

HOUSE BILL NO. 5212

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

A bill to amend 2012 PA 159, entitled "Revocation of paternity act," by amending the title and sections 1, 3, 5, 7, 9, 11, 13, and 15 (MCL 722.1431, 722.1433, 722.1435, 722.1437, 722.1439, 722.1441, 722.1443, and 722.1445), sections 3 and 5 as amended by 2014 PA 376, section 7 as amended by 2014 PA 368, and sections 13 and 15 as amended by 2016 PA 178.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

TITLE

1 An act to provide procedures to determine the ~~paternity~~
2 **parentage** of children in certain circumstances; to allow
3 acknowledgments, determinations, and judgments relating to
4 ~~paternity~~**parentage** to be set aside in certain circumstances; to
5 provide for the powers and duties of certain state and local
6 governmental officers and entities; and to provide remedies.

7 Sec. 1. This act ~~shall be known and~~ may be cited as the
8 "revocation of ~~paternity~~**parentage** act".

9 Sec. 3. As used in this act:

10 (a) "Acknowledged ~~father~~"**parent**" means ~~a man~~**an individual**
11 who has affirmatively held ~~himself~~**themselves** out to be the child's
12 ~~father~~**parent** by executing an acknowledgment of parentage under the
13 acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 to
14 722.1013.

15 (b) "Affiliated ~~father~~"**parent**" means ~~a man~~**an individual** who
16 has been determined in a court to be the child's ~~father~~**parent**.

17 (c) "Alleged father" means a man who by his actions could have
18 fathered the child.

19 (d) "**Donor**" means **that term as defined in section 3 of the**
20 **assisted reproduction and surrogacy parentage act.**

21 (e) ~~(d)~~"Genetic father" means a man whose ~~paternity~~**parentage**
22 has been determined solely through genetic testing under the
23 paternity act, 1956 PA 205, MCL 722.711 to 722.730, the summary
24 support and paternity act, or the genetic parentage act.

25 (f) ~~(e)~~"Presumed ~~father~~"**parent**" means ~~a man~~**an individual**
26 who is presumed to be the child's ~~father~~**parent** by virtue of ~~his~~
27 marriage to the child's mother at the time of the child's
28 conception or birth.

29 (g) ~~(f)~~"Order of filiation" means a judicial order

1 establishing an affiliated ~~father~~.**parent**.

2 **(h)** ~~(g)~~ "Title IV-D case" means an action in which services
3 are provided under part D of title IV of the social security act,
4 42 USC 651 to 669b.

5 Sec. 5. (1) Section 7 governs an action to set aside an
6 acknowledgment of parentage.

7 (2) Section 8 governs an action to determine that a genetic
8 father is not a child's ~~father~~.**parent**.

9 (3) Section 9 governs an action to set aside an order of
10 filiation.

11 (4) Section 11 governs an action to determine that a presumed
12 ~~father~~.**parent** is not a child's ~~father~~.**parent**.

13 Sec. 7. (1) The mother, the acknowledged ~~father~~,**parent**, an
14 alleged father, or a prosecuting attorney may file an action for
15 revocation of an acknowledgment of parentage. An action under this
16 section ~~shall~~**must** be filed within 3 years after the child's birth
17 or within 1 year after the date that the acknowledgment of
18 parentage was signed, whichever is later. The requirement that an
19 action be filed within 3 years after the child's birth or within 1
20 year after the date the acknowledgment is signed does not apply to
21 an action filed on or before June 12, 2013.

22 (2) The prosecuting attorney and the department ~~of human~~
23 ~~services~~ may enter into an agreement to transfer the prosecutor's
24 responsibilities under this act to 1 of the following:

25 (a) The friend of the court, with the approval of the chief
26 judge of the circuit court.

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

29 (c) An attorney employed by, or under contract with, the

1 department. ~~of human services.~~

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

4 (4) An action for revocation under this section ~~shall~~**must** be
5 supported by an affidavit signed by the person filing the action
6 that states facts that constitute 1 of the following:

7 (a) Mistake of fact.

8 (b) Newly discovered evidence that by due diligence could not
9 have been found before the acknowledgment was signed.

10 (c) Fraud.

11 (d) Misrepresentation or misconduct.

12 (e) Duress in signing the acknowledgment.

13 (5) If the court in an action for revocation under this
14 section finds that an affidavit under subsection (4) is sufficient,
15 the court ~~shall~~**must** order blood or tissue typing or DNA
16 identification profiling as required under section 13(5). The
17 person filing the action has the burden of proving, by clear and
18 convincing evidence, that the acknowledged ~~father~~**parent** is not the
19 father of the child.

20 (6) The clerk of the court ~~shall~~**must** forward a copy of an
21 order of revocation entered under this section to the state
22 registrar. The state registrar ~~shall~~**must** vacate the acknowledgment
23 of parentage and may amend the birth certificate as prescribed by
24 the order of revocation.

25 (7) Whether an action for revocation under this section is
26 brought by a complaint in an original action or by a motion in an
27 existing action, the prosecuting attorney, an attorney appointed by
28 the county, the friend of the court, or an attorney appointed by
29 the court is not required to represent any party regarding the

1 action for revocation.

2 Sec. 9. (1) If a child has an affiliated ~~father~~**parent** and
3 ~~paternity~~**parentage** was determined based on the affiliated ~~father's~~
4 **parent's** failure to participate in the court proceedings, the
5 mother, an alleged father, or the affiliated ~~father~~**parent** may file
6 a motion with the court that made the determination to set aside
7 the determination.

8 (2) A motion under this section ~~shall~~**must** be filed within 3
9 years after the child's birth or within 1 year after the date of
10 the order of filiation, whichever is later. The requirement that an
11 action be filed within 3 years after the child's birth or within 1
12 year after the date of the order of filiation does not apply to an
13 action filed on or before 1 year after the effective date of this
14 act.

15 (3) If the court determines that a motion under this section
16 should be denied and the order of filiation not be set aside, the
17 court shall order the person who filed the motion to pay the
18 reasonable attorney fees and costs incurred by any other party
19 because of the motion.

20 Sec. 11. (1) If a child has a presumed ~~father~~**parent**, a court
21 may determine that the child is born out of wedlock for the purpose
22 of establishing the child's ~~paternity~~**parentage** if an action is
23 filed by the child's mother and either of the following applies:

24 (a) All of the following apply:

25 (i) The mother identifies the alleged father by name in the
26 complaint or motion commencing the action.

27 (ii) The presumed ~~father~~**parent**, the alleged father, and the
28 child's mother at some time mutually and openly acknowledged a
29 biological relationship between the alleged father and the child.

1 (iii) The action is filed within 3 years after the child's
2 birth. The requirement that an action be filed within 3 years after
3 the child's birth does not apply to an action filed on or before 1
4 year after the effective date of this act.

5 (iv) Either the court determines the child's ~~paternity~~
6 **parentage** or the child's ~~paternity-parentage~~ will be established
7 under the law of this state or another jurisdiction if the child is
8 determined to be born out of wedlock.

9 (b) All of the following apply:

10 (i) The mother identifies the alleged father by name in the
11 complaint or motion commencing the action.

12 (ii) Either of the following applies:

13 (A) The presumed ~~father,~~**parent**, having the ability to support
14 or assist in supporting the child, has failed or neglected, without
15 good cause, to provide regular and substantial support for the
16 child for a period of 2 years or more before the filing of the
17 action or, if a support order has been entered, has failed to
18 substantially comply with the order for a period of 2 years or more
19 before the filing of the action.

20 (B) The child is less than 3 years of age and the presumed
21 ~~father~~**parent** lives separately and apart from the child. The
22 requirement that the child is less than 3 years of age at the time
23 an action is filed does not apply to an action filed on or before 1
24 year after the effective date of this act.

25 (iii) Either the court determines the child's ~~paternity~~
26 **parentage** or the child's ~~paternity-parentage~~ will be established
27 under the law of this state or another jurisdiction if the child is
28 determined to be born out of wedlock.

29 (2) If a child has a presumed ~~father,~~**parent**, a court may

1 determine that the child is born out of wedlock for the purpose of
2 establishing the child's ~~paternity~~**parentage** if an action is filed
3 by the presumed ~~father~~**parent** within 3 years after the child's
4 birth or if the presumed ~~father~~**parent** raises the issue in an
5 action for divorce or separate maintenance between the presumed
6 ~~father~~**parent** and the mother. The requirement that an action be
7 filed within 3 years after the child's birth does not apply to an
8 action filed on or before 1 year after the effective date of this
9 act.

10 (3) If a child has a presumed ~~father~~**parent**, a court may
11 determine that the child is born out of wedlock for the purpose of
12 establishing the child's ~~paternity~~**parentage** if an action is filed
13 by an alleged father and any of the following applies:

14 (a) All of the following apply:

15 (i) The alleged father did not know or have reason to know that
16 the mother was married at the time of conception.

17 (ii) The presumed ~~father~~**parent**, the alleged father, and the
18 child's mother at some time mutually and openly acknowledged a
19 biological relationship between the alleged father and the child.

20 (iii) The action is filed within 3 years after the child's
21 birth. The requirement that an action be filed within 3 years after
22 the child's birth does not apply to an action filed on or before 1
23 year after the effective date of this act.

24 (iv) Either the court determines the child's ~~paternity~~
25 **parentage** or the child's ~~paternity~~**parentage** will be established
26 under the law of this state or another jurisdiction if the child is
27 determined to be born out of wedlock.

28 (b) All of the following apply:

29 (i) The alleged father did not know or have reason to know that

1 the mother was married at the time of conception.

2 (ii) Either of the following applies:

3 (A) The presumed ~~father,~~**parent**, having the ability to support
4 or assist in supporting the child, has failed or neglected, without
5 good cause, to provide regular and substantial support for the
6 child for a period of 2 years or more before the filing of the
7 action or, if a support order has been entered, has failed to
8 substantially comply with the order for a period of 2 years or more
9 before the filing of the action.

10 (B) The child is less than 3 years of age and the presumed
11 ~~father~~**parent** lives separately and apart from the child. The
12 requirement that the child is less than 3 years of age at the time
13 an action is filed does not apply to an action filed on or before 1
14 year after the effective date of this act.

15 (iii) Either the court determines the child's ~~paternity~~
16 **parentage** or the child's ~~paternity~~**parentage** will be established
17 under the law of this state or another jurisdiction if the child is
18 determined to be born out of wedlock.

19 (c) Both of the following apply:

20 (i) The mother was not married at the time of conception.

21 (ii) The action is filed within 3 years after the child's
22 birth. The requirement that an action be filed within 3 years after
23 the child's birth does not apply to an action filed on or before 1
24 year after the effective date of this act.

25 (4) If a child has a presumed ~~father~~**parent** and the child is
26 being supported in whole or in part by public assistance, a court
27 may determine that the child is born out of wedlock for the purpose
28 of establishing the child's ~~paternity~~**parentage** if an action is
29 filed by the department of human services and both of the following

1 apply:

2 (a) Either of the following applies:

3 (i) The presumed ~~father~~, **parent**, having the ability to support
4 or assist in supporting the child, has failed or neglected, without
5 good cause, to provide regular and substantial support for the
6 child for a period of 2 years or more before the filing of the
7 action or, if a support order has been entered, has failed to
8 substantially comply with the order for a period of 2 years or more
9 before the filing of the action.

10 (ii) The child is less than 3 years of age and the presumed
11 ~~father~~ **parent** lives separately and apart from the child. The
12 requirement that the child is less than 3 years of age at the time
13 an action is filed does not apply to an action filed on or before 1
14 year after the effective date of this act.

15 (b) Either the court determines the child's ~~paternity~~
16 **parentage** or the child's ~~paternity~~ **parentage** will be established
17 under the law of this state or another jurisdiction if the child is
18 determined to be born out of wedlock.

19 (5) An action under this section may be brought by a complaint
20 filed in an original action or by a motion filed in an existing
21 action, as appropriate under this act and rules adopted by the
22 supreme court.

23 Sec. 13. (1) An original action under this act ~~shall~~ **must** be
24 filed in the circuit court for the county in which the mother or
25 the child resides or, if neither the mother nor the child reside in
26 this state, in the circuit court for the county in which the child
27 was born. If an action for the support, custody, or parenting time
28 of the child exists at any stage of the proceedings in a circuit
29 court of this state or if an action under section 2(b) of chapter

1 XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, is
 2 pending in a circuit court of this state, an action under this act
 3 ~~shall~~**must** be brought by motion in the existing case under rules
 4 adopted by the supreme court.

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

7 (a) Revoke an acknowledgment of parentage.

8 (b) Determine that a genetic father is not a child's
 9 ~~father~~**parent**.

10 (c) Set aside an order of filiation or a ~~paternity~~**parentage**
 11 order.

12 (d) Determine that a child was born out of wedlock.

13 (e) Make a determination of ~~paternity~~**parentage** and enter an
 14 order of filiation as provided for under section 7 of the paternity
 15 act, 1956 PA 205, MCL 722.717, **or a parentage order**.

16 (3) A judgment entered under this act does not relieve a ~~man~~
 17 **an individual** from a support obligation for the child or the
 18 child's ~~mother~~**parent** that was incurred before the action was filed
 19 or prevent a person from seeking relief under applicable court
 20 rules to vacate or set aside a judgment.

21 (4) A court may refuse to enter an order setting aside a
 22 ~~paternity~~**parentage** determination, revoking an acknowledgment of
 23 parentage, determining that a genetic father is not a child's
 24 ~~father~~**parent**, or determining that a child is born out of wedlock
 25 if the court finds evidence that the order would not be in the best
 26 interests of the child. The court ~~shall~~**must** state its reasons for
 27 refusing to enter an order on the record. The court may consider
 28 the following factors:

29 (a) Whether the presumed ~~father~~**parent** is estopped from

1 denying parentage because of ~~his~~ **the individual's** conduct.

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

4 ~~(c) The facts surrounding the presumed father's discovery that~~
5 ~~he might not be the child's father.~~

6 **(b)** ~~(d)~~ The nature of the relationship between the child and
7 the presumed **parent** or alleged father.

8 **(c)** ~~(e)~~ The **child's** age. ~~of the child.~~

9 **(d)** ~~(f)~~ The harm that may result to the child.

10 **(e)** ~~(g)~~ Other factors that may affect the equities arising
11 from the disruption of the ~~father-child~~ **parent-child** relationship.

12 **(f)** ~~(h)~~ Any other factor that the court determines appropriate
13 to consider.

14 **(5) If the challenge to parentage is based on genetic testing,**
15 **in addition to the factors listed in subsection (4), the court must**
16 **consider the following:**

17 **(a) The length of time the presumed parent was on notice that**
18 **the individual might not be the child's genetic father.**

19 **(b) The facts surrounding the presumed parent's discovery that**
20 **the individual might not be the child's genetic father.**

21 **(6) ~~(5) The~~ Except as otherwise provided in this act, the**
22 **court shall order the parties to an action or motion under this act**
23 **to participate in and pay for blood or tissue typing or DNA**
24 **identification profiling to assist the court in making a**
25 **determination under this act. Blood or tissue typing or DNA**
26 **identification profiling ~~shall~~ **must** be conducted in accordance with**
27 **section 6 of the paternity act, 1956 PA 205, MCL 722.716. The**
28 **results of blood or tissue typing or DNA identification profiling**
29 **are not binding on a court in making a determination under this**

1 act.

2 (7) Genetic testing shall not be used for either of the
3 following purposes:

4 (a) To challenge the parentage of an individual who is a
5 parent under part 2 or 3 of the assisted reproduction and surrogacy
6 parentage act.

7 (b) To establish the parentage of an individual who is a
8 donor.

9 (8) ~~(6)~~—If the case is a title IV-D case, the court may
10 appoint an attorney approved by the office of child support to
11 represent this state's interests with respect to an action or a
12 motion under this act. The court may appoint a guardian ad litem to
13 represent the child's interests with respect to the action or
14 motion.

15 (9) ~~(7)~~—A court shall not issue an order under this act that
16 sets aside a judgment or determination of a court or administrative
17 agency of another state, even if the judgment or determination is
18 being enforced in this state, or that is inconsistent with 28 USC
19 1738A or 28 USC 1738B.

20 (10) ~~(8)~~—This act does not establish a basis for termination
21 of an adoption and does not affect any obligation of an adoptive
22 parent to an adoptive child.

23 (11) ~~(9)~~—~~This~~ **An action may not be brought under this** act ~~does~~
24 ~~not establish a basis for vacating a judgment establishing~~
25 ~~paternity of a~~ **concerning the parentage of either of the following:**

26 (a) **A child conceived through the use of assisted reproduction**
27 **that does not involve surrogacy if the parents of the child may be**
28 **determined under the assisted reproduction and surrogacy parentage**
29 **act.**

1 **(b) A** child conceived under a ~~surrogate parentage contract as~~
 2 ~~that term is defined in section 3 of the surrogate parenting~~
 3 **surrogacy agreement that complies with the assisted reproduction**
 4 **and surrogacy parentage** act. ~~, 1988 PA 199, MCL 722.853.~~

5 **(12)** ~~(10)~~—A common law action that was available before June
 6 12, 2012 to set aside a paternity determination or to determine
 7 that a child is born out of wedlock remains available until June
 8 12, 2014, but is not available after June 12, 2014.

9 **(13)** ~~(11)~~—Except for an action filed under section 15(2), a
 10 court, in its discretion, may order a ~~person~~**party** who files an
 11 action or motion under this act to post an amount of money with the
 12 court, obtain a surety, or provide other assurances that in the
 13 court's determination will secure the costs of the action and
 14 attorney fees if the ~~person~~**party** does not prevail. The court, in
 15 its discretion, may order a nonprevailing party, including a mother
 16 who is a nonprevailing party under section 15(2), to pay the
 17 reasonable attorney fees and costs of a prevailing party.

18 **(14)** ~~(12)~~—A court may extend the time for filing an action or
 19 motion under this act. A request for extension ~~shall~~**must** be
 20 supported by an affidavit signed by the ~~person~~**party** requesting the
 21 extension stating facts that the ~~person~~**party** satisfied all the
 22 requirements for filing an action or motion under this act but did
 23 not file the action or motion within the time allowed under this
 24 act because of 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.

28 (c) Fraud.

29 (d) Misrepresentation or misconduct.

1 (e) Duress.

2 **(15)** ~~(13)~~—If the court finds that an affidavit under
 3 subsection ~~(12)~~—**(14)** is sufficient, the court may allow the action
 4 or motion to be filed and take other action the court considers
 5 appropriate. The party filing the request to extend the time for
 6 filing has the burden of proving, by clear and convincing evidence,
 7 that granting relief under this act will not be against the best
 8 interests of the child considering the equities of the case.

9 **(16)** ~~(14)~~—An alleged father may not bring an action under this
 10 act if the child is conceived as the result of acts for which the
 11 alleged father was convicted of criminal sexual conduct under
 12 sections 520b to 520e of the Michigan penal code, 1931 PA 328, MCL
 13 750.520b to 750.520e.

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

22 **(18) If an action is brought by an individual who proves by**
 23 **clear and convincing evidence that the individual is the child's**
 24 **parent, the court may make a determination of parentage and enter**
 25 **an order of filiation as provided for in section 7 of the parentage**
 26 **act, 1956 PA 205, MCL 722.717.**

27 Sec. 15. (1) If an action is brought by an alleged father who
 28 proves by clear and convincing evidence that he is the child's
 29 ~~father,~~ **parent**, the court may make a determination of ~~paternity~~

1 **parentage** and enter an order of filiation as provided for under
2 section 7 of the paternity act, 1956 PA 205, MCL 722.717.

3 (2) If an action is brought by a mother who, after a fact-
4 finding hearing, proves by clear and convincing evidence that the
5 child was conceived as a result of nonconsensual sexual
6 penetration, the court shall do 1 of the following:

7 (a) Revoke an acknowledgment of parentage for an acknowledged
8 ~~father.~~**parent.**

9 (b) Determine that a genetic father is not the child's
10 ~~father.~~**parent.**

11 (c) Set aside an order of filiation for an affiliated
12 ~~father.~~**parent.**

13 (d) Make a determination of ~~paternity~~**parentage** regarding an
14 alleged father and enter an order of revocation of ~~paternity~~
15 **parentage** for that alleged father.

16 (3) Subsection (2) does not apply if, after the date of the
17 alleged nonconsensual sexual penetration described in subsection
18 (2), the biological parents cohabit and establish a mutual
19 custodial environment for the child.

20 (4) As used in this section, "sexual penetration" means that
21 term as defined in section 520a of the Michigan penal code, 1931 PA
22 328, MCL 750.520a.

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

25 Enacting section 2. This amendatory act does not take effect
26 unless Senate Bill No. ____ or House Bill No. 5207 (request no.
27 03362'23 *) of the 102nd Legislature is enacted into law.