

SENATE BILL No. 401

April 19, 2001, Introduced by Senators BULLARD, NORTH, GARCIA and JAYE and referred to the Committee on Families, Mental Health and Human Services.

A bill to amend 1970 PA 91, entitled
"Child custody act of 1970,"
by amending sections 2 and 7b (MCL 722.22 and 722.27b), section 2
as amended by 1999 PA 156 and section 7b as amended by 1996
PA 19.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Agency" means a legally authorized public or private
3 organization, or governmental unit or official, whether of this
4 state or of another state or country, concerned in the welfare of
5 minor children, including a licensed child placement agency.

6 (b) "Attorney" means, if appointed to represent a child
7 under this act, an attorney serving as the child's legal advocate
8 in a traditional attorney-client relationship with the child, as
9 governed by the Michigan rules of professional conduct. An

1 attorney defined under this subdivision owes the same duties of
2 undivided loyalty, confidentiality, and zealous representation of
3 the child's expressed wishes as the attorney would to an adult
4 client.

5 (c) "Child" means minor child and children. Subject to
6 section 4a, for purposes of providing support, child includes a
7 child and children who have reached 18 years of age.

8 (d) "Guardian ad litem" means an individual whom the court
9 appoints to assist the court in determining the child's best
10 interests. A guardian ad litem does not need to be an attorney.

11 (E) "GRANDPARENT" MEANS A NATURAL OR ADOPTIVE PARENT OF A
12 CHILD'S NATURAL OR ADOPTIVE PARENT.

13 (F) ~~-(e)-~~ "Lawyer-guardian ad litem" means an attorney
14 appointed under section 4. A lawyer-guardian ad litem represents
15 the child, and has the powers and duties, as set forth in section
16 4.

17 (G) "PARENT" MEANS THE NATURAL OR ADOPTIVE PARENT OF A
18 CHILD.

19 (H) ~~-(f)-~~ "State disbursement unit" or "SDU" means the
20 entity established in section 6 of the office of child support
21 act, 1971 PA 174, MCL 400.236.

22 (I) ~~-(g)-~~ "Third person" means any individual other than a
23 parent.

24 Sec. 7b. (1) ~~Except as provided in this subsection, a~~
25 ~~grandparent of the child may seek an order for grandparenting~~
26 ~~time in the manner set forth in this section only if a child~~
27 ~~custody dispute with respect to that child is pending before the~~

~~1 court. If a natural parent of an unmarried child is deceased, a~~
~~2 parent of the deceased person may commence an action for grand-~~
~~3 parenting time. Adoption of the child by a stepparent under~~
~~4 chapter X of Act No. 288 of the Public Acts of 1939, being sec-~~
~~5 tions 710.21 to 710.70 of the Michigan Compiled Laws, does not~~
~~6 terminate the right of a parent of the deceased person to com-~~
~~7 mence an action for grandparenting time.~~ A CHILD'S GRANDPARENT
8 MAY SEEK A GRANDPARENTING TIME ORDER UNDER 1 OR MORE OF THE FOL-
9 LOWING CIRCUMSTANCES:

10 (A) AN ACTION FOR DIVORCE, SEPARATE MAINTENANCE, OR ANNUL-
11 MENT INVOLVING THE GRANDCHILD'S PARENTS IS PENDING BEFORE THE
12 COURT.

13 (B) THE GRANDCHILD'S PARENTS ARE DIVORCED, SEPARATED UNDER A
14 JUDGMENT OF SEPARATE MAINTENANCE, OR HAVE HAD THEIR MARRIAGE
15 ANNULLED.

16 (C) THE GRANDCHILD'S PARENT WHO IS A CHILD OF THE GRANDPAR-
17 ENTS IS DECEASED.

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

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

26 (F) THE GRANDCHILD'S PARENT HAS WITHHELD FROM THE
27 GRANDPARENT OPPORTUNITIES TO VISIT WITH THE GRANDCHILD TO

1 RETALIATE AGAINST THE GRANDPARENT FOR REPORTING CHILD ABUSE OR
2 NEGLECT TO THE FAMILY INDEPENDENCE AGENCY OR A LAW ENFORCEMENT
3 AGENCY IF THE GRANDPARENT HAD REASONABLE CAUSE TO SUSPECT CHILD
4 ABUSE OR NEGLECT.

5 (G) THE GRANDCHILD'S PARENT LIVES SEPARATE AND AWAY FROM THE
6 OTHER PARENT AND GRANDCHILD FOR MORE THAN 1 YEAR.

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

10 ~~(2) As used in this section, "child custody dispute"~~
11 ~~includes a proceeding in which any of the following occurs:~~

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

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

21 (2) THE COURT SHALL NOT PERMIT A PARENT OF A PUTATIVE FATHER
22 TO SEEK AN ORDER FOR GRANDCHILD VISITATION UNLESS THE PUTATIVE
23 FATHER HAS ACKNOWLEDGED PATERNITY IN WRITING, HAS BEEN DETERMINED
24 TO BE THE FATHER BY A COURT OF COMPETENT JURISDICTION, OR HAS
25 CONTRIBUTED REGULARLY TO THE SUPPORT OF THE GRANDCHILD.

26 (3) A grandparent seeking a grandparenting time order ~~may~~
27 SHALL commence an action for grandparenting time ~~, by complaint~~

~~1 or complaint and motion for an order to show cause, in the~~
~~2 circuit court in the county in which the grandchild resides. If~~
~~3 a child custody dispute is pending, the order shall be sought by~~
~~4 motion for an order to show cause. The~~ AS FOLLOWS:

5 (A) IF THE CIRCUIT COURT HAS CONTINUING JURISDICTION OVER
 6 THE GRANDCHILD, THE CHILD'S GRANDPARENT SHALL SEEK A GRANDPARENT-
 7 ING TIME ORDER BY FILING A MOTION WITH THE CIRCUIT COURT IN THE
 8 COUNTY WHERE THE COURT HAS CONTINUING JURISDICTION.

9 (B) IF THE CIRCUIT COURT DOES NOT HAVE CONTINUING JURISDIC-
 10 TION OVER THE GRANDCHILD, THE CHILD'S GRANDPARENT SHALL SEEK A
 11 GRANDPARENTING TIME ORDER BY FILING A COMPLAINT IN THE CIRCUIT
 12 COURT FOR THE COUNTY WHERE THE CHILD RESIDES.

13 (4) A complaint or motion FOR GRANDPARENTING TIME shall be
 14 accompanied 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 of, OR AN ORDER FOR
 17 PARENTING TIME WITH, the grandchild. ~~A party having legal cus-~~
 18 ~~tody may file an opposing affidavit. A hearing shall be held by~~
 19 ~~the court on its own motion or if a party so requests. At the~~
 20 ~~hearing, parties submitting affidavits shall be allowed an oppor-~~
 21 ~~tunity to be heard. At the conclusion of the hearing, if the~~
 22 ~~court finds~~ IF THE GRANDPARENT SHOWS that it is in the best
 23 interests of the ~~child~~ GRANDCHILD to enter a grandparenting
 24 time order, the court shall enter an order providing for reason-
 25 able grandparenting time of the ~~child~~ GRANDCHILD by the grand-
 26 parent by general or specific terms and conditions. ~~If a~~
 27 ~~hearing is not held, the court shall enter a grandparenting time~~

1 ~~order only upon a finding that grandparenting time is in the best~~
2 ~~interests of the child. A grandparenting time order shall not be~~
3 ~~entered for the parents of a putative father unless the father~~
4 ~~has acknowledged paternity in writing, has been adjudicated to be~~
5 ~~the father by a court of competent jurisdiction, or has contrib-~~
6 ~~uted regularly to the support of the child or children. The~~
7 ~~court shall make a record of the reasons for a denial of a~~
8 ~~requested~~ GRANTING OR DENYING A REQUEST FOR grandparenting time.
9 ~~order.~~

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

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

23 (6) THE COURT MAY REFER A COMPLAINT OR MOTION FOR GRANDPAR-
24 ENTING TIME FILED UNDER THIS SECTION TO THE FRIEND OF THE COURT
25 MEDIATION SERVICE UNDER SECTION 13 OF THE FRIEND OF THE COURT
26 ACT, 1982 PA 294, MCL 552.513. IF THE COMPLAINT OR MOTION IS
27 REFERRED TO THE FRIEND OF THE COURT MEDIATION SERVICE AND NO

1 SETTLEMENT IS REACHED THROUGH FRIEND OF THE COURT MEDIATION
2 WITHIN A REASONABLE TIME AFTER THE DATE OF REFERRAL, THE COM-
3 PLAINT OR MOTION SHALL BE HEARD BY THE COURT AS 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 grandparenting time order.

11 (8) ~~-(6)-~~ A grandparenting time order entered in accordance
12 with this section ~~shall not be considered to have created~~ DOES
13 NOT CREATE parental rights in the ~~person or persons~~ INDIVIDUAL
14 OR INDIVIDUALS to whom grandparenting time rights are granted.
15 The entry of a grandparenting time order ~~shall~~ DOES not prevent
16 a court of competent jurisdiction from acting upon the custody of
17 the child, the parental rights of the child, or the adoption of
18 the child.

19 (9) ~~-(7)-The~~ AFTER A HEARING, THE court may enter an order
20 modifying or terminating a grandparenting time order whenever
21 ~~such~~ THERE IS A CHANGE OF CIRCUMSTANCES AND a modification or
22 termination is in the best interests of the child.

23 (10) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, ADOP-
24 TION OF A CHILD OR PLACEMENT OF A CHILD FOR ADOPTION UNDER CHAP-
25 TER X OF THE PROBATE CODE OF 1939, 1939 PA 288, MCL 710.21 TO
26 710.70, TERMINATES THE RIGHT OF A GRANDPARENT TO COMMENCE AN
27 ACTION FOR GRANDPARENTING TIME WITH THAT CHILD. ADOPTION OF A

1 CHILD OR PLACEMENT OF A CHILD FOR ADOPTION BY A STEPPARENT OR BY
2 A PERSON WHO IS RELATED TO THE CHILD WITHIN THE FIFTH DEGREE BY
3 MARRIAGE, BLOOD, OR ADOPTION UNDER CHAPTER X OF THE PROBATE CODE
4 OF 1939, 1939 PA 288, MCL 710.21 TO 710.70, DOES NOT TERMINATE
5 THE RIGHT OF A GRANDPARENT TO COMMENCE AN ACTION FOR GRANDPARENT-
6 ING TIME WITH THAT CHILD.

7 (11) 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 GRANDPARENTING TIME ORDER. IF THE COURT FINDS THERE IS
10 GOOD CAUSE TO ALLOW A GRANDPARENT TO FILE MORE THAN 1 COMPLAINT
11 OR MOTION UNDER THIS SECTION IN A 2-YEAR PERIOD, THE COURT SHALL
12 ALLOW THE FILING AND SHALL CONSIDER THE COMPLAINT OR MOTION.

13 (12) UPON MOTION OF A PERSON, THE COURT MAY AWARD COSTS AND
14 FEES AS PROVIDED IN SECTION 2591 OF THE REVISED JUDICATURE ACT OF
15 1961, 1961 PA 236, MCL 600.2591.

16 Enacting section 1. This amendatory act does not take
17 effect unless Senate Bill No. _____ or House Bill No. _____
18 (request no. 03515'01 a) of the 91st Legislature is enacted into
19 law.