

HOUSE BILL NO. 5211

October 24, 2023, Introduced by Reps. Conlin, Steckloff, Morgan and O'Neal and referred to the Committee on Judiciary.

A bill to amend 1956 PA 205, entitled "The paternity act," by amending sections 1, 4, 4b, and 7 (MCL 722.711, 722.714, 722.714b, and 722.717), section 1 as amended by 2000 PA 31, section 4 as amended by 2014 PA 367, section 4b as added by 1994 PA 388, and section 7 as amended by 2014 PA 364, and by adding section 4c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1** Sec. 1. As used in this act:
- 2** (a) "Child born out of wedlock" means a child begotten and
- 3** born to a woman who was not married from the conception to the date

1 of birth of the child, or a child that the court has determined to
2 be a child born or conceived during a marriage but 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 (c) ~~(d)~~ "Court" means the circuit court.

7 (d) "Department" means the department of health and human
8 services.

9 (e) "Director" means the director of the department.

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

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

17 (h) "Genetic testing material" means a sample of an
18 individual's blood, saliva, or tissue collected from the individual
19 that is used for genetic paternity testing conducted under this
20 act.

21 (i) "Mother" means the mother of a child born out of wedlock.

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

25 ~~(h) "Genetic testing material" means a sample of an
26 individual's blood, saliva, or tissue collected from the individual
27 that is used for genetic paternity testing conducted under this
28 act.~~

29 (k) ~~(i)~~ "Summary report" means a written summary of the DNA

1 identification profile that includes only the following
2 information:

3 (i) The court case number, if applicable, the laboratory case
4 number or identification number, and the ~~family independence agency~~
5 **department** case number.

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

7 (iii) The child's name.

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

9 (v) The collection dates and identification numbers of the
10 genetic testing material.

11 (vi) The cumulative paternity index.

12 (vii) The probability of paternity.

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

15 (ix) The name, address, and telephone number of the contracting
16 laboratory.

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

18 Sec. 4. (1) An action under this act ~~shall~~**must** be brought in
19 the circuit court by the mother, the father, a child who became 18
20 years of age after August 15, 1984 and before June 2, 1986, or the
21 department ~~of human services~~ as provided in this act. The Michigan
22 court rules for civil actions apply to all proceedings under this
23 act. A complaint ~~shall~~**must** be filed in the county where the mother
24 or child resides. If both the mother and child reside outside of
25 this state, ~~then~~ the complaint ~~shall~~**must** be filed in the county
26 where the putative father resides or is found. The fact that the
27 child was conceived or born outside of this state is not a bar to
28 entering a complaint against the putative father.

29 (2) An action to determine paternity ~~shall~~**must** not be brought

1 under this act if the child's father **or other parent** acknowledges
2 ~~paternity-parentage~~ under the acknowledgment of parentage act, **1996**
3 **PA 305, MCL 722.1001 to 722.1013**, or if the child's ~~paternity~~
4 **parentage** is established under the law of another state.

5 (3) An action under this act may be commenced during the
6 pregnancy of the child's mother or at any time before the child
7 reaches 18 years of age. For a child who became 18 years of age
8 after August 15, 1984 and before June 2, 1986, an action under this
9 act may be commenced before January 1, 1995. This subsection
10 applies regardless of whether the cause of action accrued before
11 June 1, 1986 and regardless of whether the cause of action was
12 barred under this subsection before June 1, 1986. A summons issued
13 under this section ~~shall-must~~ be in the form the court determines
14 and ~~shall-must~~ be served in the same manner as is provided by court
15 rules for the service of process in civil actions.

16 (4) If the county department ~~of human services~~ of the county
17 in which the mother or alleged father resides first determines that
18 she or he has physical possession of the child and is eligible for
19 public assistance or without means to employ an attorney; if the
20 department ~~of human services~~ is the complainant; or if the mother,
21 alleged father, or child is receiving services under part D of
22 title IV of the social security act, 42 USC 651 to 669b, ~~then~~ the
23 prosecuting attorney ~~shall-must~~ initiate and conduct proceedings
24 under this act. The child support formula developed under section
25 19 of the friend of the court act, 1982 PA 294, MCL 552.519, ~~shall~~
26 **must** be used as a guideline in petitioning for child support. A
27 complaint filed under this act ~~shall-must~~ be verified by oath or
28 affirmation.

29 (5) The prosecuting attorney and the department ~~of human~~

1 ~~services~~ may enter into an agreement to transfer the prosecutor's
2 responsibilities under this act to 1 of the following:

3 (a) The friend of the court, with the approval of the chief
4 judge of the circuit court.

5 (b) An attorney employed or contracted by the county under
6 section 1 of 1941 PA 15, MCL 49.71.

7 (c) An attorney employed by or under contract with the
8 department. ~~of human services.~~

9 (6) A proceeding under this section is conducted on behalf of
10 the state and not as the attorney for any other party.

11 (7) The party filing the complaint ~~shall~~**must** name the person
12 believed to be the father of the child and state in the complaint
13 the time and place, as near as possible, when and where the mother
14 became pregnant. If the department ~~of human services~~ is the
15 plaintiff, the required facts ~~shall~~**must** be stated upon information
16 and belief.

17 (8) Upon the filing of a complaint, the court ~~shall~~**must** issue
18 a summons against the named defendant. If the defendant does not
19 file and serve a responsive pleading as required by the court
20 rules, the court may enter a default judgment. Neither party is
21 required to testify before entry of a default judgment in a
22 proceeding under this act.

23 (9) If, after service of process, the parties fail to consent
24 to an order naming the man as the child's father as provided in
25 this act within the time permitted for a responsive pleading, ~~then~~
26 the department ~~of human services~~ or its designee may file and serve
27 both the mother and the alleged father with a notice requiring that
28 the mother, alleged father, and child appear for genetic paternity
29 testing as provided in section 6.

1 (10) If the mother, alleged father, or child does not appear
2 for genetic paternity testing as provided in subsection (9), ~~then~~
3 the department ~~of human services~~ or its designee may apply to the
4 court for an order compelling genetic paternity tests as provided
5 in section 6 or may seek other relief as permitted by statute or
6 court rule.

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

13 (12) If a child born out of wedlock is being supported in
14 whole or in part by public assistance, including medical
15 assistance, the department ~~of human services~~ may file a complaint
16 on behalf of the child in the circuit court in the county in which
17 the child resides. The mother or alleged father of the child ~~shall~~
18 **must** be made a party plaintiff and notified of the hearing on the
19 complaint by summons. The complaint made by the department ~~of human~~
20 ~~services shall~~ **must** be verified by the director of the department,
21 ~~of human services, or his or her~~ **the director's** designated
22 representative, or by the director of the county department ~~of~~
23 ~~human services~~ of the county in which an action is brought, or the
24 county director's designated representative.

25 (13) 1986 PA 107, which added this subsection, does not affect
26 the rights of an indigent defendant in proceedings under this act
27 as established by decisions of the courts of this state before June
28 1, 1986.

29 (14) If a determination of paternity is made under this act,

1 the court may enter an order of filiation as provided in section 7.
2 Regardless of who commences an action under this act, an order of
3 filiation entered under this act has the same effect, is subject to
4 the same provisions, and is enforced in the same manner as an order
5 of filiation entered on complaint of the mother or father.

6 Sec. 4b. The establishment of ~~paternity~~**parentage** under the
7 law of another state has the same effect and may be used for the
8 same purposes as an acknowledgment of ~~paternity~~**parentage** or order
9 of filiation under this act.

10 **Sec. 4c. The parentage of either of the following must not be**
11 **determined under this act:**

12 **(a) A child conceived through the use of assisted reproduction**
13 **that does not involve surrogacy if the parents of the child may be**
14 **determined under the assisted reproduction and surrogacy parentage**
15 **act.**

16 **(b) A child conceived under a surrogacy agreement that**
17 **complies with the assisted reproduction and surrogacy parentage**
18 **act.**

19 Sec. 7. (1) In an action under this act, the court ~~shall~~**must**
20 enter an order of filiation declaring paternity and providing for
21 the support of the child under 1 or more of the following
22 circumstances:

23 (a) The finding of the court or the verdict determines that
24 the man is the father.

25 (b) The defendant acknowledges paternity either orally to the
26 court or by filing with the court a written acknowledgment of
27 ~~paternity~~**parentage**.

28 (c) The defendant is served with summons and a default
29 judgment is entered against him or her.

1 (d) Genetic testing under section 6 determines that the man is
2 the father.

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

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

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

21 (c) The defendant otherwise delayed the imposition of a
22 support obligation.

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

1 enforcement act, 1982 PA 295, MCL 552.601 to 552.650, this act
2 controls in regard to that provision.

3 (4) Upon entry of an order of filiation, the clerk of the
4 court ~~shall~~**must** collect a fee of \$9.00 for entering the order and
5 the fee imposed by section 2891(9) (a) of the public health code,
6 1978 PA 368, MCL 333.2891, from the person against whom the order
7 of filiation is entered. The clerk ~~shall~~**must** retain the \$9.00 fee
8 and remit the fee imposed by section 2891(9) (a) of the public
9 health code, 1978 PA 368, MCL 333.2891, with a written report of
10 the order of filiation, to the **department** director. ~~of the~~
11 ~~department of community health.~~ The report ~~shall~~**must** be on a form
12 prescribed by or in a manner approved by the **department** director.
13 ~~of the department of community health.~~ Regardless of whether the
14 fees required by this section are collected, the clerk ~~shall~~**must**
15 transmit and the department ~~of community health shall~~**must** receive
16 the report of the order of filiation.

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

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

28 Enacting section 1. This amendatory act takes effect 90 days
29 after the date it is enacted into law.

1 Enacting section 2. This amendatory act does not take effect
2 unless Senate Bill No. _____ or House Bill No. 5207 (request no.
3 03362'23 *) of the 102nd Legislature is enacted into law.