Act No. 29
Public Acts of 2024
Approved by the Governor
April 1, 2024
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**STATE OF MICHIGAN**
**102ND LEGISLATURE**
**REGULAR SESSION OF 2024**

**Introduced by Reps. Morgan, Steckloff, Conlin and O'Neal**

# ENROLLED HOUSE BILL No. 5212

AN ACT to amend 2012 PA 159, entitled "An act to provide procedures to determine the paternity of children in certain circumstances; to allow acknowledgments, determinations, and judgments relating to paternity to be set aside in certain circumstances; to provide for the powers and duties of certain state and local governmental officers and entities; and to provide remedies," 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:*

TITLE

An act to provide procedures to determine the parentage of children in certain circumstances; to allow acknowledgments, determinations, and judgments relating to parentage to be set aside in certain circumstances; to provide for the powers and duties of certain state and local governmental officers and entities; and to provide remedies.

Sec. 1. This act may be cited as the "revocation of parentage act".

Sec. 3. As used in this act:

(a) "Acknowledged parent" means an individual who has affirmatively held themself out to be the child's parent by executing an acknowledgment of parentage under the acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 to 722.1013.

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

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

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

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

(f) "Presumed parent" means an individual who is presumed to be the child's parent by virtue of marriage to the child's mother at the time of the child's conception or birth.

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

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

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

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

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

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

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

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

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

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

(c) An attorney employed by, or under contract with, the department.

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

(4) An action for revocation under this section must be supported by an affidavit signed by the person filing the action that states facts that constitute 1 of the following:

(a) Mistake of fact.

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

(c) Fraud.

(d) Misrepresentation or misconduct.

(e) Duress in signing the acknowledgment.

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

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

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

Sec. 9. (1) If a child has an affiliated father and paternity was determined based on the affiliated father's failure to participate in the court proceedings, the mother, an alleged father, or the affiliated father may file a motion with the court that made the determination to set aside the determination.

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

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

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

(a) All of the following apply:

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

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

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

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

(b) All of the following apply:

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

(*ii*) Either of the following applies:

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

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

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

(2) If a child has a presumed parent, a court may determine that the child is born out of wedlock for the purpose of establishing the child's parentage if an action is filed by the presumed parent within 3 years after the child's birth or if the presumed parent raises the issue in an action for divorce or separate maintenance between the presumed parent and the mother. The requirement that an action be filed within 3 years after the child's birth does not apply to an action filed on or before 1 year after the effective date of this act.

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

(a) All of the following apply:

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

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

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

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

(b) All of the following apply:

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

(*ii*) Either of the following applies:

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

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

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

(c) Both of the following apply:

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

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

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

(a) Either of the following applies:

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

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

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

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

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

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

(a) Revoke an acknowledgment of parentage.

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

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

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

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

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

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

(a) Whether the presumed parent is estopped from denying parentage because of the individual's conduct.

(b) The nature of the relationship between the child and the presumed parent or alleged father.

(c) The child's age.

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

(e) Other factors that may affect the equities arising from the disruption of the parent-child relationship.

(f) Any other factor that the court determines appropriate to consider.

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

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

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

(6) Except as otherwise provided in this act, the court shall order the parties to an action or motion under this act to participate in and pay for blood or tissue typing or DNA identification profiling to assist the court in making a determination under this act. Blood or tissue typing or DNA identification profiling must be conducted in accordance with section 6 of the paternity act, 1956 PA 205, MCL 722.716. The results of blood or tissue typing or DNA identification profiling are not binding on a court in making a determination under this act.

(7) Genetic testing shall not be used for either of the following purposes:

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

(b) To establish the parentage of an individual who is a donor.

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

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

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

(11) An action may not be brought under this act concerning the parentage of either of the following:

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

(b) A child conceived under a surrogacy agreement that complies with the assisted reproduction and surrogacy parentage act.

(12) A common law action that was available before June 12, 2012 to set aside a paternity determination or to determine that a child is born out of wedlock remains available until June 12, 2014, but is not available after June 12, 2014.

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

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

(a) Mistake of fact.

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

(c) Fraud.

(d) Misrepresentation or misconduct.

(e) Duress.

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

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

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

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

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

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

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

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

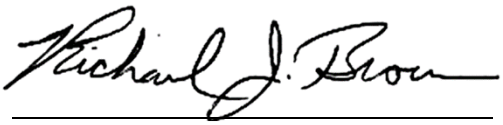
(d) Make a determination of paternity regarding an alleged father and enter an order of revocation of parentage for that alleged father.

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

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

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

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



Clerk of the House of Representatives

Secretary of the Senate

Approved_____

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Governor