

1 HB590
2 200461-1
3 By Representative Isbell
4 RFD: Judiciary
5 First Read: 08-MAY-19

8 SYNOPSIS: Under existing law, a man is presumed to be
9 the father of a child if he and the mother of the
10 child are married to each other and the child is
11 born during the marriage. If the presumed father
12 persists in his status as the legal father of a
13 child, neither the mother nor any other individual
14 may maintain an action to disprove paternity.

15 This bill would authorize a man who is not
16 the presumed father of a child but who believes
17 himself to be that child's biological father, to
18 petition the court under certain circumstances for
19 genetic testing to challenge the presumption of
20 paternity, and would provide that if the genetic
21 testing discloses results which identify that man
22 as the biological father, a court shall make a
23 finding of paternity in favor of that man which
24 would result in a loss of standing for the presumed
25 father.

26 This bill would also provide that a presumed
27 father who fails to answer the court or participate

1 in related proceedings would be deemed to have
2 ceased in his persistence as the presumed father.

3 This bill would also provide a statute of
4 limitations of four years for a man who is not a
5 child's presumed father to petition for an
6 establishment of paternity, with the exception that
7 a man is not bound by the statute of limitations if
8 he married the mother of a child in apparent
9 compliance with the law, the child was born during
10 the marriage or 300 days after the marriage, the
11 presumed father was not in physical contact with
12 the mother during any period of time in which the
13 child could have been conceived, the presumed
14 father has not held himself out to be the father of
15 the child during the child's life, and the child
16 has not been adopted.

17 This bill would also provide that standing
18 to petition for an establishment of paternity
19 ceases upon the adoption of the child.

20 This bill would also provide that standing
21 to petition for an establishment of paternity
22 ceases if the presumed father is both shown to have
23 been in physical contact with the mother during any
24 period of time in which the child could have been
25 conceived and to have held himself out to be the
26 father of the child at any point during the child's
27 life.

1 This bill would also clarify an
2 inconsistency in existing law relating to
3 jurisdiction.

4
5 A BILL
6 TO BE ENTITLED
7 AN ACT

8
9 Relating to the presumption of paternity; to amend
10 Section 26-17-604, Code of Alabama 1975, to make a technical
11 change; and to amend Section 26-17-607, Code of Alabama 1975,
12 to authorize a man who is not the presumed father of a child,
13 but who believes himself to be that child's biological father,
14 to petition the court for genetic testing to make an
15 establishment of paternity under certain circumstances; to
16 provide that if the genetic testing discloses results which
17 identify that man as the biological father, a court shall make
18 a finding of paternity in favor of that man which would result
19 in a loss of standing for the presumed father; to provide that
20 a presumed father who fails to answer the court or participate
21 in related proceedings would be deemed to have ceased in his
22 persistence as the presumed father; and to provide a statute
23 of limitations of four years for a man who is not a child's
24 presumed father to petition for an establishment of paternity,
25 with certain exceptions and limitations.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Section 26-17-604, Code of Alabama 1975,
2 is amended to read as follows:

3 "§26-17-604.

4 "(a) An individual may not be adjudicated to be a
5 parent unless the court has personal jurisdiction over the
6 individual.

7 "(b) A court of this state having jurisdiction to
8 adjudicate parentage may exercise personal jurisdiction over a
9 nonresident individual, or the guardian or conservator of the
10 individual, if the conditions prescribed in Section ~~30-3A-201~~
11 30-3D-201 are fulfilled.

12 "(c) Lack of jurisdiction over one individual does
13 not preclude the court from making an adjudication of
14 parentage binding on another individual over whom the court
15 has personal jurisdiction.

16 Section 2. Section 26-17-607, Code of Alabama 1975,
17 is amended to read as follows:

18 "§26-17-607.

19 "~~(a) Except as otherwise provided in subsection (b),~~
20 ~~a~~ A presumed father may bring an action to disprove paternity
21 at any time. ~~If the presumed father persists in his status as~~
22 ~~the legal father of a child, neither the mother nor any other~~
23 ~~individual may maintain an action to disprove paternity.~~

24 "(b) (1) A man believing himself to be the biological
25 father of a child and disputing a presumed father's paternity
26 of that child may bring an action to prove paternity no later
27 than the fourth anniversary of the child's birth date unless

1 otherwise provided by subsection (c). The court, upon petition
2 by that man, shall order genetic testing of that man, the
3 child, and the presumed father pursuant to Article 5 of this
4 Chapter, in order to make an establishment of paternity. If
5 the results of the ordered genetic testing disclose results
6 which identify that man as the father of the child, the court
7 shall make a finding of paternity in favor of that man.

8 "(2) A finding of paternity in favor of a petitioner
9 under this subsection shall result in the loss of standing for
10 the presumed father in matters relating to the child.

11 "(3) A presumed father who fails to answer the court
12 or participate in proceedings under this subsection shall be
13 deemed to have ceased in his persistence in his status as the
14 presumed father.

15 "(c) (1) Except as otherwise provided for in this
16 subsection, a man who married the mother of a child in
17 apparent compliance with the law under this chapter, even if
18 the attempted marriage is or could be declared invalid, may
19 maintain standing to petition for an establishment of
20 paternity of a child under subsection (b) at any time if all
21 of the following are true:

22 "a. The child was born during the invalid marriage.

23 "b. The child was born within 300 days after the
24 termination of the invalid marriage by death, annulment,
25 declaration of invalidity, or divorce.

1 "c. The presumed father was not in physical contact
2 with the mother during any period of time in which the child
3 could have been conceived.

4 "d. The presumed father has not held himself out to
5 be the child's father at any point during the child's life.

6 "For purposes of this section, the phrase "invalid
7 marriage" includes any common-law marriage attempted prior to
8 January 1, 2017, that was later found to be or could be found
9 to be invalid.

10 "(2) If a child for whom a dispute exists concerning
11 biological paternity has been adopted, standing to petition
12 for an establishment of paternity under this subsection shall
13 cease.

14 "(3) If the presumed father of a child for whom a
15 dispute exists concerning biological paternity was in physical
16 contact with the mother during any period of time in which the
17 child could have been conceived, and has held himself out to
18 be the child's father at any time during the child's life,
19 standing to petition for an establishment of paternity under
20 this section shall cease.

21 ~~"(b) (d)~~ A presumption of paternity under this
22 section may be rebutted in an appropriate action only by clear
23 and convincing evidence. ~~In the event two or more conflicting~~
24 ~~presumptions arise, that which is founded upon the weightier~~
25 ~~considerations of public policy and logic, as evidenced by the~~
26 ~~facts, shall control.~~ The presumption of paternity is rebutted

1 by a court decree establishing paternity of the child by
2 another man."

3 Section 3. This act shall become effective on the
4 first day of the third month following its passage and
5 approval by the Governor, or its otherwise becoming law.