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BILL ANALYSIS



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Senate Bills 601 and 602
Sponsor: Senator Dave Honigman
Committee: Families, Mental Health and Human Services

Date Completed: 10-18-95

SUMMARY OF SENATE BILLS 601 and 602 as introduced 6-15-95:

Senate Bill 601 would amend the Michigan Adoption Code to delete a provision that, during the pendency of a stepparent adoption proceeding, a parent of a natural parent may seek an order for visitation of the adoptee in the manner set forth in the Child Custody Act. **Senate Bill 602** would amend the Child Custody Act to expand the circumstances under which a child's grandparent may seek a visitation order. Currently, a grandparent may seek a visitation order only if a child custody dispute is pending or if the child's natural parent is deceased. The bill would allow a grandparent to bring an action for visitation under those circumstances as well as in situations in which the child's parents were divorced or separated, legal custody had been given to someone other than the child's parent, the grandparent had provided an established custodial environment, the child's parent had withheld visitation, the child's parent had lived separately from the child and the other parent for more than one year, or the child's parents had never been married and were not living together.

The bills are tie-barred to each other. A more detailed description of Senate Bill 602 follows.

Currently, a child's grandparent may seek a visitation order only if a child custody dispute with respect to the child is pending before the court. If a natural parent of an unmarried child is deceased, a parent of the deceased parent may commence an action for visitation. "Child custody dispute" includes a proceeding in which the marriage of the child's parents is declared invalid or is dissolved by the court, or the court enters a decree of legal separation; or legal custody of the child is given to a party other than the child's parent, or the child is placed outside of the home of a parent, excluding any child who has been placed for adoption with someone other than a stepparent, or whose adoption by someone other than a stepparent has been legally finalized.

The bill provides, instead, that a child's grandparent could seek a grandchild visitation order under any of the following circumstances:

- An action for divorce, separate maintenance, or annulment involving the grandchild's parents was pending before the court.
- The grandchild's parents were divorced or separated under a judgment of separate maintenance, or their marriage had been annulled.
- The grandparent's child was deceased and that child was the grandchild's parent.
- Legal custody of the grandchild had been given to a person other than the grandchild's parent, or the grandchild was placed outside of and did not reside in the home of the parent,

- excluding a grandchild who had been placed for adoption with someone other than a stepparent or whose adoption by someone other than a stepparent had been legally finalized.
- The grandparent had provided an established custodial environment for the grandchild, whether or not the grandparent had custody pursuant to a court order, at any time during the grandchild's life.
 - The grandchild's parent had withheld visitation opportunities from the grandparent to retaliate against the grandparent for reporting child abuse or neglect to a governmental authority if the grandparent had reasonable cause to suspect abuse or neglect.
 - Except as provided concerning a putative father, the grandchild's parents had never been married and were not residing in the same household.

As the Act currently provides, a parent of a putative father could not seek a grandchild visitation order unless the putative father had acknowledged paternity in writing, had been judicially determined to be the father, or had contributed regularly to the child's support.

Under the Act, a grandparent seeking a grandchild visitation order may commence an action for visitation by complaint or complaint and motion for an order to show cause, in the circuit court in the county where the grandchild resides. If a custody dispute is pending, the order must be sought by motion for an order to show cause. The bill provides, instead, that a grandparent could commence an action for grandchild visitation by filing a motion for visitation with the circuit court in the county where the court had continuing jurisdiction. If the circuit court did not have continuing jurisdiction, the grandparent could seek a visitation order by filing a complaint in the circuit court in the county where the child resided.

As the Act currently requires, a complaint or motion would have to be accompanied by an affidavit setting forth facts supporting the requested order, and the grandparent would have to give notice to each person who had legal custody. The grandparent also would have to give notice to someone who had an order for visitation of the grandchild. The bill would delete language under which a party having legal custody may file an opposing affidavit; a hearing must be held by the court on its own motion or if a party so requests; parties submitting affidavits must be given an opportunity to be heard; and, if a hearing is not held, the court may enter a grandchild visitation order only upon a finding that visitation is in the child's best interests. Under the bill, if the grandparent showed (rather than if the court found) that it was in the best interests of the grandchild to enter a grandchild visitation order, the court would have to enter an order providing for reasonable visitation of the child by the grandparent by general or specific terms and conditions.

Currently, the court must make a record of the reasons for a denial of a requested grandchild visitation order. The bill would require the court to make a record of the reasons for granting or denying a request.

The bill specifies that, if a grandparent sought a grandchild visitation order by filing a motion for visitation in a pending divorce, separate maintenance, or annulment action, entry of the judgment of divorce, separate maintenance, or annulment would not be a dismissal of the grandparent's motion.

Under the bill, the court could refer a complaint or motion for visitation to the Friend of the Court mediation service. If the complaint were referred, and if no settlement were reached within 30 days after the date of referral, the complaint or motion for visitation would have to be heard by the court as otherwise provided.

The Act provides that the court may enter an order modifying or terminating a grandchild visitation order whenever a modification or termination is in the child's best interests. Under the bill, a hearing would have to be held and there would have to be a change in circumstances.

Under the bill, upon motion of a party, if the court found that a party had asserted a vexatious claim or defense, the court could award court costs and reasonable attorney fees to the prevailing party. "Vexatious" would mean that at least one of the following conditions was met:

- A party acted to harass, embarrass, or cause hardship to another party.
- A party had no factual or legal basis for his or her claim or defense.

The bill specifies that the section of the Act providing for grandparent visitation would not apply to a grandparent of a child who had been placed for adoption with a person other than a stepparent or whose adoption by a person other than a stepparent had been legally finalized.

The bill would define "grandparent" as a natural or adoptive parent of a child's natural or adoptive parent. "Parent" would mean the natural or adoptive parent of a child.

MCL 710.60 (S.B. 601)
722.27b (S.B. 602)

Legislative Analyst: S. Margules

FISCAL IMPACT

Senate Bill 601 would have no fiscal impact on State or local government.

The fiscal impact of Senate Bill 602 would be minimal since grandparents currently may seek a visitation order. By allowing grandparents to seek an order under additional circumstances, the bill could increase the number of complaints or motions filed with the court. It is estimated that the increase in Friend of the Court activities would be less than 1%.

Fiscal Analyst: M. Bain

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.