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House Bill 4659 (Substitute H-1 as passed by the House)
House Bill 4660 (Substitute H-1 as passed by the House)
House Bill 4661 (Substitute H-1 as passed by the House)
House Bill 4662 (Substitute H-1 as passed by the House)
Sponsor: Representative Robert L. Kosowski (H.B. 4659)
Representative Mike Shirkey (H.B. 4660)
Representative Cindy Denby (H.B. 4661)
Representative Eileen Kowall (H.B. 4662)
House Committee: Families, Children, and Seniors
Senate Committee: Families, Seniors and Human Services

Date Completed: 10-23-13

CONTENT

House Bill 4659 (H-1) would amend the Public Health Code to do the following:

- **Require the Department of Community Health (DCH) to administer and maintain a "Responsible Father Registry".**
- **Require a man who wished to be notified of a proceeding for adoption of a child or termination of parental rights regarding a child whom he may have fathered to register with the proposed Registry within five days before or after the child's birth.**
- **Provide that a man's failure to register would waive his right to receive the proceeding notice, and would be a denial of his interest in custody of the child resulting in the court's termination of his parental rights (unless the child's mother fraudulently indicated that the child had died).**
- **Provide that a man's parental rights would not be waived by failing to register if he had established paternity.**
- **Require a child placing agency or attorney to notify a registrant of a proceeding in a timely manner.**
- **Provide that a registrant would be entitled to notice of any hearing to determine the child's father's identity or to determine or terminate the father's parental rights.**
- **Provide that a man who engaged in sexual intercourse with a woman would be considered to be on legal notice that a child could be conceived and the man would be entitled to all legal rights and obligations as a result.**
- **Require the DCH to prepare a registration form.**
- **Provide that information contained in the Registry would be confidential and exempt from disclosure under the Freedom of Information Act, limit the people to whom the information could be released, and prescribe a misdemeanor penalty for a person who intentionally released the information to an unauthorized individual or agency.**
- **Require the DCH to cross-reference an adoption record with Registry information and remove all references to the child who was the subject of the record.**

- Require a petitioner for adoption to obtain from the DCH a certificate that a Registry search was performed, if paternity had not been established.
- Require a certificate of search and an affidavit documenting efforts made to notify a putative or alleged father of a proposed adoption to be filed with the court before a proceeding for adoption of a child born out of wedlock or for termination of parental rights could be concluded.
- Require the DCH to produce and distribute a pamphlet informing the public about the Registry and including a detachable registration form.
- Require the DCH to provide information about the Registry to the public through public service announcements and other means until January 1, 2015.
- Create the "Registry Fund" and require the DCH to spend Fund money, upon appropriation, for Registry administration.

House Bill 4660 (H-1) would amend the Michigan Adoption Code to do the following:

- Prohibit a child born out of wedlock from being placed for adoption before the parental rights of the father were terminated, if the father had registered with the Responsible Father Registry.
- Require notice of a hearing to determine the identity of the father of a child proposed to be put up for adoption, or to determine or terminate his rights, to be served upon a putative father who had registered.
- Allow a court to receive an affidavit or verified written declaration of a child's mother in lieu of her live testimony as evidence of the child's father's identity.

The bill also would repeal Section 34 of the Code, which allows an unmarried pregnant woman to file a petition evidencing her intent to release her expected child for adoption or to consent to the child's adoption, and requesting the court to notify the putative father about his rights to file a notice of intent to claim paternity.

House Bill 4661 (H-1) would amend the Adoption Code to require a man who wished to be notified of a proceeding for adoption of a child or termination of parental rights regarding a child he may have fathered to register with the Responsible Father Registry.

The bill also would refer to a man who registered, rather than a person filing a notice of intent to claim paternity of a child born out of wedlock, in provisions regarding the child's assumed father, a rebuttable presumption of paternity, and entitlement to notice of any hearing to determine the identity of the child's father or to determine or terminate his paternal rights.

House Bill 4662 (H-1) would amend the Adoption Code to authorize a court to permanently terminate the parental rights of a putative father who did not register with the Registry, for a child born on or after January 1, 2014.

House Bills 4660 (H-1), 4661 (H-1), and 4662 (H-1) are tie-barred to House Bill 4659. All of the bills would take effect on January 1, 2014.

House Bill 4659 (H-1)

Responsible Father Registry

The bill would require the DCH to administer and maintain a registry known as the "Responsible Father Registry". The DCH would have to include in the Registry all

registrations filed as described below and all registrations filed in another state under similar laws of that state and presented to the DCH for filing.

Except as otherwise provided or unless notice were given, a man who wished to be notified of a proceeding for adoption of a child or termination of parental rights regarding a child whom he may have fathered would have to register before the child's birth or within five days, excluding weekends and holidays, after the child's birth. A registrant promptly could notify the Registry of any change in the registered information, including change of address. The DCH would have to incorporate all new information received into its records, but would not have to obtain current information for incorporation in the Registry.

A man's parental rights would not be waived by failing to register if he had established paternity according to the Paternity Act or the Acknowledgment of Parentage Act.

Failure to register would waive a man's right to receive the notice to which he was otherwise entitled and would be a denial of his interest in custody of the child. This denial would result in the court's termination of the man's parental rights, unless he was led to believe through the birth mother's fraud that the pregnancy was terminated or the mother miscarried when in fact the baby was born, or that the child died when in fact the child was alive. The man would have to register within five days, excluding weekends and holidays, after discovering the fraud.

A child placing agency or an attorney involved in the proposed adoption would have to notify a registrant who registered in a timely manner of a proceeding for the adoption of a child or termination of parental rights. A man who registered in a timely manner would be entitled to notice of any hearing involving the child to determine the child's father's identity or to determine or terminate the father's parental rights to that child.

A man who engaged in sexual intercourse with a woman would be considered to be on legal notice that a child could be conceived, and the man would be entitled to all legal rights and obligations as a result. Lack of knowledge of the pregnancy would not excuse failure to register in a timely manner.

If the identity and whereabouts of the putative father or alleged father were reasonably ascertainable, a child placing agency or attorney involved in the proposed adoption would have to give the putative or alleged father written notice of the mother's intended release or consent to adoption and the availability of registration with the Registry by personal service or by certified mailing return receipt request with delivery restricted to the addressee using the man's last known address. Personal service or certified mailing could be either before or after the child's birth. If before the child's birth, the man would have a maximum of five days, excluding weekends and holidays, from the date of the birth to register. Otherwise, the man would have a maximum of five days, excluding weekends and holidays, from the date of the personal service or receipt of the certified mailing to register. The child placing agency or attorney would have to prepare an affidavit documenting all efforts made to give the putative or alleged father the required notice.

The DCH would have to prepare a form for registering with the Registry that included all of the following:

- The registrant's name, date of birth, and Social Security number.
- The registrant's driver license number and state of issuance.
- The registrant's home address, telephone number, and employer.
- The name, date of birth, ethnicity, address, and telephone number of the mother, if known.
- The state, city, and place where conception occurred and the approximate date of possible conception.

- The child's place and date of birth, if known.
- The child's name and gender, if known.
- The registrant's signature.

A registration form would not be complete unless signed by the registrant and notarized.

The form also would have to include a statement regarding all of the following:

- Registration in a timely manner would entitle the registrant to notice of a proceeding for adoption of the child or termination of the registrant's parental rights.
- Registration would not initiate a proceeding to establish paternity.
- The information disclosed on the form could be used against the registrant to establish paternity.
- Services to assist in filing with the Registry would be available to the registrant through the DCH.
- The registrant also should register in another state if conception or the child's birth occurred in another state.
- Information on other states' registries could be available from the DCH.
- The form would be signed under penalty of perjury.

The DCH would not have to locate the mother of a child who was the subject of a registration, but would have to send a copy of the notice of registration to the mother if an address were provided.

Information contained in the Registry would be confidential and could be released on request only to one or more of the following:

- The registrant.
- A court of Michigan or another state, or a person designated by a court.
- The mother of the child who was the subject of the registration.
- An agency authorized by law to receive the information.
- A child placing agency of Michigan or another state.
- A support enforcement agency.
- The child's guardian ad litem.
- A party or the party's attorney of record in an adoption, custody, or paternity proceeding or a proceeding for termination of parental rights, regarding a child who was the subject of the registration.
- A putative father registry in another state.

Information contained in the Registry would be exempt from disclosure under the Freedom of Information Act.

An individual who intentionally released Registry information to an individual or agency not authorized to receive it would be guilty of a misdemeanor. (The Michigan Penal Code prescribes a penalty of imprisonment for a maximum of 90 days and/or a maximum fine of \$500 for a misdemeanor for which no penalty is specified.)

When the DCH received a record of adoption, the Department would have to cross-reference that information with the Registry information and remove all entries relating to the child who was the subject of the adoption record.

If paternity had not been established according to the Paternity Act or the Acknowledgment of Parentage Act, a petitioner for adoption would have to obtain from the DCH a certificate that a search of the Registry was performed. If the child's conception or birth occurred in another state, the petitioner would have to obtain a certificate from that state indicating that a search of the putative father registry was performed, if that state had such a registry.

Upon request, the DCH would have to give a certificate of search of the Registry to an individual, court, or agency that was authorized to receive the information. The certificate would have to be signed on behalf of the Department. Additionally, the certificate would have to state that a Registry search had been made and that either a registration containing the information required to identify the registrant had been found and was attached to the certificate, or that a registration had not been found. Within four business days after receiving the request, the DCH would have to mail the certificate to the requester. Upon request and payment of any additional costs, the Department would have to have the certificate delivered by overnight mail, in person, by messenger, by facsimile, or by other electronic communication. The Department's certificate or an appropriate certificate from another state would be sufficient proof that the Registry was searched.

A certificate of search and the required affidavit documenting efforts to notify the father of the proposed adoption would have to be filed with the court before a proceeding of adoption of a child born out of wedlock or for termination of parental rights regarding a child could be concluded.

A certificate of the Registry search would be admissible in a proceeding for adoption or termination of parental rights and any other relevant legal proceeding.

The DCH would have to allow for an online update of information to the registrant. In addition, the DCH would have to produce a pamphlet or other publication informing the public about the Registry that would have to include at least all of the following information:

- Procedures for registering.
- The consequences of registering and failing to register in a timely manner.
- A description of the Registry, including to whom and under what circumstances it applied.
- The time limits and responsibilities for filing.
- The procedures for updating registration information online.
- Other appropriate provisions.

The pamphlet or publication would have to include a detachable registration form that met the bill's requirements, was suitable for U.S. mail, and was addressed to the Registry. The pamphlet or publication would have to be made available for distribution at all DCH offices and all local Department offices. The DCH also would have to provide the pamphlet or publication to hospitals, libraries, medical clinics, correctional facilities, county or city jails or lockups, schools, universities, courts, child placing agencies, and other providers of child-related services upon request.

In addition, the DCH would have to provide information to the public through public service announcements (PSAs), or other ways to deliver the information to the public about the Registry and its services. Beginning January 1, 2015, the DCH could discontinue providing information about the Registry through PSAs.

The bill would create the Registry Fund within the State Treasury. The State Treasurer could receive money or other assets for deposit into the Fund. The Treasurer would have to direct the Fund's investment, and credit to it any interest and earnings. Money in the Fund at the close of the fiscal year would remain in the Fund and would not lapse to the General Fund. The DCH would be the Registry Fund administrator for auditing purposes.

The DCH would have to spend Fund money, upon appropriation, only for the purposes of implementing and administering the provisions related to the Fund and the Registry.

House Bill 4660 (H-1)

Under the Adoption Code, except as otherwise provided, if a child is born out of wedlock and the release or consent of the biological father cannot be obtained, the child may not be placed for adoption until the father's parental rights are terminated by a court. Under the bill, this provision would apply if the father's release or consent could not be obtained or the biological father had registered with the Responsible Father Registry.

The bill would repeal Section 34 of the Code. Under that section, in order to provide due notice at the earliest possible time to a putative father who may have an interest in the custody of an expected child or in the mother's intended release of an expected child for adoption or consent to adoption, and in order to facilitate early placement of a child for adoption, a woman pregnant out of wedlock may file with the court an ex parte petition that evidences her intent to release her expected child for adoption or to consent to the child's adoption. The petition must indicate the approximate date and location of conception and the expected date of her confinement, allege that a particular person is the putative father of the expected child, and request the court to notify him about his rights to file a notice of intent to claim paternity. The court must issue a notice of intent to release or consent, which must be served upon the putative father. A notice of intent to release or consent must do all of the following:

- Indicate the approximate date and location of the child's conception and the expected date of the mother's confinement.
- Inform the putative father of his right to file a notice of intent to claim paternity before the child's birth, as well as the rights to which that filing will entitle him.
- Inform the putative father that his failure to file will constitute a waiver of his right to receive the notice to which he would otherwise be entitled and constitute a denial of his interest in the child's custody, which will result in the court's termination of his rights to the child.

Under Section 36, if a child is claimed to be born out of wedlock and the mother executes or proposes to execute a release or consent relinquishing her rights to the child or joins in a petition for adoption filed by her husband, and the release or consent of the natural father cannot be obtained, the judge must hold a hearing as soon as practical to determine whether the child was born out of wedlock, to determine the identity of the father, and to determine or terminate the father's rights.

Proof of service of a notice of intent to release or consent or the putative father's verified acknowledgment of notice must be filed with the court, if the notice was given to the putative father. The bill would delete this requirement.

The Code requires the court to request the Vital Records Division of the DCH to send to the court a copy of any notice of intent to claim paternity of the particular child that the Division has received. Under the bill, instead, the court would have to request the Vital Records Division to send the court a copy of any information regarding a putative father who had registered with the proposed Registry.

Currently, notice of the hearing under Section 36 must be served upon the following:

- A putative father who has filed a timely notice of intent to claim paternity.
- A putative father who was not served a notice of intent to release or consent at least 30 days before the expected date of confinement specified in the notice.
- Any other male who was not served pursuant to Section 34 with a notice of intent to release or consent and who the court has reason to believe may be the child's father.

The bill would delete this language. Instead, notice of the hearing would have to be served on a putative father who had registered with the Registry.

The Code requires the court to receive evidence as to the identity of the child's father, and enter a finding identifying the father or declaring that his identity cannot be determined. Under the bill, in lieu of the mother's live testimony, the court could receive an affidavit or verified written declaration from the mother as evidence of the identity of the child's father.

If the court finds that the child's father is a person who did not receive either a timely notice of intent to release or consent under Section 34 or a required notice of a hearing under Section 36, and who has not waived his right to notice and is not present at the hearing, the court must adjourn further proceedings until he is served with a notice. The bill would delete the reference to the notice under Section 34, and refer to a father who registered with the Registry in a timely manner but did not receive the required notice under Section 36, and had not waived his right to notice and was not present at the hearing.

House Bill 4661 (H-1)

Under the Adoption Code, before the birth of a child born out of wedlock, a person claiming under oath to be the child's father may file a verified notice of intent to claim paternity in any county of the State. The form must be prescribed by the DCH Director and provided to the court. The notice must include the claimant's address. On the next business day after receiving the notice, the court must transmit it to the Vital Records Division. The bill would delete all of these provisions.

Under the bill, if a man wished to be notified of a proceeding for adoption of a child or termination of parental rights regarding a child whom he may have fathered, the man would have to register with the Responsible Father Registry before the child's birth or within five days, excluding weekends and holidays, after the child's birth.

Currently, if the mother's address is stated on the notice of intent to claim paternity, the Vital Records Division must send a copy of the notice to the mother at the stated address. The bill would refer to the Registry entry, rather than the notice of intent.

A person filing a notice of intent to claim paternity is presumed to be the child's father unless the mother denies that he is the father. The bill would refer to a man registered with the Responsible Father Registry, rather than a person filing a notice of intent to claim paternity. A notice of intent to claim paternity is admissible in a paternity proceeding under the Paternity Act and creates a rebuttable presumption as to the paternity of a child for that Act's purposes. The bill would delete this provision. The notice of intent also creates a rebuttable presumption as to paternity for purposes of dependency or neglect proceedings under the juvenile code. The bill would refer to registration with the Responsible Father Registry, rather than the notice of intent to claim paternity.

A person who files a timely notice of intent to claim paternity is entitled to notice of any hearing involving that child to determine the father's identity or to determine or terminate his paternal rights. The bill would refer to a man who registers with the Registry in a timely manner, rather than a person who files a notice of intent to claim paternity.

House Bill 4662 (H-1)

Under the Adoption Code, if the court has proof that the person whom it determines to be the child's father was served timely with a notice of intent to release or consent or was served with or waived the notice of hearing required by Section 36, the court may permanently terminate the putative father's parental rights under any of the following circumstances:

- He submits a verified affirmation of his paternity and a denial of his interest in custody of the child.
- He files a disclaimer of paternity, which constitutes a waiver of notice of hearing and a denial of his interest in custody of the child.
- He was served with a notice of intent to release or consent in accordance with Section 34 at least 30 days before the expected date of the mother's confinement or child's birth.
- He is given proper notice of hearing but either fails to appear, or appears and denies his interest in custody of the child.

Under the bill, these provisions would apply in the case of a child born on or before December 31, 2013. For a child born after that date, if the court were notified that the person whom it determined to be a child's father had not filed in a timely manner with the Responsible Father Registry, the court could permanently terminate his parental rights.

If the identity of the father cannot be determined, or if his identity is known but his whereabouts cannot be determined, the court must take evidence to determine the facts in the matter. The court may terminate the putative father's parental rights if it finds from the evidence that reasonable effort has been made to identify and locate the father and that either of the following circumstances exists:

- The putative father, whose identity is not known, has not made provision for the child's care and did not provide support for the mother during her pregnancy or confinement.
- The putative father, whose identity is known but whose whereabouts are unknown, has not provided support for the mother, has not shown any interest in the child, and has not made provision for the child's care, for at least 90 days preceding the hearing required under Section 36.

Under the bill, these provisions would apply in the case of a child born on or before December 31, 2013. For a child born after that date, if the putative father had not registered, the court could terminate his parental rights.

MCL 333.2805 et al. (H.B. 4659)
 710.22 et al. (H.B. 4660)
 710.33 (H.B. 4661)
 710.37 (H.B. 4662)

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

House Bill 4659

Under the bill, the Department of Community Health would have to establish a registry, respond to information requests, notify mothers of registrations, and provide a pamphlet on the registry. The scope of these activities would require additional staffing, although the number of new employees required is difficult to estimate. The cost of wages and benefits for each new staff member would be approximately \$80,000. The cost of the staff could be offset by contributions to the Registry Fund proposed by the bill, as well as additional vital records fee revenue from searches of entries on the registry.

House Bill 4660

The bill would have no fiscal impact on State or local government.

House Bill 4661

The bill would have no direct fiscal impact on state or local government. The costs and revenue due to the registry referred to in House Bill 4661 (H-1) would be tied to the provisions of House Bill 4659 (H-1), which would create the registry.

House Bill 4662

To the extent that the bill would expedite the process of terminating the parental rights of a putative father, the bill could result in reduced caseload for the family court.

Additionally, if the bill expedited the process of placing adoptees and finalizing those adoptions that are presently delayed by the process of providing notice to the putative father, then the Department of Human Services could pay higher incentive payments to placement agencies.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.