



HOUSE BILL No. 4063

February 2, 1993, Introduced by Rep. Gubow and referred to the Committee on Judiciary.

A bill to amend sections 26 and 45 of chapter X of Act No. 288 of the Public Acts of 1939, entitled as amended

"An act to revise and consolidate the statutes relating to certain aspects of the organization and jurisdiction of the probate court of this state, the powers and duties of such court and the judges and other officers thereof, certain aspects of the statutes of descent and distribution of property, and the statutes governing the change of name of adults and children, the adoption of adults and children, and the jurisdiction of the juvenile division of the probate court; to prescribe the powers and duties of the juvenile division of the probate court, and the judges and other officers thereof; to prescribe the manner and time within which actions and proceedings may be brought in the juvenile division of the probate court; to prescribe pleading, evidence, practice, and procedure in actions and proceedings in the juvenile division of the probate court; to provide for appeals from the juvenile division of the probate court; to prescribe the powers and duties of certain state departments, agencies, and officers; and to provide remedies and penalties for the violation of this act,"

section 26 as amended by Act No. 175 of the Public Acts of 1990 and section 45 as added by Act No. 72 of the Public Acts of 1982, being sections 710.26 and 710.45 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 26 and 45 of chapter X of Act No. 288
2 of the Public Acts of 1939, section 26 as amended by Act No. 175
3 of the Public Acts of 1990 and section 45 as added by Act No. 72
4 of the Public Acts of 1982, being sections 710.26 and 710.45 of
5 the Michigan Compiled Laws, are amended to read as follows:

6 CHAPTER X

7 Sec. 26. (1) Subsequent to or concurrent with the filing of
8 the adoption petition but before the hearing on the petition by
9 the court, the petitioner, the department, an employee or agent
10 of the court, or a child placing agency, as appropriate, shall
11 file ALL OF the following documentation:

12 (a) Except in instances of parental consent to adoption, a
13 copy of each release or order terminating parental rights over
14 the child ~~which has~~ HAVING a bearing upon the authority of a
15 person to execute the consent to adoption.

16 (b) A copy of the order of commitment, if a commitment was
17 made to a child placing agency or to the department.

18 (c) Proof of a guardian's appointment and authorization to
19 execute the release or consent to the child's adoption.

20 (d) A copy of the consent to adoption as required in this
21 chapter. IF THE CONSENT IS REQUIRED PURSUANT TO
22 SECTION 43(1)(B), (C), OR (D) OF THIS CHAPTER, THE CONSENT SHALL
23 BE FILED CONCURRENTLY WITH THE FILING OF THE ADOPTION PETITION
24 UNLESS A MOTION IS FILED PURSUANT TO SECTION 45 OF THIS CHAPTER.

25 (e) A copy of the adoptee's birth certificate, verification
26 of birth, hospital birth registration, or other satisfactory

1 proof of date and place of birth, if obtainable, unless this
2 filing is waived by written order of the PROBATE judge. ~~of~~
3 ~~probate.~~

4 (f) The report of the investigation prepared pursuant to
5 section 46 of this chapter.

6 (g) If the petition alleges nonsupport and noncommunication
7 by a parent, as described in section 51(6), an affidavit verify-
8 ing that fact.

9 (h) Any additional facts considered necessary by the court.

10 (2) Before or at the time of the hearing on the adoption
11 petition, the court shall inform the adoptee, if he or she is
12 14 years old or older, and the adoptive parents of the provisions
13 described in sections 68 and 68a. This subsection also applies
14 to a stepparent adoption and the adoption of a child related to
15 the petitioner within the fifth degree by marriage, blood, or
16 adoption.

17 (3) Before or at the time of the hearing on the adoption
18 petition, the court shall provide the adoptee, if he or she is 14
19 years old or older, and the adoptive parents with a list of adop-
20 tion support groups. This subsection also applies to a steppar-
21 ent adoption and to the adoption of a child related to the peti-
22 tioner within the fifth degree by marriage, blood, or adoption.

23 Sec. 45. (1) ~~If a representative or court whose consent is~~
24 ~~required under section 43(1)(b) to (d) of this chapter has not~~
25 ~~executed a consent within a reasonable period of time, a person~~
26 ~~who has filed a petition to adopt may file a motion with the~~
27 ~~court to determine whether the withholding of consent is~~

1 ~~arbitrary and capricious.~~ A COURT SHALL NOT ALLOW THE FILING OF
2 A PETITION TO ADOPT A CHILD IF THE CONSENT OF A REPRESENTATIVE OR
3 COURT IS REQUIRED PURSUANT TO SECTION 43(1)(B), (C), OR (D) OF
4 THIS CHAPTER UNLESS THE PETITION IS ACCOMPANIED BY THE REQUIRED
5 CONSENT OR A MOTION AS PROVIDED IN SUBSECTION (2).

6 (2) ~~If at a hearing, the court finds clear and convincing~~
7 ~~evidence that a consent required under section 43(1)(b) to (d) of~~
8 ~~this chapter is being arbitrarily and capriciously withheld, the~~
9 ~~court may terminate the rights of that representative or court,~~
10 ~~and enter a final order of adoption in accordance with this~~
11 ~~chapter.~~ IF AN ADOPTION PETITIONER HAS BEEN UNABLE TO OBTAIN THE
12 CONSENT REQUIRED BY SECTION 43(1)(B), (C), OR (D) OF THIS CHAP-
13 TER, THE PETITIONER MAY FILE A MOTION WITH THE COURT ALLEGING
14 THAT THE DECISION TO WITHHOLD CONSENT WAS ARBITRARY AND
15 CAPRICIOUS. A MOTION UNDER THIS SUBSECTION SHALL CONTAIN INFOR-
16 MATION REGARDING BOTH OF THE FOLLOWING:

17 (A) THE SPECIFIC STEPS TAKEN BY THE PETITIONER TO OBTAIN THE
18 CONSENT REQUIRED AND THE RESULTS, IF ANY.

19 (B) THE SPECIFIC REASONS WHY THE PETITIONER BELIEVES THE
20 DECISION TO WITHHOLD CONSENT WAS ARBITRARY AND CAPRICIOUS.

21 (3) IF CONSENT HAS BEEN GIVEN TO ANOTHER PETITIONER AND IF
22 THE CHILD HAS BEEN PLACED WITH THAT OTHER PETITIONER PURSUANT TO
23 AN ORDER UNDER SECTION 51 OF THIS CHAPTER, A MOTION UNDER THIS
24 SECTION SHALL NOT BE BROUGHT AFTER EITHER OF THE FOLLOWING:

25 (A) FIFTY-SIX DAYS FOLLOWING THE ENTRY OF THE ORDER PLACING
26 THE CHILD.

1 (B) ENTRY OF AN ORDER OF ADOPTION.

2 (4) UPON THE FILING OF A PETITION TO ADOPT A CHILD AND THE
3 MOTION DESCRIBED IN SUBSECTION (2), THE COURT MAY WAIVE OR MODIFY
4 THE FULL INVESTIGATION OF THE PETITION PROVIDED IN SECTION 46 OF
5 THIS CHAPTER. THE COURT SHALL DECIDE THE MOTION WITHIN 91 DAYS
6 AFTER THE FILING OF THE MOTION UNLESS GOOD CAUSE IS SHOWN.

7 (5) UNLESS THE PETITIONER ESTABLISHES BY CLEAR AND CONVINC-
8 ING EVIDENCE THAT THE DECISION TO WITHHOLD CONSENT WAS ARBITRARY
9 AND CAPRICIOUS, THE COURT SHALL DENY THE MOTION DESCRIBED IN SUB-
10 SECTION (2) AND DISMISS THE PETITION TO ADOPT.

11 (6) IF THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT
12 THE DECISION TO WITHHOLD CONSENT WAS ARBITRARY AND CAPRICIOUS,
13 THE COURT MAY TERMINATE THE RIGHTS OF THE APPROPRIATE COURT,
14 CHILD PLACING AGENCY, OR DEPARTMENT AND MAY ENTER FURTHER ORDERS
15 IN ACCORDANCE WITH THIS CHAPTER OR SECTION 18 OF CHAPTER XIIA AS
16 THE COURT CONSIDERS APPROPRIATE. IN ADDITION, THE COURT MAY
17 GRANT TO THE PETITIONER REIMBURSEMENT FOR PETITIONER'S COSTS OF
18 PREPARING, FILING, AND ARGUING THE MOTION ALLEGING THE WITHHOLD-
19 ING OF CONSENT WAS ARBITRARY AND CAPRICIOUS, INCLUDING A REASON-
20 ABLE ALLOWANCE FOR ATTORNEY FEES.

21 (7) ~~-(3)-~~ If the consent at issue is that required of the
22 juvenile division of the probate court under section 43(1)(c) of
23 this chapter, the motion shall be heard by a visiting judge
24 assigned pursuant to section 8212 of THE REVISED JUDICATURE ACT
25 OF 1961, Act No. 236 of the Public Acts of 1961, as amended,
26 being section 600.8212 of the Michigan Compiled Laws.