

Act No. 308
Public Acts of 1996
Approved by the Governor
June 20, 1996
Filed with the Secretary of State
June 20, 1996

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Senators Honigman, Geake, Hoffman, Gougeon, Shugars, Dunaskiss, Stille, McManus and Emmons

ENROLLED SENATE BILL No. 604

AN ACT to amend sections 4, 6, 7, and 7b of Act No. 205 of the Public Acts of 1956, entitled "An act to confer upon circuit courts jurisdiction over proceedings to compel and provide support of children born out of wedlock; to prescribe the procedure for determination of such liability; to authorize agreements providing for furnishing of such support and to provide for the enforcement thereof; and to prescribe penalties for the violation of certain provisions of this act," sections 4 and 6 as amended by Act No. 388 of the Public Acts of 1994 and sections 7 and 7b as amended by Act No. 18 of the Public Acts of 1996, being sections 722.714, 722.716, 722.717, and 722.717b of the Michigan Compiled Laws; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Section 1. Sections 4, 6, 7, and 7b of Act No. 205 of the Public Acts of 1956, sections 4 and 6 as amended by Act No. 388 of the Public Acts of 1994 and sections 7 and 7b as amended by Act No. 18 of the Public Acts of 1996, being sections 722.714, 722.716, 722.717, and 722.717b of the Michigan Compiled Laws, are amended to read as follows:

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

(2) An action is not required to be brought under this act if the child's father acknowledges paternity under the acknowledgment of parentage act, or if the child's paternity is established under the law of another state.

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

(4) If the county family independence agency of the county in which the mother or alleged father resides first determines that she or he has physical possession of the child and is eligible for public assistance or without means to employ an attorney; if the family independence agency is the complainant; of if the mother, alleged father, or child is receiving services under part D of title IV of the social security act, 42 U.S.C. 651 to 667, then the prosecuting attorney or an attorney employed by the county under section 1 of Act No. 15 of the Public Acts of 1941, being section 49.71 of

the Michigan Compiled Laws, shall initiate and conduct proceedings under this act. The prosecuting attorney shall utilize the child support formula developed under section 19 of the friend of the court act, Act No. 294 of the Public Acts of 1982, being section 552.519 of the Michigan Compiled Laws, as a guideline in petitioning for child support. A complaint filed under this act shall be verified by oath or affirmation.

(5) The party filing the complaint shall name the person believed to be the father of the child and state in the complaint the time and place, as near as possible, when and where the mother became pregnant. If the family independence agency is the plaintiff, the required facts shall be stated upon information and belief.

(6) Upon the filing of a complaint, the court shall issue a summons against the named defendant. If the defendant does not file and serve a responsive pleading as required by the court rules, the court shall enter a default judgment. Neither party is required to testify before entry of a default judgment in a proceeding under this act.

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

(8) If a child born out of wedlock is being supported in whole or in part by public assistance, including medical assistance, the family independence agency may file a complaint on behalf of the child in the circuit court in the county in which the child resides. The mother or alleged father of the child shall be made a party plaintiff and notified of the hearing on the complaint by summons. The complaint made by the family independence agency shall be verified by the director of the family independence agency, or his or her designated representative, or by the director of the county family independence agency of the county in which an action is brought, or the county director's designated representative.

(9) Act No. 107 of the Public Acts of 1986, which added this subsection, does not affect the rights of an indigent defendant in proceedings under this act as established by decisions of the courts of this state before June 1, 1986.

(10) If a determination of paternity is made under this act, the court may enter an order of filiation as provided in section 7. Regardless of who commences an action under this act, an order of filiation entered under this act has the same effect, is subject to the same provisions, and is enforced in the same manner as an order of filiation entered on complaint of the mother or father.

Sec. 6. (1) In a proceeding under this act before trial, the court, upon application made by or on behalf of either party, or on its own motion, shall order that the mother, child, and alleged father submit to blood or tissue typing determinations, which may include, but are not limited to, determinations of red cell antigens, red cell isoenzymes, human leukocyte antigens, serum proteins, or DNA profiles, to determine whether the alleged father is likely to be, or is not, the father of the child. If the court orders a blood or tissue typing or DNA profile determination to be conducted and a party refuses to submit to the typing or DNA profile determination, in addition to any other remedies available, the court may do either of the following:

(a) Enter a default judgment at the request of the appropriate party.

(b) If a trial is held, allow the disclosure of the fact of the refusal unless good cause is shown for not disclosing the fact of refusal.

(2) A blood or tissue typing or DNA profile determination shall be conducted by a person accredited for paternity determinations by a nationally recognized scientific organization, including, but not limited to, the American association of blood banks.

(3) The court shall fix the compensation of an expert at a reasonable amount and may direct the compensation to be paid by the county or by any other party to the case, or by both in the proportions and at the times the court prescribes. Before blood or tissue typing or a DNA profile determination is conducted, the court may order a part or all of the compensation paid in advance.

(4) The result of blood or tissue typing or a DNA profile determination and, if a determination of exclusion of paternity cannot be made, a written report including, but not limited to, a calculation of the probability of paternity shall be filed with the court and served on the mother and alleged father. Objection to the result or report is waived unless made in writing, setting forth the specific basis for the objection, within 14 calendar days after service on the mother and alleged father. The court shall not schedule a trial on the issue of paternity until after the expiration of the 14-day period. If an objection is not filed, the court shall admit in proceedings under this act the result of the blood or tissue typing or the DNA profile and the written report without requiring foundation testimony or other proof of authenticity or accuracy. If an objection is filed within the 14-day period, on the motion of either party, the court shall hold a hearing to determine the admissibility of the result or written report. The objecting party has the burden of proving by clear and convincing evidence by a qualified person described in subsection (2) that foundation testimony or other proof of authenticity or accuracy is necessary for admission of the result or written report.

(5) If the probability of paternity determined by the qualified person described in subsection (2) is 99% or higher, and the result and report are admissible as provided in subsection (4), paternity shall be presumed. If 2 or more persons are determined to have a probability of paternity of 99% or higher, paternity shall be presumed for the person with the highest probability.

(6) Upon the establishment of the presumption of paternity as provided in subsection (5), either party may move for summary disposition under the court rules. Nothing in this section abrogates the right of either party to child support from the date of birth of the child if applicable under section 7.

(7) As used in this section, "DNA profile" means the patterns of fragments of deoxyribonucleic acid used both to identify individuals and to study the relatedness of individuals.

Sec. 7. (1) The court shall enter an order of filiation declaring paternity and providing for the support of the child under 1 or more of the following circumstances:

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

(b) The defendant acknowledges paternity either orally to the court or by filing with the court a written acknowledgment of paternity.

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

(2) An order of filiation entered under subsection (1) shall specify the sum to be paid weekly or otherwise, until the child reaches the age of 18. Subject to section 7a, the court may also order support for a child after he or she reaches 18 years of age. In addition to providing for the support of the child, the order shall also provide for the payment of the necessary expenses incurred by or for the mother in connection with her confinement, for the funeral expenses if the child has died, for the support of the child before the entry of the order of filiation, and for the expenses in connection with the pregnancy of the mother or of the proceedings as the court considers proper. However, if proceedings under this act are commenced after the lapse of more than 6 years from the birth of the child, an amount shall not be awarded for expenses or support that accrued before the date on which the complaint was filed unless 1 or more of the following circumstances exist:

(a) Paternity has been acknowledged by the father in writing in accordance with statutory provisions.

(b) One or more payments were made for support of the child during the 6-year period and proceedings are commenced within 6 years from the date of the most recent payment.

(c) The defendant was out of the state, was avoiding service of process, or threatened or coerced the complainant not to file a proceeding under this act during the 6-year period. The court may award an amount for expenses or support that accrued before the date the complaint was filed if the complaint was filed within a period of time equal to the sum of 6 years and the time that the defendant was out of state, was avoiding service of process, or threatened or coerced the complainant not to file a proceeding under this act.

(3) Except as otherwise provided in this section, the court shall order support in an amount determined by application of the child support formula developed by the state friend of the court bureau. The court may enter an order that deviates from the formula if the court determines from the facts of the case that application of the child support formula would be unjust or inappropriate and sets forth in writing or on the record all of the following:

(a) The support amount determined by application of the child support formula.

(b) How the support order deviates from the child support formula.

(c) The value of property or other support awarded instead of the payment of child support, if applicable.

(d) The reasons why application of the child support formula would be unjust or inappropriate in the case.

(4) Subsection (3) does not prohibit the court from entering a support order that is agreed to by the parents and that deviates from the child support formula, if the requirements of subsection (3) are met.

(5) Beginning January 1, 1991, each support order entered by the court shall provide that each parent keep the office of the friend of the court informed of both of the following:

(a) The name and address of the parent's current source of income. As used in this subdivision, "source of income" means that term as defined in section 2 of the support and parenting time enforcement act, Act No. 295 of the Public Acts of 1982, being section 552.602 of the Michigan Compiled Laws.

(b) The health care coverage that is available to the parent as a benefit of employment or that is maintained by the parent; the name of the insurance company, nonprofit health care corporation, or health maintenance organization; the policy, certificate, or contract number; and the names and birth dates of the persons for whose benefit the parent maintains health care coverage under the policy, certificate, or contract.

(6) For the purposes of this act, "support" may include payment of medical, dental, and other health care expenses, child care expenses, and educational expenses. The court shall require that 1 or both parents obtain or maintain any health care coverage that is available to them at a reasonable cost, as a benefit of employment, for the benefit of a child who is the subject of an order of filiation under this section. If a parent is self-employed and maintains health care coverage, the court shall require the parent to obtain or maintain dependent coverage for the benefit of the child, if available at a reasonable cost.

(7) A judgment or order entered under this act providing for the support of a child or payment of expenses in connection with the mother's confinement or pregnancy is enforceable as provided in Act No. 295 of the Public Acts of 1982, being sections 552.601 to 552.650 of the Michigan Compiled Laws.

(8) Upon entry of an order of filiation, the clerk of the court shall collect a fee of \$35.00 from the person against whom the order of filiation is entered. The clerk shall retain \$9.00 of the fee and remit the \$26.00 balance, along with a written report of the order of filiation, to the director of public health. The report shall be on a form prescribed by or in a manner approved by the director of community health. Regardless of whether the fee required by this section is collected, the clerk shall transmit and the department of community health shall receive the report of the order of filiation.

(9) If an order of filiation or acknowledgment of parentage is abrogated by a later judgment or order of a court, the clerk of the court that entered the order shall immediately communicate that fact to the director of community health on a form prescribed by the director of public health. An order of filiation supersedes an acknowledgment of parentage.

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

Sec. 7b. If the court makes a determination of paternity and there is no dispute regarding custody, the court shall include in the order of filiation specific provisions for the custody and parenting time of the child as provided in the child custody act of 1970, Act No. 91 of the Public Acts of 1970, being sections 722.21 to 722.29 of the Michigan Compiled Laws. If there is a dispute between the parties concerning custody or parenting time, the court shall immediately enter an order that establishes support and temporarily establishes custody of and parenting time with the child. Pending a hearing on or other resolution of the dispute, the court may also refer the matter to the friend of the court for a report and recommendation as provided in section 5 of the friend of the court act, Act No. 294 of the Public Acts of 1982, being section 552.505 of the Michigan Compiled Laws. In a dispute regarding custody or parenting time, the prosecuting attorney, an attorney appointed by the county, or an attorney appointed by the court under section 4 shall not be required to represent either party regarding that dispute.

Section 2. Section 3 of Act No. 205 of the Public Acts of 1956, being section 722.713 of the Michigan Compiled Laws, is repealed.

Section 3. This amendatory act shall not take effect unless Senate Bill No. 749 of the 88th Legislature is enacted into law.

Section 4. This amendatory act shall take effect June 1, 1997.

This act is ordered to take immediate effect.

Secretary of the Senate.

Clerk of the House of Representatives.

Approved -----

Governor.

