

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 373

(Chair, Judiciary Committee)(By Request - Departmental
- Human Services)

Judiciary

Family Law - Paternity and Birth Certificates

This departmental bill authorizes a court to disestablish an individual's paternity under specified circumstances and alters the circumstances under which a declaration of paternity may be set aside. It also expands the circumstances under which the Secretary of Health must make a new birth certificate for an individual.

Fiscal Summary

State Effect: The bill does not materially affect the workload of the Department of Human Services (DHS), the Judiciary, or the Maryland Department of Health (MDH). Revenues are not materially affected.

Local Effect: The bill does not materially affect the workload of the circuit courts.

Small Business Effect: DHS has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary/Current Law: Statutory provisions set forth a process by which an unmarried father and mother must be provided an opportunity to execute an affidavit of parentage. An affidavit of parentage includes specified items, including a statement that the affidavit constitutes a legal finding of paternity, a statement by the mother consenting to the assertion of paternity and acknowledging that her cosignatory is the only possible father, and a statement by the father that he is the natural father. After the expiration of a

60-day period, an executed affidavit of parentage may be challenged in court only on the basis of fraud, duress, or material mistake of fact. The bill prohibits a court from disestablishing an individual's paternity based on these grounds if the individual executed the affidavit knowing he was not the father. The bill also authorizes a court to disestablish an individual's paternity only if the court finds that doing so is in the best interest of the child.

Under current law, a declaration of paternity in an order is final, but may be modified or set aside (1) in the manner and to the extent that any order or decree of an equity court is subject to the revisory power of the court, as specified; or (2) if a blood or genetic test done in accordance with statutory provisions establishes the exclusion of the individual named as the father in the order. The bill adds a requirement that the court must also find that modifying or setting aside the declaration of paternity is in the best interest of the child.

Current law requires the Secretary of Health to make a new birth certificate if MDH receives satisfactory proof that the individual was born in the State and one of a list of specified circumstances has occurred, including if a father is not named on an earlier certificate of birth and has acknowledged himself by affidavit to be the father and the mother has consented by affidavit to the acknowledgement. The bill adds that a new birth certificate must be made for an individual born in the State if a father is named on an earlier birth certificate and (1) an executed affidavit of parentage is rescinded; (2) a court disestablishes paternity; or (3) a court modifies or sets aside a declaration of paternity.

Background: DHS advises that courts are required to conduct a best interest analysis before disestablishing the paternity of a child born to a *married* couple (see, *e.g.*, *Sieglein v. Schmidt*, 224 Md. App. 222, 243 (2015)), but not an unmarried couple. The bill eliminates that distinction and ensures that a court must always consider a child's best interest before disestablishing paternity, regardless of marital status. It also prevents a man who voluntarily executes an affidavit of parentage with the knowledge that he is not the biological father from later avoiding the obligation to support the child by relying on genetic testing that excludes him as the biological father. DHS also indicates that the Division of Vital Records is not authorized to revise birth certificates to remove the name of a man whose paternity is disestablished unless there is a court order specifically requiring it to do so.

State Revenues: Temporary Cash Assistance (TCA) recipients must assign their support rights to the State and federal governments as partial reimbursement for payments made on behalf of the children of the obligor. As a result, TCA child support collections are distributed 50% to the State and 50% to the federal government. Accordingly, special fund revenues may increase to the extent that courts disestablish paternity (and the related responsibility for parents to support their minor children) in fewer cases. Any such impact

cannot be reliably estimated beforehand, but is not anticipated to materially impact State finances.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Human Services; Department of Legislative Services

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Child Support-Affidavit of Parentage

BILL NUMBER: HB 373

PREPARED BY: Department of Human Services
(Dept./Agency)

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS