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BILL ANALYSIS

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Senate Bill 436 (as introduced 4-27-05)
Sponsor: Senator Michelle A. McManus
Committee: Families and Human Services

Date Completed: 6-29-05

CONTENT

The bill would amend the Paternity Act to do the following:

- Allow a court to determine that a child born or conceived during a marriage and born after May 1, 2005, was a child born out of wedlock if certain conditions existed.**
- Allow a man who could be the father of a child born out of wedlock to bring an action to determine paternity.**
- Allow a man who could be the father of a child not born out of wedlock and born after May 1, 2005, to bring a paternity action under certain circumstances.**
- Revise the fee a court clerk must collect upon entry of an order of filiation.**

The bill is described below in further detail.

Action under the Act

Currently, an action under the Paternity Act may be brought in the circuit court by the mother, the father, a child who became 18 years old after August 15, 1984, and before June 2, 1986, or the Department of Human Services (DHS) (formerly the Family Independence Agency). The bill specifies, instead, that an action concerning a child born out of wedlock could be brought by the mother, a child who became 18 after August 15, 1984, and before June 2, 1986, the DHS, or a man who could be the child's father.

The bill also would allow a man who could be the father of a child not born out of wedlock and born after May 1, 2005, to bring an action in circuit court if either of the following circumstances existed:

- The mother and the man mutually and openly acknowledged a biological relationship between the man and the child not born out of wedlock and the action was brought within one year of the child's birth.
- The man who was legally presumed to be the child's father had failed to support the child.

The bill would revise the definition of "child born out of wedlock" to include a child whom the court determined to be a child born out of wedlock (as described below). Under the Act, the term means a child born to a woman who was not married from the conception to the child's date of birth, or a child whom the court has determined to be a child born or conceived during a marriage but who is not the issue of that marriage.

The bill would define “child not born out of wedlock” as a child other than a child born out of wedlock.

Child Born out of Wedlock

Under the bill, in addition to any other action available, a court could determine that a child born or conceived during a marriage and born after May 1, 2005, was a child born out of wedlock under the Act if the mother, a man presumed to be the child’s father, or a man who could be the child’s father commenced an action under the Act and all of the following were true:

- A man who was not presumed to be the child’s father could be the child’s father.
- The mother and the man mutually and openly acknowledged a biological relationship between the man and the child.
- The mother was married and the action was commenced within one year of the child’s birth.
- The court determined that a man who was not presumed to be the child’s father was the child’s father.

The court also could determine that a child born or conceived during a marriage and born after May 1, 2005, was born out of wedlock if the mother, the DHS, or a man who was not presumed to be the child’s father commenced an action and all of the following were true:

- A man who was not presumed to be the child’s father could be the child’s father.
- The man who was legally presumed to be the child’s father had failed to support the child for at least two years, or the child was younger than two and the man who was legally presumed to be his or her father lived separately and apart from the child.
- The court determined that a man who was not presumed to be the child’s father was the child’s father.

Additionally, the court could determine that a child born or conceived during a marriage and born after May 1, 2005, was a child born out of wedlock if a man who was not presumed to be the child’s father could be the child’s father and both of the following were true:

- The mother was not married at the time of conception and the action was commenced within one year of the child’s birth.
- The court determined that a man who was not presumed to be the child’s father could be the child’s father.

A judgment entered under these provisions would not relieve a man who was legally presumed to be the father of the child from any obligation incurred before the date of the judgment.

An action under these provisions could be combined with another action under the Act, as described above.

Blood & Tissue Typing; Default Judgment

Under the Act, in a proceeding before trial, the court, upon application by or on behalf of either party, or on its own motion, must order that the mother, child, and alleged father submit to blood or tissue typing determinations to determine whether the alleged father is likely to be, or is not, the child’s father. If the court orders a blood or tissue typing or DNA identification profiling to be conducted and a party refuses to submit, in addition to any other remedies available, the court may enter a default judgment at the request of the appropriate party, or, if a trial is held, allow the disclosure of the fact of the refusal unless good cause is shown for not disclosing the refusal.

Under the bill, the court could not enter a default judgment in an action brought by a man who could be the father of a child not born out of wedlock, if the man who was legally presumed to be the child's father had failed to support the child.

Order of Filiation

The Act requires the court to enter an order of filiation declaring paternity and providing for the support of the child if the defendant is served with summons and a default judgment is entered against him or her. Under the bill, this provision would not apply in an action brought by a man who could be the father of a child not born out of wedlock, if the man who was legally presumed to be the child's father had failed to support the child.

Fees

Currently, upon entry of an order of filiation, the court clerk must collect a \$35 fee from the person against whom the order was entered. The clerk must retain \$9 and remit the \$26 balance, along with a written report of the order, to the Director of the Department of Community Health (DCH). The bill would require the clerk to collect a fee as prescribed under Section 2891(9)(a) of the Public Health Code, plus an additional \$9 fee. The clerk would have to retain the \$9 fee and remit the balance, along with the written report, to the DCH Director.

(Under Section 2891(9)(a) of the Public Health Code, the application fee to create a new birth certificate following an order of filiation is \$40.)

MCL 722.711 et al.

Legislative Analyst: Julie Koval

FISCAL IMPACT

The bill would increase the amount the State collects from filiation filings from \$26 to \$40, or \$14. Thus, State revenue would increase by \$14 for each filiation filing.

To the extent that the bill would allow courts to consider more children as born out of wedlock and allow more potential fathers to bring an action in circuit court, it would increase local court costs.

Fiscal Analyst: Steve Angelotti
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.