. 5583

May 15, 2014, Introduced by Reps. Hovey-Wright and Kurtz and referred to the Committee on Families, Children, and Seniors.

A bill to amend 2012 PA 159, entitled
"Revocation of paternity act,"
by amending sections 3, 5, and 13 (MCL 722.1433, 722.1435, and
722.1443) and by adding section 8.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. **AS USED IN THIS ACT:**

2 **(A)** ~~(1)~~—"Acknowledged father" means a man who has
3 affirmatively held himself out to be the child's father by
4 executing an acknowledgment of parentage under the acknowledgment
5 of parentage act, 1996 PA 305, MCL 722.1001 to 722.1013.

6 **(B)** ~~(2)~~—"Affiliated father" means a man who has been
7 determined in a court to be the child's father.

8 **(C)** ~~(3)~~—"Alleged father" means a man who by his actions could
9 have fathered the child.

10 **(D) "GENETIC FATHER" MEANS A MAN WHOSE PATERNITY HAS BEEN**

1 DETERMINED SOLELY THROUGH GENETIC TESTING.

2 (E) ~~(4)~~—"Presumed father" means a man who is presumed to be
3 the child's father by virtue of his marriage to the child's mother
4 at the time of the child's conception or birth.

5 (F) ~~(5)~~—"Order of filiation" means a judicial order
6 establishing an affiliated father.

7 (G) ~~(6)~~—"Title IV-D case" means an action in which services
8 are provided under part D of title IV of the social security act,
9 42 USC 651 to 669b.

10 Sec. 5. (1) Section 7 governs an action to set aside an
11 acknowledgment of parentage.

12 (2) SECTION 8 GOVERNS AN ACTION TO DETERMINE THAT A GENETIC
13 FATHER IS NOT A CHILD'S FATHER.

14 (3) ~~(2)~~—Section 9 governs an action to set aside an order of
15 filiation.

16 (4) ~~(3)~~—Section 11 governs an action to determine that a
17 presumed father is not a child's father.

18 SEC. 8. (1) THE MOTHER, THE GENETIC FATHER, AN ALLEGED FATHER,
19 OR A PROSECUTING ATTORNEY MAY FILE AN ACTION FOR AN ORDER
20 DETERMINING THAT A GENETIC FATHER IS NOT A CHILD'S FATHER. AN
21 ACTION UNDER THIS SECTION SHALL BE FILED WITHIN 3 YEARS AFTER THE
22 CHILD'S BIRTH OR WITHIN 1 YEAR AFTER THE DATE THAT THE GENETIC
23 FATHER WAS ESTABLISHED AS A CHILD'S FATHER, WHICHEVER IS LATER.

24 (2) AN ACTION UNDER THIS SECTION SHALL BE SUPPORTED BY AN
25 AFFIDAVIT SIGNED BY THE PERSON FILING THE ACTION THAT STATES FACTS
26 CONSTITUTING 1 OF THE FOLLOWING:

27 (A) THE GENETIC TESTS THAT ESTABLISHED THE MAN AS A CHILD'S

1 FATHER WERE INACCURATE.

2 (B) THE MAN'S GENETIC MATERIAL WAS NOT AVAILABLE TO THE
3 CHILD'S MOTHER.

4 (C) A MAN WHO HAS DNA IDENTICAL TO THE GENETIC FATHER IS THE
5 CHILD'S FATHER.

6 (3) IF THE COURT IN AN ACTION UNDER THIS SECTION FINDS THAT AN
7 AFFIDAVIT UNDER SUBSECTION (2) IS SUFFICIENT, THE COURT SHALL ORDER
8 BLOOD OR TISSUE TYPING OR DNA IDENTIFICATION PROFILING AS REQUIRED
9 UNDER SECTION 13(5). THE PERSON FILING THE ACTION HAS THE BURDEN OF
10 PROVING, BY CLEAR AND CONVINCING EVIDENCE, THAT THE GENETIC FATHER
11 IS NOT THE FATHER OF THE CHILD.

12 (4) IF A GENETIC FATHER HAS BEEN REPORTED TO THE STATE
13 REGISTRAR AS A CHILD'S FATHER, THE CLERK OF THE COURT SHALL FORWARD
14 A COPY OF AN ORDER DETERMINING THAT THE GENETIC FATHER IS NOT A
15 CHILD'S FATHER TO THE STATE REGISTRAR. THE STATE REGISTRAR SHALL
16 REMOVE THE GENETIC FATHER AS THE CHILD'S FATHER AND MAY AMEND THE
17 BIRTH CERTIFICATE AS PRESCRIBED BY THE ORDER.

18 (5) WHETHER AN ACTION FILED UNDER THIS SECTION IS BROUGHT BY A
19 COMPLAINT IN AN ORIGINAL ACTION OR BY A MOTION IN AN EXISTING
20 ACTION, THE PROSECUTING ATTORNEY, AN ATTORNEY APPOINTED BY THE
21 COUNTY, OR AN ATTORNEY APPOINTED BY THE COURT IS NOT REQUIRED TO
22 REPRESENT ANY PARTY REGARDING THE ACTION.

23 Sec. 13. (1) An original action under this act shall be filed
24 in the circuit court for the county in which the mother or the
25 child resides or, if neither the mother nor the child reside in
26 this state, in the circuit court for the county in which the child
27 was born. If an action for the support, custody, or parenting time

1 of the child exists at any stage of the proceedings in a circuit
 2 court of this state or if an action under section 2(b) of chapter
 3 XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, is
 4 pending in a circuit court of this state, an action under this act
 5 shall be brought by motion in the existing case under rules adopted
 6 by the supreme court.

7 (2) In an action filed under this act, the court may do any of
 8 the following:

9 (a) Revoke an acknowledgment of parentage.

10 **(B) DETERMINE THAT A GENETIC FATHER IS NOT A CHILD'S FATHER.**

11 **(C) ~~(b)~~**—Set aside an order of filiation or a paternity order.

12 **(D) ~~(c)~~**—Determine that a child was born out of wedlock.

13 **(E) ~~(d)~~**—Make a determination of paternity and enter an order
 14 of filiation as provided for under section 7 of the paternity act,
 15 1956 PA 205, MCL 722.717.

16 (3) A judgment entered under this act does not relieve a man
 17 from a support obligation for the child or the child's mother that
 18 was incurred before the action was filed or prevent a person from
 19 seeking relief under applicable court rules to vacate or set aside
 20 a judgment.

21 (4) A court may refuse to enter an order setting aside a
 22 paternity determination, **REVOKING AN ACKNOWLEDGMENT OF PARENTAGE,**
 23 **DETERMINING THAT A GENETIC FATHER IS NOT A CHILD'S FATHER,** or
 24 determining that a child is born out of wedlock if the court finds
 25 evidence that the order would not be in the best interests of the
 26 child. The court shall state its reasons for refusing to enter an
 27 order on the record. The court may consider the following factors:

1 (a) Whether the presumed father is estopped from denying
2 parentage because of his conduct.

3 (b) The length of time the presumed father was on notice that
4 he might not be the child's father.

5 (c) The facts surrounding the presumed father's discovery that
6 he might not be the child's father.

7 (d) The nature of the relationship between the child and the
8 presumed or alleged father.

9 (e) The age of the child.

10 (f) The harm that may result to the child.

11 (g) Other factors that may affect the equities arising from
12 the disruption of the father-child relationship.

13 (h) Any other factor that the court determines appropriate to
14 consider.

15 (5) The court shall order the parties to an action or motion
16 under this act to participate in and pay for blood or tissue typing
17 or DNA identification profiling to assist the court in making a
18 determination under this act. Blood or tissue typing or DNA
19 identification profiling shall be conducted in accordance with
20 section 6 of the paternity act, 1956 PA 205, MCL 722.716. The
21 results of blood or tissue typing or DNA identification profiling
22 are not binding on a court in making a determination under this
23 act.

24 (6) If the case is a title IV-D case, the court may appoint an
25 attorney approved by the office of child support to represent this
26 state's interests with respect to an action or a motion under this
27 act. The court may appoint a guardian ad litem to represent the

1 child's interests with respect to the action or motion.

2 (7) A court shall not issue an order under this act that sets
3 aside a judgment or determination of a court or administrative
4 agency of another state, even if the judgment or determination is
5 being enforced in this state.

6 (8) This act does not establish a basis for termination of an
7 adoption and does not affect any obligation of an adoptive parent
8 to an adoptive child.

9 (9) This act does not establish a basis for vacating a
10 judgment establishing paternity of a child conceived under a
11 surrogate parentage contract as that term is defined in section 3
12 of the surrogate parenting act, 1988 PA 199, MCL 722.853.

13 (10) A common law action that was available before ~~the~~
14 ~~effective date of this act~~ **JUNE 12, 2012** to set aside a paternity
15 determination or to determine that a child is born out of wedlock
16 remains available until ~~2 years after the effective date of this~~
17 ~~act~~ **JUNE 12, 2014**, but is not available after ~~that date~~ **JUNE 12,**
18 **2014.**

19 (11) A court, in its discretion, may order a person who files
20 an action or motion under this act to post an amount of money with
21 the court, obtain a surety, or provide other assurances that in the
22 court's determination will secure the costs of the action and
23 attorney fees if the person does not prevail. The court, in its
24 discretion, may order a nonprevailing party to pay the reasonable
25 attorney fees and costs of a prevailing party.

26 (12) A court may extend the time for filing an action or
27 motion under this act. A request for extension shall be supported

1 by an affidavit signed by the person requesting the extension
2 stating facts that the person satisfied all the requirements for
3 filing an action or motion under this act but did not file the
4 action or motion within the time allowed under this act because of
5 1 of the following:

6 (a) Mistake of fact.

7 (b) Newly discovered evidence that by due diligence could not
8 have been found earlier.

9 (c) Fraud.

10 (d) Misrepresentation or misconduct.

11 (e) Duress.

12 (13) If the court finds that an affidavit under subsection
13 (12) is sufficient, the court may allow the action or motion to be
14 filed and take other action the court considers appropriate. The
15 party filing the request to extend the time for filing has the
16 burden of proving, by clear and convincing evidence, that granting
17 relief under this act will not be against the best interests of the
18 child considering the equities of the case.

19 (14) An alleged father may not bring an action under this act
20 if the child is conceived as the result of acts for which the
21 alleged father was convicted of criminal sexual conduct under
22 sections 520b to 520e of the Michigan penal code, 1931 PA 328, MCL
23 750.520b to 750.520e.

24 (15) An action may not be brought under this act if the child
25 is under court jurisdiction under chapter XIIIA of the probate code
26 of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, and a petition has
27 been filed to terminate the parental rights to the child, unless

1 the court having jurisdiction under chapter XIIIA of the probate
2 code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, first finds that
3 allowing an action under this act would be in the best interests of
4 the child.