

SUBSTITUTE FOR
HOUSE BILL NO. 5212

A bill to amend 2012 PA 159, entitled
"Revocation of paternity act,"
by amending the title and sections 1, 3, 5, 7, 9, 11, 13, and 15
(MCL 722.1431, 722.1433, 722.1435, 722.1437, 722.1439, 722.1441,
722.1443, and 722.1445), sections 3 and 5 as amended by 2014 PA
376, section 7 as amended by 2014 PA 368, and sections 13 and 15 as
amended by 2016 PA 178.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE
2 An act to provide procedures to determine the ~~paternity~~
3 **parentage** of children in certain circumstances; to allow
4 acknowledgments, determinations, and judgments relating to
5 ~~paternity~~**parentage** to be set aside in certain circumstances; to

1 provide for the powers and duties of certain state and local
2 governmental officers and entities; and to provide remedies.

3 Sec. 1. This act ~~shall be known and~~ may be cited as the
4 "revocation of ~~paternity~~ **parentage** act".

5 Sec. 3. As used in this act:

6 (a) "Acknowledged ~~father~~" **parent**" means ~~a man~~ **an individual**
7 who has affirmatively held ~~himself~~ **themselves** out to be the child's
8 ~~father~~ **parent** by executing an acknowledgment of parentage under the
9 acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 to
10 722.1013.

11 (b) "Affiliated father" means a man who has been determined in
12 a court to be the child's father.

13 (c) "Alleged father" means a man who by his actions could have
14 fathered the child.

15 (d) "Donor" means that term as defined in section 3 of the
16 **assisted reproduction and surrogacy parentage act**.

17 (e) ~~(d)~~ "Genetic father" means a man whose paternity has been
18 determined solely through genetic testing under the paternity act,
19 1956 PA 205, MCL 722.711 to 722.730, the summary support and
20 paternity act, or the genetic parentage act.

21 (f) ~~(e)~~ "Presumed ~~father~~" **parent**" means ~~a man~~ **an individual**
22 who is presumed to be the child's ~~father~~ **parent** by virtue of his
23 marriage to the child's mother at the time of the child's
24 conception or birth.

25 (g) ~~(f)~~ "Order of filiation" means a judicial order
26 establishing an affiliated father.

27 (h) ~~(g)~~ "Title IV-D case" means an action in which services
28 are provided under part D of title IV of the social security act,
29 42 USC 651 to 669b.

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

3 (2) Section 8 governs an action to determine that a genetic
4 father is not a child's father.

5 (3) Section 9 governs an action to set aside an order of
6 filiation.

7 (4) Section 11 governs an action to determine that a presumed
8 ~~father~~**parent** is not a child's ~~father~~**parent**.

9 Sec. 7. (1) The mother, the acknowledged ~~father~~**parent**, an
10 alleged father, or a prosecuting attorney may file an action for
11 revocation of an acknowledgment of parentage. An action under this
12 section ~~shall~~**must** be filed within 3 years after the child's birth
13 or within 1 year after the date that the acknowledgment of
14 parentage was signed, whichever is later. The requirement that an
15 action be filed within 3 years after the child's birth or within 1
16 year after the date the acknowledgment is signed does not apply to
17 an action filed on or before June 12, 2013.

18 (2) The prosecuting attorney and the department ~~of human~~
19 ~~services~~ may enter into an agreement to transfer the prosecutor's
20 responsibilities under this act to 1 of the following:

21 (a) The friend of the court, with the approval of the chief
22 judge of the circuit court.

23 (b) An attorney employed or contracted by the county under
24 section 1 of 1941 PA 15, MCL 49.71.

25 (c) An attorney employed by, or under contract with, the
26 department. ~~of human services.~~

27 (3) A proceeding under this section is conducted on behalf of
28 the state and not as the attorney for any other party.

29 (4) An action for revocation under this section ~~shall~~**must** be

1 supported by an affidavit signed by the person filing the action
2 that states facts that constitute 1 of the following:

3 (a) Mistake of fact.

4 (b) Newly discovered evidence that by due diligence could not
5 have been found before the acknowledgment was signed.

6 (c) Fraud.

7 (d) Misrepresentation or misconduct.

8 (e) Duress in signing the acknowledgment.

9 (5) If the court in an action for revocation under this
10 section finds that an affidavit under subsection (4) is sufficient,
11 the court ~~shall~~**must** order blood or tissue typing or DNA
12 identification profiling as required under section 13(5). The
13 person filing the action has the burden of proving, by clear and
14 convincing evidence, that the acknowledged ~~father~~**parent** is not the
15 father of the child.

16 (6) The clerk of the court ~~shall~~**must** forward a copy of an
17 order of revocation entered under this section to the state
18 registrar. The state registrar ~~shall~~**must** vacate the acknowledgment
19 of parentage and may amend the birth certificate as prescribed by
20 the order of revocation.

21 (7) Whether an action for revocation under this section is
22 brought by a complaint in an original action or by a motion in an
23 existing action, the prosecuting attorney, an attorney appointed by
24 the county, the friend of the court, or an attorney appointed by
25 the court is not required to represent any party regarding the
26 action for revocation.

27 Sec. 9. (1) If a child has an affiliated father and paternity
28 was determined based on the affiliated father's failure to
29 participate in the court proceedings, the mother, an alleged

1 father, or the affiliated father may file a motion with the court
2 that made the determination to set aside the determination.

3 (2) A motion under this section ~~shall~~**must** be filed within 3
4 years after the child's birth or within 1 year after the date of
5 the order of filiation, whichever is later. The requirement that an
6 action be filed within 3 years after the child's birth or within 1
7 year after the date of the order of filiation does not apply to an
8 action filed on or before 1 year after the effective date of this
9 act.

10 (3) If the court determines that a motion under this section
11 should be denied and the order of filiation not be set aside, the
12 court shall order the person who filed the motion to pay the
13 reasonable attorney fees and costs incurred by any other party
14 because of the motion.

15 Sec. 11. (1) If a child has a presumed ~~father,~~**parent**, a court
16 may determine that the child is born out of wedlock for the purpose
17 of establishing the child's ~~paternity~~**parentage** if an action is
18 filed by the child's mother and either of the following applies:

19 (a) All of the following apply:

20 (i) The mother identifies the alleged father by name in the
21 complaint or motion commencing the action.

22 (ii) The presumed ~~father,~~**parent**, the alleged father, and the
23 child's mother at some time mutually and openly acknowledged a
24 biological relationship between the alleged father and the child.

25 (iii) The action is filed within 3 years after the child's
26 birth. The requirement that an action be filed within 3 years after
27 the child's birth does not apply to an action filed on or before 1
28 year after the effective date of this act.

29 (iv) Either the court determines the child's ~~paternity~~

1 **parentage** or the child's ~~paternity~~**parentage** will be established
2 under the law of this state or another jurisdiction if the child is
3 determined to be born out of wedlock.

4 (b) All of the following apply:

5 (i) The mother identifies the alleged father by name in the
6 complaint or motion commencing the action.

7 (ii) Either of the following applies:

8 (A) The presumed ~~father~~**parent**, having the ability to support
9 or assist in supporting the child, has failed or neglected, without
10 good cause, to provide regular and substantial support for the
11 child for a period of 2 years or more before the filing of the
12 action or, if a support order has been entered, has failed to
13 substantially comply with the order for a period of 2 years or more
14 before the filing of the action.

15 (B) The child is less than 3 years of age and the presumed
16 ~~father~~**parent** lives separately and apart from the child. The
17 requirement that the child is less than 3 years of age at the time
18 an action is filed does not apply to an action filed on or before 1
19 year after the effective date of this act.

20 (iii) Either the court determines the child's ~~paternity~~
21 **parentage** or the child's ~~paternity~~**parentage** will be established
22 under the law of this state or another jurisdiction if the child is
23 determined to be born out of wedlock.

24 (2) If a child has a presumed ~~father~~**parent**, a court may
25 determine that the child is born out of wedlock for the purpose of
26 establishing the child's ~~paternity~~**parentage** if an action is filed
27 by the presumed ~~father~~**parent** within 3 years after the child's
28 birth or if the presumed ~~father~~**parent** raises the issue in an
29 action for divorce or separate maintenance between the presumed

1 ~~father~~**parent** and the mother. The requirement that an action be
2 filed within 3 years after the child's birth does not apply to an
3 action filed on or before 1 year after the effective date of this
4 act.

5 (3) If a child has a presumed ~~father,~~**parent**, a court may
6 determine that the child is born out of wedlock for the purpose of
7 establishing the child's ~~paternity~~**parentage** if an action is filed
8 by an alleged father and any of the following applies:

9 (a) All of the following apply:

10 (i) The alleged father did not know or have reason to know that
11 the mother was married at the time of conception.

12 (ii) The presumed ~~father,~~**parent**, the alleged father, and the
13 child's mother at some time mutually and openly acknowledged a
14 biological relationship between the alleged father and the child.

15 (iii) The action is filed within 3 years after the child's
16 birth. The requirement that an action be filed within 3 years after
17 the child's birth does not apply to an action filed on or before 1
18 year after the effective date of this act.

19 (iv) Either the court determines the child's ~~paternity~~
20 **parentage** or the child's ~~paternity~~**parentage** will be established
21 under the law of this state or another jurisdiction if the child is
22 determined to be born out of wedlock.

23 (b) All of the following apply:

24 (i) The alleged father did not know or have reason to know that
25 the mother was married at the time of conception.

26 (ii) Either of the following applies:

27 (A) The presumed ~~father,~~**parent**, having the ability to support
28 or assist in supporting the child, has failed or neglected, without
29 good cause, to provide regular and substantial support for the

1 child for a period of 2 years or more before the filing of the
2 action or, if a support order has been entered, has failed to
3 substantially comply with the order for a period of 2 years or more
4 before the filing of the action.

5 (B) The child is less than 3 years of age and the presumed
6 ~~father~~**parent** lives separately and apart from the child. The
7 requirement that the child is less than 3 years of age at the time
8 an action is filed does not apply to an action filed on or before 1
9 year after the effective date of this act.

10 (iii) Either the court determines the child's ~~paternity~~
11 **parentage** or the child's ~~paternity~~**parentage** will be established
12 under the law of this state or another jurisdiction if the child is
13 determined to be born out of wedlock.

14 (c) Both of the following apply:

15 (i) The mother was not married at the time of conception.

16 (ii) The action is filed within 3 years after the child's
17 birth. The requirement that an action be filed within 3 years after
18 the child's birth does not apply to an action filed on or before 1
19 year after the effective date of this act.

20 (4) If a child has a presumed ~~father~~**parent** and the child is
21 being supported in whole or in part by public assistance, a court
22 may determine that the child is born out of wedlock for the purpose
23 of establishing the child's ~~paternity~~**parentage** if an action is
24 filed by the department of human services and both of the following
25 apply:

26 (a) Either of the following applies:

27 (i) The presumed ~~father~~**parent**, having the ability to support
28 or assist in supporting the child, has failed or neglected, without
29 good cause, to provide regular and substantial support for the

1 child for a period of 2 years or more before the filing of the
2 action or, if a support order has been entered, has failed to
3 substantially comply with the order for a period of 2 years or more
4 before the filing of the action.

5 (ii) The child is less than 3 years of age and the presumed
6 ~~father~~**parent** lives separately and apart from the child. The
7 requirement that the child is less than 3 years of age at the time
8 an action is filed does not apply to an action filed on or before 1
9 year after the effective date of this act.

10 (b) Either the court determines the child's ~~paternity~~
11 **parentage** or the child's ~~paternity~~**parentage** will be established
12 under the law of this state or another jurisdiction if the child is
13 determined to be born out of wedlock.

14 (5) An action under this section may be brought by a complaint
15 filed in an original action or by a motion filed in an existing
16 action, as appropriate under this act and rules adopted by the
17 supreme court.

18 Sec. 13. (1) An original action under this act ~~shall~~**must** be
19 filed in the circuit court for the county in which the mother or
20 the child resides or, if neither the mother nor the child reside in
21 this state, in the circuit court for the county in which the child
22 was born. If an action for the support, custody, or parenting time
23 of the child exists at any stage of the proceedings in a circuit
24 court of this state or if an action under section 2(b) of chapter
25 XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, is
26 pending in a circuit court of this state, an action under this act
27 ~~shall~~**must** be brought by motion in the existing case under rules
28 adopted by the supreme court.

29 (2) In an action filed under this act, the court may do any of

1 the following:

2 (a) Revoke an acknowledgment of parentage.

3 (b) Determine that a genetic father is not a child's father.

4 (c) Set aside an order of filiation or a paternity order.

5 (d) Determine that a child was born out of wedlock.

6 (e) Make a determination of ~~paternity~~ **parentage** and enter an
7 order of filiation as provided for under section 7 of the paternity
8 act, 1956 PA 205, MCL 722.717, **or a parentage order.**

9 (3) A judgment entered under this act does not relieve ~~a man~~
10 **an individual** from a support obligation for the child or the
11 child's ~~mother~~ **parent** that was incurred before the action was filed
12 or prevent a person from seeking relief under applicable court
13 rules to vacate or set aside a judgment.

14 (4) A court may refuse to enter an order setting aside a
15 ~~paternity~~ **parentage** determination, revoking an acknowledgment of
16 parentage, determining that a genetic father is not a child's
17 father, or determining that a child is born out of wedlock if the
18 court finds evidence that the order would not be in the best
19 interests of the child. The court ~~shall~~ **must** state its reasons for
20 refusing to enter an order on the record. The court may consider
21 the following factors:

22 (a) Whether the presumed ~~father~~ **parent** is estopped from
23 denying parentage because of ~~his~~ **the individual's** conduct.

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

26 ~~(c) The facts surrounding the presumed father's discovery that~~
27 ~~he might not be the child's father.~~

28 **(b)** ~~(d)~~ The nature of the relationship between the child and
29 the presumed **parent** or alleged father.

1 (c) ~~(e)~~ The **child's** age. ~~of the child.~~

2 (d) ~~(f)~~ The harm that may result to the child.

3 (e) ~~(g)~~ Other factors that may affect the equities arising
4 from the disruption of the ~~father-child~~ **parent-child** relationship.

5 (f) ~~(h)~~ Any other factor that the court determines appropriate
6 to consider.

7 **(5) If the challenge to parentage is based on genetic testing,**
8 **in addition to the factors listed in subsection (4), the court must**
9 **consider the following:**

10 (a) **The length of time the presumed parent was on notice that**
11 **the individual might not be the child's genetic father.**

12 (b) **The facts surrounding the presumed parent's discovery that**
13 **the individual might not be the child's genetic father.**

14 (6) ~~(5)~~ **The** **Except as otherwise provided in this act, the**
15 court shall order the parties to an action or motion under this act
16 to participate in and pay for blood or tissue typing or DNA
17 identification profiling to assist the court in making a
18 determination under this act. Blood or tissue typing or DNA
19 identification profiling ~~shall~~ **must** 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 **(7) Genetic testing shall not be used for either of the**
25 **following purposes:**

26 (a) **To challenge the parentage of an individual who is a**
27 **parent under part 2 or 3 of the assisted reproduction and surrogacy**
28 **parentage act.**

29 (b) **To establish the parentage of an individual who is a**

1 donor.

2 (8) ~~(6)~~—If the case is a title IV-D case, the court may
 3 appoint an attorney approved by the office of child support to
 4 represent this state's interests with respect to an action or a
 5 motion under this act. The court may appoint a guardian ad litem to
 6 represent the child's interests with respect to the action or
 7 motion.

8 (9) ~~(7)~~—A court shall not issue an order under this act that
 9 sets aside a judgment or determination of a court or administrative
 10 agency of another state, even if the judgment or determination is
 11 being enforced in this state, or that is inconsistent with 28 USC
 12 1738A or 28 USC 1738B.

13 (10) ~~(8)~~—This act does not establish a basis for termination
 14 of an adoption and does not affect any obligation of an adoptive
 15 parent to an adoptive child.

16 (11) ~~(9)~~ ~~This~~ **An action may not be brought under this** act ~~does~~
 17 ~~not establish a basis for vacating a judgment establishing~~
 18 ~~paternity of a~~ **concerning the parentage of either of the following:**

19 (a) **A child conceived through the use of assisted reproduction**
 20 **that does not involve surrogacy if the parents of the child may be**
 21 **determined under the assisted reproduction and surrogacy parentage**
 22 **act.**

23 (b) **A child conceived under a** ~~surrogate parentage contract as~~
 24 ~~that term is defined in section 3 of the surrogate parenting~~
 25 **surrogacy agreement that complies with the assisted reproduction**
 26 **and surrogacy parentage act.** ~~, 1988 PA 199, MCL 722.853.~~

27 (12) ~~(10)~~—A common law action that was available before June
 28 12, 2012 to set aside a paternity determination or to determine
 29 that a child is born out of wedlock remains available until June

1 12, 2014, but is not available after June 12, 2014.

2 (13) ~~(11)~~ Except for an action filed under section 15(2), a
3 court, in its discretion, may order a ~~person~~**party** who files an
4 action or motion under this act to post an amount of money with the
5 court, obtain a surety, or provide other assurances that in the
6 court's determination will secure the costs of the action and
7 attorney fees if the ~~person~~**party** does not prevail. The court, in
8 its discretion, may order a nonprevailing party, including a mother
9 who is a nonprevailing party under section 15(2), to pay the
10 reasonable attorney fees and costs of a prevailing party.

11 (14) ~~(12)~~ A court may extend the time for filing an action or
12 motion under this act. A request for extension ~~shall~~**must** be
13 supported by an affidavit signed by the ~~person~~**party** requesting the
14 extension stating facts that the ~~person~~**party** satisfied all the
15 requirements for filing an action or motion under this act but did
16 not file the action or motion within the time allowed under this
17 act because of 1 of the following:

18 (a) Mistake of fact.

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

21 (c) Fraud.

22 (d) Misrepresentation or misconduct.

23 (e) Duress.

24 (15) ~~(13)~~ If the court finds that an affidavit under
25 subsection ~~(12)~~ **(14)** is sufficient, the court may allow the action
26 or motion to be filed and take other action the court considers
27 appropriate. The party filing the request to extend the time for
28 filing has the burden of proving, by clear and convincing evidence,
29 that granting relief under this act will not be against the best

1 interests of the child considering the equities of the case.

2 (16) ~~(14)~~—An alleged father may not bring an action under this
3 act if the child is conceived as the result of acts for which the
4 alleged father was convicted of criminal sexual conduct under
5 sections 520b to 520e of the Michigan penal code, 1931 PA 328, MCL
6 750.520b to 750.520e.

7 (17) ~~(15)~~—An action may not be brought under this act if the
8 child is under court jurisdiction under chapter XIIA of the probate
9 code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, and a petition
10 has been filed to terminate the parental rights to the child,
11 unless the court having jurisdiction under chapter XIIA of the
12 probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, first
13 finds that allowing an action under this act would be in the best
14 interests of the child.

15 Sec. 15. (1) If an action is brought by an alleged father who
16 proves by clear and convincing evidence that he is the child's
17 father, the court may make a determination of paternity and enter
18 an order of filiation as provided for under section 7 of the
19 paternity act, 1956 PA 205, MCL 722.717.

20 (2) If an action is brought by a mother who, after a fact-
21 finding hearing, proves by clear and convincing evidence that the
22 child was conceived as a result of nonconsensual sexual
23 penetration, the court shall do 1 of the following:

24 (a) Revoke an acknowledgment of parentage for an acknowledged
25 father.

26 (b) Determine that a genetic father is not the child's father.

27 (c) Set aside an order of filiation for an affiliated father.

28 (d) Make a determination of paternity regarding an alleged
29 father and enter an order of revocation of ~~paternity~~**parentage** for

1 that alleged father.

2 (3) Subsection (2) does not apply if, after the date of the
3 alleged nonconsensual sexual penetration described in subsection
4 (2), the biological parents cohabit and establish a mutual
5 custodial environment for the child.

6 (4) As used in this section, "sexual penetration" means that
7 term as defined in section 520a of the Michigan penal code, 1931 PA
8 328, MCL 750.520a.

9 Enacting section 1. This amendatory act takes effect 90 days
10 after the date it is enacted into law.

11 Enacting section 2. This amendatory act does not take effect
12 unless House Bill No. 5207 of the 102nd Legislature is enacted into
13 law.