

HOUSE BILL No. 4793

May 6, 1991, Introduced by Reps. Gubow, DeBeaussaert, Olshove, Law, Ciaramitaro, Emerson, DeMars, London, Kosteva, Leland, Hunter, Gire, Palamara, Pitoniak, Bennett, Gilmer, Power, Middaugh, Harder, Perry Bullard, Sikkema, Dolan, Jaye, Bankes, Weeks, O'Connor, Munsell, Willis Bullard, Muxlow, Berman and Webb and referred to the Committee on Judiciary.

A bill to amend section 7b of Act No. 91 of the Public Acts of 1970, entitled as amended
"Child custody act of 1970,"
as added by Act No. 340 of the Public Acts of 1982, being section 722.27b of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 7b of Act No. 91 of the Public Acts of
2 1970, as added by Act No. 340 of the Public Acts of 1982, being
3 section 722.27b of the Michigan Compiled Laws, is amended to read
4 as follows:

5 Sec. 7b. (1) ~~Except as provided in this subsection, a~~ A
6 grandparent of ~~the~~ A child may seek ~~an order for~~ A GRANDCHILD
7 visitation ORDER UNDER 1 OR MORE OF THE FOLLOWING CIRCUMSTANCES:
8 ~~in the manner set forth in this section only if a child custody~~
9 ~~dispute with respect to that child is pending before the court.~~

~~1 If a natural parent of an unmarried child is deceased, a parent
2 of the deceased person may commence an action for visitation.
3 Adoption of the child by a stepparent under chapter X of Act
4 No. 288 of the Public Acts of 1939, being sections 710.21 to
5 710.70 of the Michigan Compiled Laws, does not terminate the
6 right of a parent of the deceased person to commence an action
7 for visitation.~~

8 (A) IF AN ACTION FOR DIVORCE, SEPARATE MAINTENANCE, OR
9 ANNULMENT INVOLVING THE PARENTS OF THE GRANDCHILD IS PENDING
10 BEFORE THE COURT.

11 (B) IF THE PARENTS OF THE GRANDCHILD ARE DIVORCED, SEPARATED
12 UNDER A JUDGMENT OF SEPARATE MAINTENANCE, OR HAVE HAD THEIR MAR-
13 RIAGE ANNULLED.

14 (C) IF THE GRANDCHILD'S PARENT WHO IS THE CHILD OF THE
15 GRANDPARENTS IS DECEASED.

16 (D) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (10), IF
17 LEGAL CUSTODY OF THE GRANDCHILD HAS BEEN GIVEN TO A PERSON OTHER
18 THAN THE GRANDCHILD'S PARENT, OR THE GRANDCHILD IS PLACED OUTSIDE
19 OF AND DOES NOT RESIDE IN THE HOME OF A PARENT.

20 (E) IF THE GRANDPARENT HAS PROVIDED AN ESTABLISHED CUSTODIAL
21 ENVIRONMENT FOR THE GRANDCHILD AS DESCRIBED IN SECTION 7, WHETHER
22 OR NOT THE GRANDPARENT HAD CUSTODY PURSUANT TO A COURT ORDER, AT
23 ANY TIME DURING THE LIFE OF THE GRANDCHILD.

24 (F) IF A PARENT OF A GRANDCHILD HAS WITHHELD VISITATION
25 OPPORTUNITIES WITH THE CHILD FROM A GRANDPARENT TO RETALIATE
26 AGAINST THE GRANDPARENT FOR REPORTING CHILD ABUSE OR NEGLECT TO A

1 GOVERNMENTAL AUTHORITY WHERE THE GRANDPARENT HAD REASONABLE CAUSE
2 TO SUSPECT CHILD ABUSE OR NEGLECT.

3 (G) IF A PARENT OF THE GRANDCHILD IS LIVING SEPARATE AND
4 AWAY FROM THE OTHER PARENT AND GRANDCHILD FOR MORE THAN 1 YEAR.

5 (H) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2), IF THE
6 PARENTS OF THE GRANDCHILD HAVE NEVER BEEN MARRIED AND ARE NOT
7 RESIDING IN THE SAME HOUSEHOLD.

8 (2) ~~As used in this section, "child custody dispute"~~
9 ~~includes a proceeding in which any of the following occurs:~~ THE
10 COURT SHALL NOT PERMIT A PARENT OF A PUTATIVE FATHER TO SEEK AN
11 ORDER FOR GRANDCHILD VISITATION UNLESS THE PUTATIVE FATHER HAS
12 ACKNOWLEDGED PATERNITY IN WRITING, HAS BEEN DETERMINED TO BE THE
13 FATHER BY A COURT OF COMPETENT JURISDICTION, OR HAS CONTRIBUTED
14 REGULARLY TO THE SUPPORT OF THE GRANDCHILD.

15 ~~(a) The marriage of the child's parents is declared invalid~~
16 ~~or is dissolved by the court, or a court enters a decree of legal~~
17 ~~separation with regard to the marriage.~~

18 ~~(b) Legal custody of the child is given to a party other~~
19 ~~than the child's parent, or the child is placed outside of and~~
20 ~~does not reside in the home of a parent, excluding any child who~~
21 ~~has been placed for adoption with other than a stepparent, or~~
22 ~~whose adoption by other than a stepparent has been legally~~
23 ~~finalized.~~

24 (3) A grandparent seeking a grandchild visitation order
25 ~~may~~ SHALL commence an action for grandchild visitation AS
26 FOLLOWS: ~~, by complaint or complaint and motion for an order to~~
27 ~~show cause, in the circuit court in the county in which the~~

~~1 grandchild resides. If a child custody dispute is pending, the
2 order shall be sought by motion for an order to show cause.~~

3 (A) IF THE CIRCUIT COURT IN THIS STATE HAS CONTINUING JURIS-
4 DICTION OVER THE GRANDCHILD, A GRANDPARENT OF THE GRANDCHILD
5 SHALL SEEK A GRANDCHILD VISITATION ORDER BY FILING A MOTION FOR
6 VISITATION WITH THE CIRCUIT COURT IN THE COUNTY WHERE THE COURT
7 HAS CONTINUING JURISDICTION.

8 (B) IF THE CIRCUIT COURT IN THIS STATE DOES NOT HAVE CON-
9 TINUING JURISDICTION OVER THE GRANDCHILD, A GRANDPARENT OF THE
10 GRANDCHILD SHALL SEEK A GRANDCHILD VISITATION ORDER BY FILING A
11 COMPLAINT IN THE CIRCUIT COURT FOR THE COUNTY WHERE THE CHILD
12 RESIDES.

13 (4) The complaint or motion FOR VISITATION shall be accom-
14 panied by an affidavit setting forth facts supporting the
15 requested order. The grandparent shall give notice of the filing
16 to each ~~party~~ PERSON who has legal custody OR AN ORDER FOR
17 VISITATION of the grandchild. ~~A party having legal custody may
18 file an opposing affidavit. A hearing shall be held by the court
19 on its own motion or if a party so requests. At the hearing,
20 parties submitting affidavits shall be allowed an opportunity to
21 be heard. At the conclusion of the hearing, if the court finds-~~
22 IF THE GRANDPARENT SHOWS that it is in the best interests of the
23 ~~child~~ GRANDCHILD to enter a grandchild visitation order, the
24 court shall enter an order providing for reasonable visitation of
25 the ~~child~~ GRANDCHILD by the grandparent by general or specific
26 terms and conditions. ~~If a hearing is not held, the court shall
27 enter a grandchild visitation order only upon a finding that~~

~~1 visitation is in the best interests of the child. A grandchild~~
~~2 visitation order shall not be entered for the parents of a puta-~~
~~3 tive father unless the father has acknowledged paternity in writ-~~
~~4 ing, has been adjudicated to be the father by a court of compe-~~
~~5 tent jurisdiction, or has contributed regularly to the support of~~
~~6 the child or children. The court shall make a record of the rea-~~
~~7 sons for a denial of a requested~~ GRANTING OR DENYING A REQUEST
8 FOR grandchild visitation. ~~order.~~

9 ~~(4) A grandparent may not file more than once every 2~~
10 ~~years, absent a showing of good cause, a complaint or motion~~
11 ~~seeking a grandchild visitation order. If the court finds there~~
12 ~~is good cause to allow a grandparent to file more than 1 com-~~
13 ~~plaint or motion under this section in a 2 year period, the court~~
14 ~~shall allow the filing and shall consider the complaint or~~
15 ~~motion. The court may order reasonable attorney fees to the pre-~~
16 ~~vailing party.~~

17 (5) IF A GRANDPARENT SEEKS A GRANDCHILD VISITATION ORDER BY
18 FILING A MOTION FOR VISITATION IN A PENDING DIVORCE, SEPARATE
19 MAINTENANCE, OR ANNULMENT ACTION, ENTRY OF THE JUDGMENT OF
20 DIVORCE, SEPARATE MAINTENANCE, OR ANNULMENT DOES NOT DISMISS THE
21 GRANDPARENT'S MOTION FOR VISITATION.

22 (6) THE COURT MAY REFER A COMPLAINT OR MOTION FOR VISITATION
23 FILED UNDER THIS SECTION TO THE FRIEND OF THE COURT MEDIATION
24 SERVICE UNDER SECTION 13 OF THE FRIEND OF THE COURT ACT, ACT
25 NO. 294 OF THE PUBLIC ACTS OF 1982, BEING SECTION 552.513 OF THE
26 MICHIGAN COMPILED LAWS. IF THE COMPLAINT IS REFERRED TO THE
27 FRIEND OF THE COURT MEDIATION SERVICE, AND IF NO SETTLEMENT IS

1 REACHED THROUGH FRIEND OF THE COURT MEDIATION WITHIN 30 DAYS
2 AFTER THE DATE OF REFERRAL, THE COMPLAINT OR MOTION FOR VISITA-
3 TION SHALL BE HEARD BY THE COURT AS OTHERWISE PROVIDED IN THIS
4 SECTION.

5 (7) ~~(5)~~ The court shall not enter an order ~~restricting~~
6 ~~the movement of the grandchild if the restriction~~ PROHIBITING A
7 PERSON WHO HAS LEGAL CUSTODY OF A CHILD FROM CHANGING THE DOMI-
8 CILE OF THE CHILD IF THE PROHIBITION is solely for the purpose of
9 allowing ~~the~~ A grandparent to exercise the rights conferred in
10 a grandchild visitation order.

11 (8) ~~(6)~~ A grandchild visitation order entered in accord-
12 ance with this section ~~shall not be considered to have created~~
13 DOES NOT CREATE parental rights in the person or persons to whom
14 grandchild visitation rights are granted. The entry of a grand-
15 child visitation order ~~shall~~ DOES not prevent a court of compe-
16 tent jurisdiction from acting upon the custody of the child, the
17 parental rights of the child, or the adoption of the child.

18 (9) ~~(7)~~ The court AFTER A HEARING may enter an order modi-
19 fying or terminating a grandchild visitation order whenever
20 ~~such~~ THERE IS A CHANGE OF CIRCUMSTANCES AND a modification or
21 termination is in the best interests of the child.

22 (10) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (11), ADOP-
23 TION OF A CHILD OR PLACEMENT OF A CHILD FOR ADOPTION UNDER THE
24 MICHIGAN ADOPTION CODE, CHAPTER X OF ACT NO. 288 OF THE PUBLIC
25 ACTS OF 1939, BEING SECTIONS 710.21 TO 710.70 OF THE MICHIGAN
26 COMPILED LAWS, TERMINATES THE RIGHT OF A GRANDPARENT TO COMMENCE
27 AN ACTION FOR VISITATION OF THAT CHILD.

1 (11) ADOPTION OF A CHILD OR PLACEMENT OF A CHILD FOR
2 ADOPTION BY A STEPPARENT OR BY A PERSON WHO IS RELATED TO THE
3 CHILD WITHIN THE FIFTH DEGREE BY MARRIAGE, BLOOD, OR ADOPTION
4 UNDER THE MICHIGAN ADOPTION CODE, CHAPTER X OF ACT NO. 288 OF THE
5 PUBLIC ACTS OF 1939, DOES NOT TERMINATE THE RIGHT OF A GRANDPAR-
6 ENT TO COMMENCE AN ACTION FOR VISITATION OF THAT CHILD.

7 (12) A GRANDPARENT SHALL NOT FILE MORE THAN ONCE EVERY 2
8 YEARS, ABSENT A SHOWING OF GOOD CAUSE, A COMPLAINT OR MOTION
9 SEEKING A GRANDCHILD VISITATION ORDER. IF THE COURT FINDS THERE
10 IS GOOD CAUSE TO ALLOW A GRANDPARENT TO FILE MORE THAN 1 COM-
11 PLAINT OR MOTION UNDER THIS SECTION IN A 2-YEAR PERIOD, THE COURT
12 SHALL ALLOW THE FILING AND SHALL CONSIDER THE COMPLAINT OR
13 MOTION.

14 (13) UPON MOTION OF A PERSON, IF THE COURT FINDS THAT A
15 PERSON HAS ASSERTED A FRIVOLOUS CLAIM OR DEFENSE IN AN ACTION
16 UNDER THIS SECTION, THE COURT MAY AWARD COURT COSTS AND REASON-
17 ABLE ATTORNEY FEES TO THE PREVAILING PARTY. AS USED IN THIS SUB-
18 SECTION, "FRIVOLOUS" MEANS THAT AT LEAST 1 OF THE FOLLOWING CON-
19 DITIONS IS MET:

20 (A) A PARTY ACTED TO HARASS, EMBARRASS, OR CAUSE HARDSHIP TO
21 ANOTHER PARTY.

22 (B) A PARTY HAD NO FACTUAL OR LEGAL BASIS FOR HIS OR HER
23 CLAIM OR DEFENSE.

24 (14) AS USED IN THIS SECTION:

25 (A) "GRANDPARENT" MEANS A NATURAL OR ADOPTIVE PARENT OF A
26 CHILD'S NATURAL OR ADOPTIVE PARENT.

1 (B) "PARENT" MEANS THE NATURAL OR ADOPTIVE PARENT OF A
2 CHILD.

3 Section 2. This amendatory act shall not take effect unless
4 Senate Bill No. _____ or House Bill No. 4794 (request
5 no. 00880'91) of the 86th Legislature is enacted into law.