



HOUSE BILL No. 4195

February 10, 1993, Introduced by Reps. Gubow, Bobier, Olshove, DeMars, Yokich, Leland, Pitoniak and Gire and referred to the Committee on Judiciary.

A bill to amend section 6b of Act No. 91 of the Public Acts of 1970, entitled as amended

"Child custody act of 1970,"

as added by Act No. 315 of the Public Acts of 1990, being section 722.26b of the Michigan Compiled Laws; and to add section 6c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 6b of Act No. 91 of the Public Acts of
2 1970, as added by Act No. 315 of the Public Acts of 1990, being
3 section 722.26b of the Michigan Compiled Laws, is amended and
4 section 6c is added to read as follows:

5 Sec. 6b. (1) Except as otherwise provided in ~~subsection~~
6 SUBSECTIONS (2) AND (6), a guardian or limited guardian of a
7 child has standing to bring an action for custody of the child
8 pursuant to this act.

1 (2) A limited guardian of a child does not have standing to
2 bring an action for custody of the child if the parent or parents
3 of the child have substantially complied with a limited guardian-
4 ship placement plan regarding the child entered into pursuant to
5 section 424a of the revised probate code, Act No. 642 of the
6 Public Acts of 1978, being section 700.424a of the Michigan
7 Compiled Laws.

8 (3) If the circuit court does not have prior continuing
9 jurisdiction over the custody of a child, a child custody action
10 brought by a guardian or limited guardian of the child shall be
11 filed in the circuit court in the county in which the probate
12 court appointed the guardian.

13 (4) Upon the filing of a child custody action brought by a
14 guardian or limited guardian of the child, all guardianship pro-
15 ceedings concerning that child in the probate court shall be
16 stayed until disposition of the child custody action. An order
17 of the probate court concerning the guardianship of the child
18 shall continue in force until superseded by an order of the cir-
19 cuit court. If the circuit court awards custody of the child, it
20 shall send a copy of the judgment or order of disposition to the
21 probate court in the county that appointed the guardian or
22 limited guardian for the child.

23 (5) If a guardian or limited guardian of a child brings a
24 child custody action, the circuit court may request the supreme
25 court pursuant to section 225 of the revised judicature act of
26 1961, Act No. 236 of the Public Acts of 1961, being section
27 600.225 of the Michigan Compiled Laws, to assign the judge of the

1 probate court who appointed that guardian or limited guardian to
2 serve as a judge of the circuit court and hear the child custody
3 action.

4 (6) IN ADDITION TO THE RESTRICTION OF SUBSECTION (2), IF A
5 CUSTODY DISPUTE CONCERNING A CHILD IS NOT PENDING AND A GUARDIAN
6 OR LIMITED GUARDIAN BRINGS A CHILD CUSTODY ACTION UNDER THIS SEC-
7 TION, THE PROCEDURES PROVIDED IN SECTION 6C, INCLUDING DETERMINA-
8 TION OF STANDING, NOTICES, TIME LIMITS, AND ATTORNEY FEES, SHALL
9 BE FOLLOWED.

10 SEC. 6C. (1) IF A CUSTODY DISPUTE CONCERNING A CHILD IS NOT
11 PENDING, A THIRD PERSON WITH WHOM THE CHILD HAS RESIDED MAY BRING
12 AN ACTION IN THE CIRCUIT COURT FOR CUSTODY OF THE CHILD. THE
13 COURT SHALL DETERMINE WHETHER TO GRANT STANDING TO THE
14 THIRD-PERSON PLAINTIFF BASED ON ALL OF THE FOLLOWING FACTORS:

15 (A) LENGTH OF TIME THE CHILD RESIDED WITH THE THIRD PERSON.

16 (B) THE PARENT'S OR PARENTS' AND THE THIRD-PERSON'S INTENT
17 IN ESTABLISHING CARETAKING OF THE CHILD BY THE THIRD PERSON.

18 (C) FREQUENCY, TYPE, AND DURATION OF CONTACT BETWEEN THE
19 PARENT OR PARENTS AND THE CHILD DURING THE CHILD'S RESIDENCE WITH
20 THE THIRD PERSON.

21 (D) CHILD'S AGE.

22 (2) AN ACTION BROUGHT UNDER THIS SECTION SHALL INCLUDE AN
23 AFFIDAVIT SETTING FORTH FACTS RELATIVE TO EACH OF THE FACTORS
24 LISTED IN SUBSECTION (1) AND SUPPORTING THE CUSTODY REQUEST. THE
25 PLAINTIFF SHALL SEND NOTICE OF THE ACTION TO EACH PARTY WHO HAS
26 LEGAL CUSTODY OF THE CHILD AND, IF A PARENT OF THE CHILD DOES NOT

1 HAVE LEGAL CUSTODY AND THE PARENT'S PARENTAL RIGHTS HAVE NOT BEEN
2 TERMINATED, TO THAT PARENT.

3 (3) EXCEPT FOR GOOD CAUSE, WITHIN 14 DAYS AFTER AN ACTION
4 FOR CUSTODY IS FILED UNDER THIS SECTION, THE COURT SHALL HOLD A
5 HEARING ON THE ISSUE OF STANDING ONLY. THE PLAINTIFF HAS THE
6 BURDEN OF PROVING THAT THE PLAINTIFF SHOULD BE GRANTED STANDING
7 BASED ON THE FACTORS LISTED IN SUBSECTION (1).

8 (4) IN AN ACTION UNDER THIS SECTION AND BEFORE, DURING, OR
9 AFTER THE HEARING ON THE PLAINTIFF'S STANDING, THE COURT MAY
10 ORDER THAT A NECESSARY AND REASONABLE SUM BE PAID TO A PARTY'S
11 ATTORNEY BY THE OTHER PARTY. EITHER PARTY MAY REQUEST AN ORDER
12 UNDER THIS SUBSECTION. THE MOVING PARTY SHALL ALLEGE FACTS SHOW-
13 ING THAT THE PARTY IS UNABLE TO BEAR THE EXPENSE OF THE ACTION
14 WITHOUT THIS AID. THE COURT MAY REQUIRE THE DISCLOSURE OF ATTOR-
15 NEY FEES OR OTHER EXPENSES ALREADY PAID.

16 (5) A THIRD PERSON WHO IS A FOSTER PARENT UNDER CONTRACT
17 WITH THE DEPARTMENT OF SOCIAL SERVICES SHALL NOT FILE A COMPLAINT
18 UNDER THIS SECTION FOR CUSTODY OF THAT CHILD.