

SENATE BILL No. 436

April 27, 2005, Introduced by Senators McMANUS, BASHAM and GOSCHKA and referred to the Committee on Families and Human Services.

A bill to amend 1956 PA 205, entitled "The paternity act," by amending sections 1, 4, 6, 7, and 10 (MCL 722.711, 722.714, 722.716, 722.717, and 722.720), sections 1 and 6 as amended by 2000 PA 31, section 4 as amended by 1998 PA 113, section 7 as amended by 2004 PA 209, and section 10 as amended by 2001 PA 109.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (A) "CHILD" MEANS, EXCEPT AS USED IN SECTION 10(2), A CHILD
3 BORN OUT OF WEDLOCK.

4 (B) ~~—(a)—~~ "Child born out of wedlock" means ~~—a—~~ ANY OF THE
5 FOLLOWING:

6 (i) A child ~~—begetten and—~~ born to a woman who was not married
7 from the conception to the date of birth of the child. ~~—, or a~~

1 (ii) A child ~~that~~ **WHOM** the court has determined to be a child
2 born or conceived during a marriage but **WHO IS** not the issue of
3 that marriage.

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

5 ~~(c) "Mother" means the mother of a child born out of wedlock.~~

6 (iii) **A CHILD WHOM THE COURT DETERMINES UNDER SECTION 10(2) TO**
7 **BE A CHILD BORN OUT OF WEDLOCK.**

8 (C) **"CHILD NOT BORN OUT OF WEDLOCK" MEANS A CHILD OTHER THAN A**
9 **CHILD BORN OUT OF WEDLOCK.**

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

11 (e) "DNA identification profile" means the results of the DNA
12 identification profiling of genetic testing material.

13 (f) "DNA identification profiling" means a validated
14 scientific method of analyzing components of deoxyribonucleic acid
15 molecules in a sample of genetic testing material to identify the
16 pattern of the components' chemical structure that is unique to the
17 individual.

18 ~~(g) "State disbursement unit" or "SDU" means the entity~~
19 ~~established in section 6 of the office of child support act, 1971~~
20 ~~PA 174, MCL 400.236.~~

21 (G) ~~(h)~~ "Genetic testing material" means a sample of an
22 individual's blood, saliva, or tissue collected from the individual
23 that is used for genetic paternity testing conducted under this
24 act.

25 (H) **"MOTHER" MEANS, EXCEPT AS USED IN SECTION 10(2), THE**
26 **MOTHER OF A CHILD BORN OUT OF WEDLOCK.**

27 (I) **"STATE DISBURSEMENT UNIT" OR "SDU" MEANS THE ENTITY**

1 ESTABLISHED IN SECTION 6 OF THE OFFICE OF CHILD SUPPORT ACT, 1971
2 PA 174, MCL 400.236.

3 (J) ~~(i)~~ "Summary report" means a written summary of the DNA
4 identification profile that includes only the following
5 information:

6 (i) The court case number, if applicable, the laboratory case
7 number or identification number, and the ~~family independence~~
8 ~~agency~~ **DEPARTMENT OF HUMAN SERVICES** case number.

9 (ii) The mother's name and race.

10 (iii) The child's name.

11 (iv) The alleged father's name and race.

12 (v) The collection dates and identification numbers of the
13 genetic testing material.

14 (vi) The cumulative paternity index.

15 (vii) The probability of paternity.

16 (viii) The conclusion as to whether the alleged father can or
17 cannot be excluded as the biological father.

18 (ix) The name, address, and telephone number of the contracting
19 laboratory.

20 (x) The name of the individual certifying the report.

21 Sec. 4. (1) An action **CONCERNING A CHILD BORN OUT OF WEDLOCK**
22 under this act shall be brought in the circuit court by the mother,
23 ~~the father,~~ a child who became 18 years of age after August 15,
24 1984 and before June 2, 1986, ~~or~~ the ~~family independence~~ ~~agency~~
25 **DEPARTMENT OF HUMAN SERVICES** as provided in this act, **OR A MAN WHO**
26 **COULD BE THE CHILD'S FATHER.**

27 (2) **A MAN WHO COULD BE THE FATHER OF A CHILD NOT BORN OUT OF**

1 WEDLOCK AND BORN AFTER MAY 1, 2005 MAY BRING AN ACTION IN CIRCUIT
2 COURT IF ANY OF THE FOLLOWING EXIST:

3 (A) THE MOTHER AND THE MAN MUTUALLY AND OPENLY ACKNOWLEDGE A
4 BIOLOGICAL RELATIONSHIP BETWEEN THE MAN AND THE CHILD NOT BORN OUT
5 OF WEDLOCK AND THE ACTION IS BROUGHT WITHIN 1 YEAR OF THE DATE OF
6 THE BIRTH OF THE CHILD NOT BORN OUT OF WEDLOCK.

7 (B) THE MAN WHO IS LEGALLY PRESUMED TO BE THE FATHER OF THE
8 CHILD NOT BORN OUT OF WEDLOCK HAS FAILED TO SUPPORT THE CHILD NOT
9 BORN OUT OF WEDLOCK.

10 (3) The Michigan court rules for civil actions apply to all
11 proceedings under this act. A complaint shall be filed in the
12 county where the mother or child resides. If both the mother and
13 child reside outside of this state, then the complaint shall be
14 filed in the county where the putative father resides or is found.
15 The fact that the child was conceived or born outside of this state
16 is not a bar to entering a complaint against the putative father.

17 (4) ~~—(2)—~~ An action to determine paternity shall not be
18 brought under this act if the child's father acknowledges paternity
19 under the acknowledgment of parentage act, 1996 PA 305, MCL
20 722.1001 TO 722.1013, or if the child's paternity is established
21 under the law of another state.

22 (5) ~~—(3)— An~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS ACT, AN**
23 action under this act may be commenced during the pregnancy of the
24 child's mother or at any time before the child reaches 18 years of
25 age. For a child who became 18 years of age after August 15, 1984
26 and before June 2, 1986, an action under this act may be commenced
27 before January 1, 1995. This subsection applies regardless of

1 whether the cause of action accrued before June 1, 1986 and
2 regardless of whether the cause of action was barred under this
3 subsection before June 1, 1986. A summons issued under this section
4 shall be in the form the court determines and shall be served in
5 the same manner as is provided by court rules for the service of
6 process in civil actions.

7 (6) ~~(4)~~ If the county ~~family independence agency~~
8 **DEPARTMENT OF HUMAN SERVICES** of the county in which the mother or
9 alleged father resides first determines that she or he has physical
10 possession of the child and is eligible for public assistance or
11 without means to employ an attorney; if the ~~family independence~~
12 ~~agency~~ **DEPARTMENT OF HUMAN SERVICES** is the complainant; ~~of~~ OR if
13 the mother, alleged father, or child is receiving services under
14 part D of title IV of the social security act, 42 ~~U.S.C.~~ **USC** 651
15 to ~~667~~ **669B**, then the prosecuting attorney or an attorney
16 employed by the county under section 1 of 1941 PA 15, MCL 49.71,
17 shall initiate and conduct proceedings under this act. The
18 prosecuting attorney shall utilize the child support formula
19 developed under section 19 of the friend of the court act, 1982 PA
20 294, MCL 552.519, as a guideline in petitioning for child support.
21 A complaint filed under this act shall be verified by oath or
22 affirmation.

23 (7) ~~(5)~~ The party filing the complaint shall name the person
24 believed to be the father of the child and state in the complaint
25 the time and place, as near as possible, when and where the mother
26 became pregnant. If the ~~family independence agency~~ **DEPARTMENT OF**
27 **HUMAN SERVICES** is the plaintiff, the required facts shall be stated

1 upon information and belief.

2 (8) ~~-(6)-~~ Upon the filing of a complaint, the court shall
3 issue a summons against the named defendant. If the defendant does
4 not file and serve a responsive pleading as required by the court
5 rules, the court may enter a default judgment. Neither party is
6 required to testify before entry of a default judgment in a
7 proceeding under this act.

8 (9) ~~-(7)-~~ If, after service of process, the parties fail to
9 consent to an order naming the man as the child's father as
10 provided in this act within the time permitted for a responsive
11 pleading, then the ~~family independence agency~~ **DEPARTMENT OF HUMAN**
12 **SERVICES** or its designee may file and serve both the mother and the
13 alleged father with a notice requiring that the mother, alleged
14 father, and child appear for genetic paternity testing as provided
15 in section 6.

16 (10) ~~-(8)-~~ If the mother, alleged father, or child does not
17 appear for genetic paternity testing as provided in subsection ~~-(7)-~~
18 (9), then the ~~family independence agency~~ **DEPARTMENT OF HUMAN**
19 **SERVICES** or its designee may apply to the court for an order
20 compelling genetic paternity tests as provided in section 6 or may
21 seek other relief as permitted by statute or court rule.

22 (11) ~~-(9)-~~ It is unnecessary in any proceedings under this act
23 commenced by or against a minor to have a next friend or guardian
24 ad litem appointed for the minor unless required by the circuit
25 judge. A minor may prosecute or defend any proceedings in the same
26 manner and with the same effect as if he or she were of legal age.

27 (12) ~~-(10)-~~ If a child born out of wedlock is being supported

1 in whole or in part by public assistance, including medical
2 assistance, the ~~family independence agency~~ **DEPARTMENT OF HUMAN**
3 **SERVICES** may file a complaint on behalf of the child in the circuit
4 court in the county in which the child resides. The mother or
5 alleged father of the child shall be made a party plaintiff and
6 notified of the hearing on the complaint by summons. The complaint
7 made by the ~~family independence agency~~ **DEPARTMENT OF HUMAN**
8 **SERVICES** shall be verified by the director of the ~~family~~
9 ~~independence agency~~ **DEPARTMENT OF HUMAN SERVICES**, or his or her
10 designated representative, or by the director of the county ~~family~~
11 ~~independence agency~~ **DEPARTMENT OF HUMAN SERVICES** of the county in
12 which an action is brought, or the county director's designated
13 representative.

14 (13) ~~-(11)-~~ 1986 PA 107, which added this subsection, does not
15 affect the rights of an indigent defendant in proceedings under
16 this act as established by decisions of the courts of this state
17 before June 1, 1986.

18 (14) ~~-(12)-~~ If a determination of paternity is made under this
19 act, the court may enter an order of filiation as provided in
20 section 7. Regardless of who commences an action under this act, an
21 order of filiation entered under this act has the same effect, is
22 subject to the same provisions, and is enforced in the same manner
23 as an order of filiation entered on complaint of the mother or
24 father.

25 Sec. 6. (1) In a proceeding under this act before trial, the
26 court, upon application made by or on behalf of either party, or on
27 its own motion, shall order that the mother, child, and alleged

1 father submit to blood or tissue typing determinations, which may
2 include, but are not limited to, determinations of red cell
3 antigens, red cell isoenzymes, human leukocyte antigens, serum
4 proteins, or DNA identification profiling, to determine whether the
5 alleged father is likely to be, or is not, the father of the child.
6 If the court orders a blood or tissue typing or DNA identification
7 profiling to be conducted and a party refuses to submit to the
8 typing or DNA identification profiling, in addition to any other
9 remedies available, the court may do either of the following:

10 (a) ~~Enter~~ **EXCEPT FOR AN ACTION COMMENCED UNDER SECTION**
11 **4(2)(B), ENTER** a default judgment at the request of the appropriate
12 party.

13 (b) If a trial is held, allow the disclosure of the fact of
14 the refusal unless good cause is shown for not disclosing the fact
15 of refusal.

16 (2) A blood or tissue typing or DNA identification profiling
17 shall be conducted by a person accredited for paternity
18 determinations by a nationally recognized scientific organization,
19 including, but not limited to, the American association of blood
20 banks.

21 (3) The court shall fix the compensation of an expert at a
22 reasonable amount and may direct the compensation to be paid by the
23 county or by any other party to the case, or by both in the
24 proportions and at the times the court prescribes. Before blood or
25 tissue typing or DNA identification profiling is conducted, the
26 court may order a part or all of the compensation paid in advance.
27 If the ~~family independence agency~~ **DEPARTMENT OF HUMAN SERVICES**

1 paid for the genetic testing expenses, the court may order
2 repayment by the alleged father if the court declares paternity.
3 Documentation of the genetic testing expenses is admissible as
4 evidence of the amount, which evidence constitutes prima facie
5 evidence of the amount of those expenses without third party
6 foundation testimony.

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

1 qualified person described in subsection (2) conducting the blood
2 or tissue typing or DNA identification profiling is 99% or higher,
3 and the DNA identification profile and summary report are
4 admissible as provided in subsection (4), paternity is presumed. If
5 the results of the analysis of genetic testing material from 2 or
6 more persons indicate a probability of paternity greater than 99%,
7 the contracting laboratory shall conduct additional genetic
8 paternity testing until all but 1 of the putative fathers is
9 eliminated, unless the dispute involves 2 or more putative fathers
10 who have identical DNA.

11 (6) Upon the establishment of the presumption of paternity as
12 provided in subsection (5), either party may move for summary
13 disposition under the court rules. ~~this~~ **THIS** section does not
14 abrogate the right of either party to child support from the date
15 of birth of the child if applicable under section 7.

16 Sec. 7. (1) The court shall enter an order of filiation
17 declaring paternity and providing for the support of the child
18 under 1 or more of the following circumstances:

19 (a) The finding of the court ~~or the verdict~~ determines that
20 the man is the father.

21 (b) The defendant acknowledges paternity either orally to the
22 court or by filing with the court a written acknowledgment of
23 paternity.

24 (c) ~~The~~ **EXCEPT FOR AN ACTION COMMENCED UNDER SECTION**
25 **4(2)(B), THE** defendant is served with summons and a default
26 judgment is entered against him or her.

27 (2) An order of filiation entered under subsection (1) shall

1 specify the sum to be paid weekly or otherwise, as prescribed in
2 section 5 of the support and parenting time enforcement act, 1982
3 PA 295, MCL 552.605, until the child reaches the age of 18. Subject
4 to section 5b of the support and parenting time enforcement act,
5 1982 PA 295, MCL 552.605b, the court may also order support for a
6 child after he or she reaches 18 years of age. In addition to
7 providing for the support of the child, the order shall also
8 provide for the payment of the necessary expenses incurred by or
9 for the mother in connection with her confinement and pregnancy and
10 for the funeral expenses if the child has died, as determined by
11 the court under section 2. A child support obligation is only
12 retroactive to the date that the paternity complaint was filed
13 unless any of the following circumstances exist:

14 (a) The defendant was avoiding service of process.

15 (b) The defendant threatened or coerced through domestic
16 violence or other means the complainant not to file a proceeding
17 under this act.

18 (c) The defendant otherwise delayed the imposition of a
19 support obligation.

20 (3) A judgment or order entered under this act providing for
21 the support of a child or payment of expenses in connection with
22 the mother's confinement or pregnancy is enforceable as provided in
23 the support and parenting time enforcement act, 1982 PA 295, MCL
24 552.601 to 552.650. If this act contains a specific provision
25 regarding the contents or enforcement of a support order that
26 conflicts with a provision in the support and parenting time
27 enforcement act, 1982 PA 295, MCL 552.601 to 552.650, this act

1 controls in regard to that provision.

2 (4) Upon entry of an order of filiation, the clerk of the
3 court shall collect a fee ~~of \$35.00~~ **AS PRESCRIBED UNDER SECTION**
4 **2891(9) (A) OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.2891,**
5 **PLUS AN ADDITIONAL \$9.00 FEE** from the person against whom the order
6 of filiation is entered. The clerk shall retain **THE** \$9.00 ~~of the~~
7 ~~fee~~ and remit the ~~\$26.00~~ balance, along with a written report of
8 the order of filiation, to the director of the department of
9 community health. The report shall be on a form prescribed by or in
10 a manner approved by the director of the department of community
11 health. Regardless of whether the ~~fee~~ **FEES** required by this
12 section ~~is~~ **ARE** collected, the clerk shall transmit and the
13 department of community health shall receive the report of the
14 order of filiation.

15 (5) If an order of filiation or acknowledgment of parentage is
16 abrogated by a later judgment or order of a court, the clerk of the
17 court that entered the order shall immediately communicate that
18 fact to the director of the department of community health on a
19 form prescribed by the director of the department of community
20 health. An order of filiation supersedes an acknowledgment of
21 parentage.

22 (6) Within the time prescribed by court rule, the party,
23 attorney, or agency that secures the signing of an order of
24 filiation shall serve a copy of the order on all parties to the
25 action and file proof of service with the court clerk.

26 Sec. 10. (1) The court has continuing jurisdiction over
27 proceedings brought under this act to increase or decrease the

1 amount fixed by the order of filiation subject to section 7, and to
2 provide for, change, and enforce provisions of the order relating
3 to the custody or support of or parenting time with the child.

4 (2) IN ADDITION TO ANY OTHER ACTION AVAILABLE, A COURT MAY
5 DETERMINE THAT A CHILD BORN OR CONCEIVED DURING A MARRIAGE AND BORN
6 AFTER MAY 1, 2005 IS A CHILD BORN OUT OF WEDLOCK UNDER THIS ACT IF
7 ANY OF THE FOLLOWING ARE TRUE:

8 (A) THE MOTHER, A MAN PRESUMED TO BE THE FATHER OF THE CHILD,
9 OR A MAN WHO COULD BE THE FATHER OF THE CHILD COMMENCES AN ACTION
10 UNDER THIS ACT AND ALL OF THE FOLLOWING ARE TRUE:

11 (i) A MAN WHO IS NOT PRESUMED TO BE THE FATHER OF THE CHILD
12 COULD BE THE FATHER OF THE CHILD.

13 (ii) THE MOTHER AND THE MAN MUTUALLY AND OPENLY ACKNOWLEDGE A
14 BIOLOGICAL RELATIONSHIP BETWEEN THE MAN AND THE CHILD.

15 (iii) THE MOTHER IS MARRIED AND THE ACTION IS COMMENCED WITHIN 1
16 YEAR OF THE BIRTH OF THE CHILD.

17 (iv) THE COURT DETERMINES THAT A MAN WHO IS NOT PRESUMED TO BE
18 THE FATHER OF THE CHILD IS THE FATHER OF THE CHILD.

19 (B) THE MOTHER, THE DEPARTMENT OF HUMAN SERVICES, OR A MAN WHO
20 IS NOT PRESUMED TO BE THE FATHER OF THE CHILD COMMENCES AN ACTION
21 UNDER THIS ACT AND ALL OF THE FOLLOWING ARE TRUE:

22 (i) A MAN WHO IS NOT PRESUMED TO BE THE FATHER OF THE CHILD
23 COULD BE THE FATHER OF THE CHILD.

24 (ii) THE MAN WHO IS LEGALLY PRESUMED TO BE THE FATHER OF THE
25 CHILD HAS FAILED TO SUPPORT THE CHILD FOR A PERIOD IN EXCESS OF 2
26 YEARS OR THE CHILD IS UNDER 2 YEARS OF AGE AND THE MAN WHO IS
27 LEGALLY PRESUMED TO BE THE CHILD'S FATHER LIVES SEPARATELY AND

1 APART FROM THE CHILD.

2 (iii) THE COURT DETERMINES THAT A MAN WHO IS NOT PRESUMED TO BE
3 THE FATHER OF THE CHILD IS THE FATHER OF THE CHILD.

4 (C) A MAN WHO COULD BE THE FATHER OF THE CHILD COMMENCES AN
5 ACTION UNDER THIS ACT AND ALL OF THE FOLLOWING ARE TRUE:

6 (i) A MAN WHO IS NOT PRESUMED TO BE THE FATHER OF THE CHILD
7 COULD BE THE FATHER OF THE CHILD.

8 (ii) THE MOTHER WAS NOT MARRIED AT THE TIME OF CONCEPTION AND
9 THE ACTION IS COMMENCED WITHIN 1 YEAR OF THE BIRTH OF THE CHILD.

10 (iii) THE COURT DETERMINES THAT A MAN WHO IS NOT PRESUMED TO BE
11 THE FATHER OF THE CHILD IS THE FATHER OF THE CHILD.

12 (3) AN ACTION UNDER SUBSECTION (2) MAY BE COMBINED WITH AN
13 ACTION UNDER SECTION 4.

14 (4) A JUDGMENT ENTERED PURSUANT TO SUBSECTION (2) DOES NOT
15 RELIEVE A MAN WHO IS LEGALLY PRESUMED TO BE THE FATHER OF THE CHILD
16 FROM ANY OBLIGATION INCURRED BEFORE THE DATE OF THE JUDGMENT.