

# SENATE BILL No. 316

May 16, 1991, Introduced by Senators HONIGMAN, V. SMITH, STABENOW, WELBORN, EMMONS, CISKY and ARTHURHULTZ and referred to the Committee on Family Law, Criminal Law, and Corrections.

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 ANY OF THE FOLLOWING CIRCUMSTANCES: ~~in~~  
8 ~~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 THEIR MARRIAGE HAS  
13 BEEN ANNULLED.

14 (C) IF A GRANDPARENT'S CHILD IS DECEASED AND THAT CHILD IS  
15 THE PARENT OF THE GRANDCHILD.

16 (D) IF LEGAL CUSTODY OF THE GRANDCHILD HAS BEEN GIVEN TO A  
17 PERSON OTHER THAN THE GRANDCHILD'S PARENT, OR A CHILD IS PLACED  
18 OUTSIDE OF AND DOES NOT RESIDE IN THE HOME OF A PARENT, EXCLUDING  
19 A CHILD WHO HAS BEEN PLACED FOR ADOPTION WITH OTHER THAN A STEP-  
20 PARENT, OR WHOSE ADOPTION BY OTHER THAN A STEPPARENT HAS BEEN  
21 LEGALLY FINALIZED.

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

26 (F) IF A PARENT OF A GRANDCHILD HAS WITHHELD VISITATION  
27 OPPORTUNITIES WITH THE CHILD FROM A GRANDPARENT TO RETALIATE

1 AGAINST THE GRANDPARENT FOR REPORTING CHILD ABUSE OR NEGLECT TO A  
2 GOVERNMENTAL AUTHORITY WHERE THE GRANDPARENT HAS REASONABLE CAUSE  
3 TO SUSPECT CHILD ABUSE OR NEGLECT.

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

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

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

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

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

25 (3) A grandparent seeking a grandchild visitation order  
26 ~~may~~ SHALL commence an action for grandchild visitation AS  
27 FOLLOWS: ~~, by complaint or complaint and motion for an order to~~

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

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

9 (B) IF THE CIRCUIT COURT DOES NOT HAVE CONTINUING JURISDIC-  
10 TION OVER A CHILD, A GRANDPARENT OF THE CHILD SHALL SEEK A GRAND-  
11 CHILD VISITATION ORDER BY FILING A COMPLAINT IN THE CIRCUIT COURT  
12 IN THE COUNTY WHERE THE CHILD 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 to enter a grandchild visitation order, the court shall  
24 enter an order providing for reasonable visitation of the child  
25 by the grandparent by general or specific terms and conditions.  
26 ~~If a hearing is not held, the court shall enter a grandchild  
27 visitation order only upon a finding that visitation is in the~~

~~1 best interests of the child. A grandchild visitation order shall~~  
~~2 not be entered for the parents of a putative father unless the~~  
~~3 father has acknowledged paternity in writing, has been adjudi-~~  
~~4 cated to be the father by a court of competent jurisdiction, or~~  
~~5 has contributed regularly to the support of the child or~~  
~~6 children.~~ The court shall make a record of the reasons for ~~a~~  
~~7 denial of a requested~~ GRANTING OR DENYING A REQUEST FOR grand-  
~~8 child 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 SHALL NOT ACT AS A~~  
~~21 DISMISSAL OF THE GRANDPARENT'S MOTION.~~

~~22 (6) A COMPLAINT OR MOTION FOR VISITATION FILED UNDER THIS~~  
~~23 ACT MAY BE REFERRED BY THE COURT TO THE FRIEND OF THE COURT MEDI-~~  
~~24 ATION SERVICE UNDER SECTION 13 OF THE FRIEND OF THE COURT ACT,~~  
~~25 ACT NO. 294 OF THE PUBLIC ACTS OF 1982, BEING SECTION 552.513 OF~~  
~~26 THE 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 the~~  
6 ~~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 parental rights in the person or persons to whom grandchild visi-  
14 tation rights are granted. The entry of a grandchild visitation  
15 order shall not prevent a court of competent jurisdiction from  
16 acting upon the custody of the child, the parental rights of the  
17 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) ADOPTION OF THE CHILD BY A STEPPARENT UNDER THE  
23 MICHIGAN ADOPTION CODE, CHAPTER X OF ACT NO. 288 OF THE PUBLIC  
24 ACTS OF 1939, BEING SECTIONS 710.21 TO 710.70 OF THE MICHIGAN  
25 COMPILED LAWS, DOES NOT TERMINATE THE RIGHT OF A GRANDPARENT TO  
26 COMMENCE AN ACTION FOR VISITATION.

1 (11) THIS SECTION DOES NOT APPLY TO A GRANDPARENT OF A CHILD  
2 WHO HAS BEEN PLACED FOR ADOPTION WITH A PERSON OTHER THAN A  
3 STEPPARENT OR WHOSE ADOPTION BY A PERSON OTHER THAN A STEPPARENT  
4 HAS BEEN LEGALLY FINALIZED.

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

12 (13) UPON MOTION OF A PARTY, IF THE COURT FINDS THAT A PARTY  
13 HAS ASSERTED A VEXATIOUS CLAIM OR DEFENSE, THE COURT MAY AWARD  
14 COURT COSTS AND REASONABLE ATTORNEY FEES TO THE PREVAILING  
15 PARTY. AS USED IN THIS SUBSECTION, "VEXATIOUS" MEANS THAT AT  
16 LEAST 1 OF THE FOLLOWING CONDITIONS IS MET:

17 (A) A PARTY ACTED TO HARASS, EMBARRASS, OR CAUSE HARDSHIP TO  
18 ANOTHER PARTY.

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

21 (14) AS USED IN THIS SECTION:

22 (A) "GRANDPARENT" MEANS A NATURAL OR ADOPTIVE PARENT OF A  
23 CHILD'S NATURAL OR ADOPTIVE PARENT.

24 (B) "PARENT" MEANS THE NATURAL OR ADOPTIVE PARENT OF A  
25 CHILD.

1       Section 2. This amendatory act shall not take effect unless  
2 Senate Bill No. 317  
3                   of the 86th Legislature is enacted into law.