

PATERNITY ESTABLISHMENT

Senate Bill 800 (Substitute H-1)
First Analysis (12-6-94)

Sponsor: Sen. William Van Regenmorter
Senate Committee: Judiciary
House Committee: Judiciary

THE APPARENT PROBLEM:

The federal Omnibus Reconciliation Act of 1993 (OBRA) requires states to have in place certain "expedited processes" for establishing paternity under judicial or administrative procedures, among them "procedures for a simple civil process for voluntarily acknowledging paternity under which the state must provide that the rights and responsibilities of acknowledging paternity are explained, and ensure that due process rights are afforded." Under OBRA, the state must have procedures for: a hospital-based acknowledgement of paternity; a presumption under which voluntary acknowledgement is admissible as evidence of paternity and is recognized as a basis for seeking a support order; a presumption of paternity following certain genetic testing results; a default order to be entered when a putative father fails to respond following proper notice; and recognition of paternity determinations made in other states. Failure to meet these federal requirements threatens federal funding for state child support enforcement programs. Under OBRA's terms, Michigan is to have any necessary statutory amendments enacted by January 1, 1995.

Michigan already has procedures for hospital-based acknowledgement of paternity, established by Public Act 115 of 1993. Procedures regarding the use of genetic tests, default orders against nonresponding putative fathers, and recognition of paternity determinations made by other states have been incorporated into Substitute S-2 for House Bill 4916, which would amend the paternity act, and was reported from the Senate Family Law, Mental Health and Corrections Committee December 1, 1994. Procedures for voluntarily acknowledging paternity, creating a presumption of paternity, and notifying parties of their rights and responsibilities have been incorporated into a House committee substitute for Senate Bill 800.

THE CONTENT OF THE BILL:

The bill would amend the Revised Probate Code to: clarify procedures for the acknowledgement of paternity for the purposes of intestate succession (that is, for purposes of inheritance in cases where the putative father died without leaving a will); specify that certain information is to be provided to parties whom the Department of Social Services (DSS) or the prosecutor is assisting to execute an acknowledgement of paternity; and, declare that an acknowledgement of paternity would be presumed to establish paternity for all purposes. A more detailed explanation follows.

Intestate succession. Currently, the probate code considers a child born out of wedlock to be a man's child for all purposes of intestate succession if he joins with the mother in acknowledges paternity in writing "in the same manner provided by law for the execution and acknowledgment of deeds of real estate and recorded at any time during the child's lifetime" in the appropriate probate judge's office. The bill would replace these procedures with provisions for the man and the child's mother to voluntarily acknowledge paternity by each signing the acknowledgement in the presence of two witnesses (who also would sign), plus a judge, court clerk, or Michigan notary public. The acknowledgement would be filed at either the time of birth or another time during the child's lifetime with the probate court in the mother's county of residence. If the mother was not a Michigan resident, the acknowledgement would be filed in the county of the child's birth.

Information for parties. If the DSS or the prosecutor provided assistance to parties in executing an acknowledgement of paternity, that entity would provide to the child's mother and to the man written information on the parents' rights and responsibilities after acknowledgement. At a minimum, that information would include

information on: the right to seek visitation or custody; the right to notice and hearing regarding a proposed adoption; and the responsibility to comply with a child support order if issued after the acknowledgement.

Presumption. An acknowledgement of paternity executed as provided by the bill would be presumed to establish paternity for all purposes. (Note: the Senate committee substitute for House Bill 4916 includes complementary language recognizing acknowledgements under Senate Bill 800.) The acknowledgement could be set aside by the local circuit court only if the man was proven by clear and convincing evidence not to be the father of the child.

MCL 700.111

HOUSE COMMITTEE ACTION:

The House Judiciary committee adopted a substitute bill that dealt with paternity procedures. The original bill dealt with claims against estates and powers of attorney.

FISCAL IMPLICATIONS:

The Department of Social Services reports that failure to meet OBRA mandates regarding paternity procedures would threaten quarterly advances on the approximately \$105 million that state receives annually to fund its child support enforcement efforts. (12-1-94)

ARGUMENTS:

For:

The bill would clarify and revise Michigan's procedures for establishing paternity along the lines required by federal law. In conjunction with the Senate committee substitute for House Bill 4916, the bill would enable Michigan to meet federal mandates and preserve federal child support funding of over \$100 million annually.

Against:

The bill would insert paternity establishment procedures and a general presumption of validity into a portion of the Revised Probate Code dealing with intestate succession. This may strike some as incongruous, with the paternity act appearing to be

the more appropriate location for some of the bill's provisions.

POSITIONS:

The Department of Social Services supports the bill. (12-1-94)