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SFA



BILL ANALYSIS

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House Bill 4635 (Substitute H-1 as passed by the House)
House Bill 4636 (Substitute H-1 as passed by the House)
House Bill 4637 (Substitute H-1 as passed by the House)
House Bill 4638 (Substitute H-2 as passed by the House)
Sponsor: Representative James Koetje (House Bill 4635)
Representative Doug Hart (House Bill 4636)
Representative Sue Tabor (House Bill 4637)
Representative Andrew Raczkowski (House Bill 4638)
House Committee: Civil Law and the Judiciary
Senate Committee: Families, Mental Health and Human Services

Date Completed: 9-25-02

CONTENT

House Bills 4635 (H-1) and 4636 (H-1) would amend the Support and Parenting Time Enforcement Act, House Bill 4637 (H-1) would amend the Friend of the Court Act, and House Bill 4638 (H-2) would amend the Michigan Adoption Code to do all of the following:

- **Allow a person to file a motion for relief from a paternity or child support order and, except under certain circumstances, require that a court vacate a paternity order or terminate a child support order if it found that the individual subject to the order was not the child's biological or adoptive parent.**
- **Allow the court to order genetic testing in a proceeding seeking relief from a paternity or child support order.**
- **Require a court to determine whether to terminate, modify, or continue a parenting time order, if it granted a motion for relief from a paternity or child support order.**
- **Specify that a court's granting of relief from a child support order, as proposed, would be a correction of a mistake and not a modification of an order.**
- **Provide for the transfer of a domestic relations matter to a different county's Friend of the Court (FOC) office under certain circumstances.**
- **Prohibit a person from identifying another as the biological father of a child, if he or she knew that the other person was not the father, when placing the child for adoption, and establish a misdemeanor penalty for a violation.**

The bills all include an effective date of October 1, 2001.

House Bill 4635 (H-1)

The bill would allow an individual to file a motion for relief from a court order stating that the individual was a child's father or requiring the individual to pay child support. An individual would have to file the motion with the court that issued the order from which the moving party sought relief. The court would have to vacate an order stating that an individual was a child's father or terminate a child support order if it found that the individual was not the child's adoptive parent and that genetic testing results were admitted into evidence and the results excluded the individual as the child's parent.

The court could not grant a motion filed under the bill, however, if it found that the individual who filed the motion knew of genetic or blood testing results that excluded him as the child's parent more than six months before the motion was filed and he could not show good cause as to the failure to file the motion within six months after obtaining those test results.

The court also could not grant a motion filed under the bill if it found that, after an individual knew that he was not a child's biological parent, any of the following occurred:

- The individual acknowledged paternity of the child in writing.
- The individual consented to his name being entered as the child's biological father on the child's birth certificate.
- The individual was determined to be the child's father in an action under the Paternity Act.
- The State Registrar filed an acknowledgment of parentage in which the individual declared himself to be the child's biological father.
- The individual otherwise admitted that he was, or acknowledged himself as, the child's biological father.

If the court found that an event listed above occurred before the individual knew that he was not the child's biological father, the court would not be precluded from granting the motion.

In a proceeding under the bill, the court, upon application made by or on behalf of either party, or on its own motion, would have to order the child, the child's mother, and the person filing the motion for relief to submit to genetic testing within 30 days. Genetic testing would be subject to the same procedures as genetic testing ordered under the Paternity Act. (The Paternity Act requires a court, upon application of either party or on its own motion, to order that the mother, child, and alleged father submit to blood or tissue typing determinations, which may include determinations of red cell antigens, red cell isoenzymes, human leukocyte antigens, serum proteins, or DNA identification profiling, to determine whether the alleged father is likely to be, or is not, the father of the child. A blood or tissue typing of DNA identification profiling must be conducted by a person accredited for paternity determinations by a nationally recognized scientific organization.)

If the court granted a motion to vacate or terminate an order, and the moving party and child were also the subjects of a parenting time order, the court would have to determine if the parenting time order would be terminated, modified, or continued based upon the best interests of the child. If the court granted a motion to terminate a child support order and an arrearage existed under that order, the court could retroactively correct the arrearage.

If a motion under the bill were to terminate a child support order and the court did not grant the motion, the court would have to order the moving party to pay the costs of the action and each opposing party's reasonable attorney fees.

The bill would define "genetic testing" as blood or tissue typing, or DNA identification profiling, as described in and prescribed by the Paternity Act.

House Bill 4636 (H-1)

Under the Support and Parenting Time Enforcement Act, a support payment due under a support order may be modified retroactively with respect to any period during which a petition for modification is pending, but only from the date that notice of the petition was given to the payer or recipient of support. The bill specifies that a retroactive correction under House Bill 4635 of a support arrearage owed under a support order that was terminated as provided in that bill, would be a "retroactive correction of a mistake" and not a "retroactive modification".

House Bill 4636 (H-1) is tie-barred to House Bill 4635.

House Bill 4637 (H-1)

The bill specifies that, if a recipient or payer of support filed with the court a postjudgment motion to transfer a domestic relations matter to a different county FOC office, the court would have to transfer the case if it found all of the following:

- The transfer would serve the convenience of the parties and be consistent with the child's best interests.
- Neither party resided in the county of current jurisdiction for at least six months before the motion was filed.
- At least one party had resided in the county to which the transfer was requested for at least six months before the motion was filed.
- The county to which the transfer was requested was not contiguous to the county of current jurisdiction.

If the court transferred a domestic relations matter, the transferring FOC office would have to send to the receiving FOC office all records related to the matter, according to the procedure established by the Michigan Supreme Court. The court could transfer a domestic relations matter more than once in a 12-month period, but would not be required to do so.

The court could charge a fee of \$20 to file a transfer motion, but would have to waive the filing fee for an indigent individual, as provided in the Michigan Court Rules.

House Bill 4638 (H-2)

The bill would prohibit an individual from identifying or providing information or a document that identified another person as the biological father of a child to one or more of the following, if the individual knew that the other person was not the biological father and intended to deceive one or more of the following as to the true identity of the biological father, when placing the child for adoption:

- A court or court employee or agent.
- The Family Independence Agency.
- A child placing agency.
- Another interested party.

A violation of the bill would be a misdemeanor punishable by up to two years' imprisonment, a maximum fine of \$1,000, or both. The penalty could be imposed in addition to any penalty imposed for any other criminal offense arising from the same conduct.

Proposed MCL 552.605 (H.B. 4635)
MCL 552.603 (H.B. 4636)
Proposed MCL 552.517f (H.B. 4637)
Proposed MCL 710.69a (H.B. 4638)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

House Bill 4635 (H-1) & 4636 (H-1)

The additional Friend of the Court investigations and court hearings resulting from the bills are not determinable.

House Bill 4637 (H-1)

The bill would have no fiscal impact on State or local government. The bill would formalize in statute the transfer process that is currently controlled by Michigan Court Rule 3.212.

House Bill 4638 (H-2)

The bill would have no fiscal impact on the State and an indeterminate impact on local government. There are no data to indicate how many people would be convicted of this offense. Offenders would be convicted of a misdemeanor and could receive probation or up to two years' incarceration in a local facility. Local units would incur the costs of both probation and incarceration, which may vary by county from \$27 to \$65 per day.

Fiscal Analyst: Bill Bowerman
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