

HOUSE BILL 373

D4, J1

9lr0095

By: **Chair, Judiciary Committee (By Request – Departmental – Human Services)**

Introduced and read first time: January 30, 2019

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Family Law – Paternity and Birth Certificates**

3 FOR the purpose of authorizing a court to disestablish an individual's paternity under
4 certain circumstances; prohibiting a court from disestablishing an individual's
5 paternity under certain circumstances; altering the circumstances under which a
6 declaration of paternity may be modified or set aside; expanding the circumstances
7 under which the Secretary of Health is required to make a new certificate of birth
8 for an individual; making certain conforming changes; and generally relating to
9 paternity and birth certificates.

10 BY repealing and reenacting, with amendments,
11 Article – Family Law
12 Section 5–1028 and 5–1038
13 Annotated Code of Maryland
14 (2012 Replacement Volume and 2018 Supplement)

15 BY repealing and reenacting, with amendments,
16 Article – Health – General
17 Section 4–211(a)
18 Annotated Code of Maryland
19 (2015 Replacement Volume and 2018 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
21 That the Laws of Maryland read as follows:

22 **Article – Family Law**

23 5–1028.

24 (a) An unmarried father and mother shall be provided an opportunity to execute
25 an affidavit of parentage in the manner provided under § 4–208 of the Health – General

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article.

2 (b) The affidavit shall be completed on a standardized form developed by the
3 Department.

4 (c) (1) The completed affidavit of parentage form shall contain:

5 (i) in ten point boldface type a statement that the affidavit is a legal
6 document and constitutes a legal finding of paternity;

7 (ii) the full name and the place and date of birth of the child;

8 (iii) the full name of the attesting father of the child;

9 (iv) the full name of the attesting mother of the child;

10 (v) the signatures of the father and the mother of the child attesting,
11 under penalty of perjury, that the information provided on the affidavit is true and correct;

12 (vi) a statement by the mother consenting to the assertion of
13 paternity and acknowledging that her cosignatory is the only possible father;

14 (vii) a statement by the father that he is the natural father of the
15 child; and

16 (viii) the Social Security numbers provided by each of the parents.

17 (2) Before completing an affidavit of parentage form, the unmarried
18 mother and the father shall be advised orally and in writing of the legal consequences of
19 executing the affidavit and of the benefit of seeking legal counsel.

20 (d) (1) An executed affidavit of parentage constitutes a legal finding of
21 paternity, subject to the right of any signatory to rescind the affidavit:

22 (i) in writing within 60 days after execution of the affidavit; or

23 (ii) in a judicial proceeding relating to the child:

24 1. in which the signatory is a party; and

25 2. that occurs before the expiration of the 60-day period.

26 (2) (i) After the expiration of the 60-day period, an executed affidavit
27 of parentage may be challenged in court only on the basis of fraud, duress, or material
28 mistake of fact.

29 (II) A COURT MAY DISESTABLISH AN INDIVIDUAL'S PATERNITY

1 ON THE BASIS OF FRAUD, DURESS, OR MATERIAL MISTAKE OF FACT UNDER THIS
2 PARAGRAPH ONLY IF THE COURT FINDS THAT THE DISESTABLISHMENT IS IN THE
3 BEST INTEREST OF THE CHILD.

4 ~~[(ii)]~~ **(III)** The [burden of proof shall be on the] challenger [to show
5 fraud, duress, or material mistake of fact] **HAS THE BURDEN OF PROOF UNDER THIS**
6 **PARAGRAPH.**

7 **(IV) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH**
8 **(I) OF THIS PARAGRAPH, A COURT MAY NOT DISESTABLISH AN INDIVIDUAL'S**
9 **PATERNITY UNDER THIS PARAGRAPH IF THE INDIVIDUAL EXECUTED THE AFFIDAVIT**
10 **KNOWING HE WAS NOT THE FATHER.**

11 ~~[(iii)]~~ **(V)** The legal responsibilities of any signatory arising from the
12 affidavit, including child support obligations, may not be suspended during the challenge,
13 except for good cause shown.

14 (e) The Administration shall prepare written information to be furnished to
15 unmarried mothers under § 4–208 of the Health – General Article concerning the benefits
16 of having the paternity of their children established, including the availability of child
17 support enforcement services.

18 (f) The Department shall make the standardized affidavit forms available to all
19 hospitals in the State.

20 (g) The Secretary, in consultation with the Maryland Department of Health and
21 the Maryland Hospital Association, shall adopt regulations governing the provisions of this
22 section and § 4–208 of the Health – General Article.

23 5–1038.

24 (a) (1) Except as provided in paragraph (2) of this subsection, a declaration of
25 paternity in an order is final.

26 (2) (i) A declaration of paternity may be modified or set aside:

27 1. **A.** in the manner and to the extent that any order or
28 decree of an equity court is subject to the revisory power of the court under any law, rule,
29 or established principle of practice and procedure in equity; or

30 ~~[2.]~~ **B.** if a blood or genetic test done in accordance with §
31 5–1029 of this subtitle establishes the exclusion of the individual named as the father in
32 the order; **AND**

33 **2. IF THE COURT FINDS THAT MODIFYING OR SETTING**
34 **ASIDE THE DECLARATION OF PATERNITY IS IN THE BEST INTEREST OF THE CHILD.**

1 (ii) Notwithstanding subparagraph (i) of this paragraph, a
 2 declaration of paternity may not be modified or set aside if the individual named in the
 3 order acknowledged paternity knowing he was not the father.

4 (b) Except for a declaration of paternity, the court may modify or set aside any
 5 order or part of an order under this subtitle as the court considers just and proper in light
 6 of the circumstances and in the best interests of the child.

7 Article – Health – General

8 4–211.

9 (a) Except as provided in subsection (d) of this section, the Secretary shall make
 10 a new certificate of birth for an individual if the Department receives satisfactory proof
 11 that:

12 (1) The individual was born in this State; and

13 (2) Regardless of the location, one of the following has occurred:

14 (i) The previously unwed parents of the individual have married
 15 each other after the birth of the individual;

16 (ii) A court of competent jurisdiction has entered an order as to the
 17 parentage, legitimation, or adoption of the individual; [or]

18 (iii) If a father is not named on an earlier certificate of birth:

19 1. The father of the individual has acknowledged himself by
 20 affidavit to be the father; and

21 2. The mother of the individual has consented by affidavit to
 22 the acknowledgment; OR

23 (IV) IF A FATHER IS NAMED ON AN EARLIER CERTIFICATE OF
 24 BIRTH:

25 1. AN EXECUTED AFFIDAVIT OF PARENTAGE IS
 26 RESCINDED UNDER § 5–1028(D)(1) OF THE FAMILY LAW ARTICLE;

27 2. A COURT DISESTABLISHES PATERNITY UNDER §
 28 5–1028(D)(2) OF THE FAMILY LAW ARTICLE; OR

29 3. A COURT MODIFIES OR SETS ASIDE A DECLARATION
 30 OF PATERNITY UNDER § 5–1038 OF THE FAMILY LAW ARTICLE.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2019.