

HOUSE BILL No. 4634

April 19, 2001, Introduced by Rep. Richner and referred to the Committee on Civil Law and the Judiciary.

A bill to amend 1939 PA 288, entitled "Probate code of 1939," by amending section 39 of chapter X (MCL 710.39), as amended by 1998 PA 94.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER X

1
2 Sec. 39. (1) If ~~the~~ A putative father does not come
3 within the provisions of subsection (2) OR (3), and if the puta-
4 tive father appears at the hearing HELD UNDER SECTION 36 and
5 requests custody of the child, the court shall inquire into his
6 fitness and his ability to properly care for the child and shall
7 determine whether the best interests of the child will be served
8 by granting custody to him. UNLESS THE CUSTODY DISPUTE IS
9 BETWEEN THE PUTATIVE FATHER AND THE CHILD'S MOTHER, IT IS A
10 REBUTTABLE PRESUMPTION THAT THE BEST INTERESTS OF THE CHILD ARE

1 SERVED BY AWARDING CUSTODY TO THE PUTATIVE FATHER. If the court
2 finds that THE PUTATIVE FATHER IS UNFIT AND it would not be in
3 the best interests of the child to grant custody to the putative
4 father, the court shall terminate his rights to the child. THE
5 COURT SHALL STATE ON THE RECORD THE REASONS FOR TERMINATING HIS
6 RIGHTS TO THE CHILD.

7 (2) If ~~the~~ A putative father has established a custodial
8 relationship with ~~the~~ A child, or has provided substantial and
9 regular support or care in accordance with the putative father's
10 ability to provide ~~such~~ THAT support or care for the mother
11 during pregnancy or for either mother or child after the child's
12 birth during the 90 days before notice of the hearing was served
13 upon him, the rights of the putative father shall not be termi-
14 nated except by proceedings in accordance with section 51(6) of
15 this chapter or section 2 of chapter XIIIA.

16 (3) THE COURT SHALL NOT TERMINATE THE RIGHTS OF THE PUTATIVE
17 FATHER EXCEPT BY PROCEEDINGS IN ACCORDANCE WITH SECTION 51(6) OF
18 THIS CHAPTER OR SECTION 2 OF CHAPTER XIIIA IF EITHER OF THE FOL-
19 LOWING APPLIES:

20 (A) THE PUTATIVE FATHER CAN SHOW BY A PREPONDERANCE OF THE
21 EVIDENCE THAT HE WAS DECEIVED AS TO THE PREGNANCY OF THE MOTHER
22 OR THE BIRTH OF HIS CHILD OR THE FATHER'S STATUS AS THE CHILD'S
23 FATHER.

24 (B) THE PUTATIVE FATHER CAN SHOW BY A PREPONDERANCE OF THE
25 EVIDENCE THAT HE WAS THWARTED OR PREVENTED IN SOME MANNER FROM
26 PROVIDING OR ATTEMPTING TO PROVIDE SUBSTANTIAL AND REGULAR
27 SUPPORT OR CARE IN ACCORDANCE WITH HIS ABILITY TO PROVIDE THAT

1 SUPPORT OR CARE FOR THE MOTHER AND THE CHILD DURING THE PREGNANCY
2 OR FOR EITHER THE MOTHER OR CHILD DURING AND AFTER THE CHILD'S
3 BIRTH.

4 (4) ~~(3)~~ If the parental rights of the mother OF A CHILD
5 BORN OUT OF WEDLOCK are terminated ~~pursuant to~~ IN ACCORDANCE
6 WITH this chapter or other law and if the court awards custody of
7 ~~a~~ THE child born out of wedlock to the CHILD'S putative father,
8 the court shall enter an order granting custody to the putative
9 father and legitimating the child for all purposes. Upon entry
10 of an order granting custody and legitimating the child, the
11 clerk of the court shall collect a fee of \$35.00 from the puta-
12 tive father. The clerk shall retain \$9.00 of the fee and remit
13 the \$26.00 balance, along with a written report of the order
14 granting custody and legitimating the child, to the director of
15 the department of community health. The report shall be on a
16 form prescribed by or in a manner approved by the director of the
17 department of community health. Regardless of whether the fee
18 required by this section is collected, the clerk shall transmit
19 and the department of community health shall receive the report
20 of the order granting custody and legitimating the child.