

HOUSE BILL No. 6093

December 13, 2012, Introduced by Rep. Brown and referred to the Committee on Families, Children, and Seniors.

A bill to amend 2012 PA 159, entitled
"Revocation of paternity act,"
by amending section 13 (MCL 722.1443).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

1 by the supreme court.

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

4 (a) Revoke an acknowledgment of parentage.

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

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

7 (d) Make a determination of paternity and enter an order of
8 filiation as provided for under section 7 of the paternity act,
9 1956 PA 205, MCL 722.717.

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

15 (4) A court may refuse to enter an order setting aside a
16 paternity determination or determining that a child is born out of
17 wedlock if the court finds evidence that the order would not be in
18 the best interests of the child. The court shall state its reasons
19 for refusing to enter an order on the record. The court may
20 consider the following factors:

21 (a) Whether the presumed father is estopped from denying
22 parentage because of his conduct.

23 (b) The length of time the presumed father was on notice that
24 he might not be the child's father.

25 (c) The facts surrounding the presumed father's discovery that
26 he might not be the child's father.

27 (d) The nature of the relationship between the child and the

1 presumed or alleged father.

2 (e) The age of the child.

3 (f) The harm that may result to the child.

4 (g) Other factors that may affect the equities arising from
5 the disruption of the father-child relationship.

6 (h) Any other factor that the court determines appropriate to
7 consider.

8 (5) The court shall order the parties to an action or motion
9 under this act to participate in and pay for blood or tissue typing
10 or DNA identification profiling to assist the court in making a
11 determination under this act. Blood or tissue typing or DNA
12 identification profiling shall be conducted in accordance with
13 section 6 of the paternity act, 1956 PA 205, MCL 722.716. The
14 results of blood or tissue typing or DNA identification profiling
15 are not binding on a court in making a determination under this
16 act.

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

22 (7) A court shall not issue an order under this act that sets
23 aside a judgment or determination of a court or administrative
24 agency of another state, even if the judgment or determination is
25 being enforced in this state.

26 (8) This act does not establish a basis for termination of an
27 adoption and does not affect any obligation of an adoptive parent

1 to an adoptive child.

2 ~~—— (9) This act does not establish a basis for vacating a~~
3 ~~judgment establishing paternity of a child conceived under a~~
4 ~~surrogate parentage contract as that term is defined in section 3~~
5 ~~of the surrogate parenting act, 1988 PA 199, MCL 722.853.~~

6 (9) ~~(10)~~ A common law action that was available before the
7 ~~effective date of this act~~ **JUNE 12, 2012** to set aside a paternity
8 determination or to determine that a child is born out of wedlock
9 remains available until ~~2 years after the effective date of this~~
10 ~~act~~ **JUNE 12, 2014** but is not available after that date.

11 (10) ~~(11)~~ A court, in its discretion, may order a person who
12 files an action or motion under this act to post an amount of money
13 with the court, obtain a surety, or provide other assurances that
14 in the court's determination will secure the costs of the action
15 and attorney fees if the person does not prevail. The court, in its
16 discretion, may order a nonprevailing party to pay the reasonable
17 attorney fees and costs of a prevailing party.

18 (11) ~~(12)~~ A court may extend the time for filing an action or
19 motion under this act. A request for extension shall be supported
20 by an affidavit signed by the person requesting the extension
21 stating facts that the person satisfied all the requirements for
22 filing an action or motion under this act but did not file the
23 action or motion within the time allowed under this act because of
24 1 of the following:

25 (a) Mistake of fact.

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

1 (c) Fraud.

2 (d) Misrepresentation or misconduct.

3 (e) Duress.

4 **(12)** ~~(13)~~—If the court finds that an affidavit under
5 subsection ~~(12)~~ **(11)** is sufficient, the court may allow the action
6 or motion to be filed and take other action the court considers
7 appropriate. The party filing the request to extend the time for
8 filing has the burden of proving, by clear and convincing evidence,
9 that granting relief under this act will not be against the best
10 interests of the child considering the equities of the case.

11 **(13)** ~~(14)~~—An alleged father may not bring an action under this
12 act if the child is conceived as the result of acts for which the
13 alleged father was convicted of criminal sexual conduct under
14 sections 520b to 520e of the Michigan penal code, 1931 PA 328, MCL
15 750.520b to 750.520e.

16 **(14)** ~~(15)~~—An action may not be brought under this act if the
17 child is under court jurisdiction under chapter XIIA of the probate
18 code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, and a petition
19 has been filed to terminate the parental rights to the child,
20 unless the court having jurisdiction under chapter XIIA of the
21 probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, first
22 finds that allowing an action under this act would be in the best
23 interests of the child.

24 Enacting section 1. This amendatory act does not take effect
25 unless Senate Bill No. ____ or House Bill No. 6092 (request no.
26 06718'12) of the 96th Legislature is enacted into law.