

**SUBSTITUTE FOR
SENATE BILL NO. 727**

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 2002 PA 9 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 under
7 this act, an attorney serving as the child's legal advocate in a
8 traditional attorney-client relationship with the child, as
9 governed by the Michigan rules of professional conduct. An
10 attorney defined under this subdivision owes the same duties of

1 undivided loyalty, confidentiality, and zealous representation of
2 the child's expressed wishes as the attorney would to an adult
3 client.

4 (c) "Child" means minor child and children. Subject to
5 section 5b of the support and parenting time enforcement act,
6 1982 PA 295, MCL 552.605b, for purposes of providing support,
7 child includes a child and children who have reached 18 years of
8 age.

9 (d) **"Grandparent" means a natural or adoptive parent of a**
10 **child's natural or adoptive parent.**

11 (e) ~~—(d)—~~ "Guardian ad litem" means an individual whom the
12 court appoints to assist the court in determining the child's
13 best interests. A guardian ad litem does not need to be an
14 attorney.

15 (f) ~~—(e)—~~ "Lawyer-guardian ad litem" means an attorney
16 appointed under section 4. A lawyer-guardian ad litem represents
17 the child, and has the powers and duties, as set forth in section
18 4.

19 (g) **"Parent" means the natural or adoptive parent of a child.**

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

23 (i) ~~—(g)—~~ "Third person" means an individual other than a
24 parent.

25 Sec. 7b. ~~—(1) Except as provided in this subsection, a~~
26 ~~grandparent of the child may seek an order for grandparenting~~
27 ~~time in the manner set forth in this section only if a child~~

~~1 custody dispute with respect to that child is pending before the
2 court. If a natural parent of an unmarried child is deceased, a
3 parent of the deceased person may commence an action for
4 grandparenting time. Adoption of the child by a stepparent under
5 chapter X of Act No. 288 of the Public Acts of 1939, being
6 sections 710.21 to 710.70 of the Michigan Compiled Laws, does not
7 terminate the right of a parent of the deceased person to
8 commence an action for grandparenting time.~~

~~9 (2) As used in this section, "child custody dispute" includes
10 a proceeding in which any of the following occurs:~~

~~11 (a) The marriage of the child's parents is declared invalid
12 or is dissolved by the court, or a court enters a decree of legal
13 separation with regard to the marriage.~~

~~14 (b) Legal custody of the child is given to a party other than
15 the child's parent, or the child is placed outside of and does
16 not reside in the home of a parent, excluding any child who has
17 been placed for adoption with other than a stepparent, or whose
18 adoption by other than a stepparent has been legally finalized.~~

**19 (1) Except as otherwise provided in this subsection, adoption
20 of a child or placement of a child for adoption under the
21 Michigan adoption code, chapter X of the probate code of 1939,
22 1939 PA 288, MCL 710.21 to 710.70, terminates the right of a
23 grandparent to commence an action for grandparenting time with
24 that child. Adoption of a child by a stepparent under the
25 Michigan adoption code, chapter X of the probate code of 1939,
26 1939 PA 288, MCL 710.21 to 710.70, does not terminate the right
27 of a grandparent to commence an action for grandparenting time**

1 with that child.

2 (2) A child's grandparent may seek a grandparenting time
3 order under 1 or more of the following circumstances:

4 (a) An action for divorce, separate maintenance, or annulment
5 involving the child's parents is pending before the court.

6 (b) The child's parents are divorced, separated under a
7 judgment of separate maintenance, or have had their marriage
8 annulled.

9 (c) The child's parent who is a child of the grandparents is
10 deceased.

11 (d) The child's parents have never been married, they are not
12 residing in the same household, and paternity has been
13 established by the completion of an acknowledgment of parentage
14 under the acknowledgment of parentage act, 1996 PA 305, MCL
15 722.1001 to 722.1013, by an order of filiation entered under the
16 paternity act, 1956 PA 205, MCL 722.711 to 722.730, or by a
17 determination by a court of competent jurisdiction that the
18 individual is the father of the child.

19 (3) The court shall not permit a parent of a father who has
20 never been married to the child's mother to seek an order for
21 grandparenting time unless the father has completed an
22 acknowledgment of parentage under the acknowledgment of parentage
23 act, 1996 PA 305, MCL 722.1001 to 722.1013, an order of filiation
24 has been entered under the paternity act, 1956 PA 205, MCL
25 722.711 to 722.730, or the father has been determined to be the
26 father by a court of competent jurisdiction. The court shall not
27 permit the parent of a putative father to seek an order for

1 grandparenting time unless the putative father has provided
2 substantial and regular support or care in accordance with the
3 putative father's ability to provide the support or care.

4 (4) ~~-(3)-~~ A grandparent seeking a grandparenting time order
5 ~~may~~ **shall** commence an action for grandparenting time, ~~by~~
6 ~~complaint or complaint and motion for an order to show cause, in~~
7 ~~the circuit court in the county in which the grandchild resides.~~
8 ~~If a child custody dispute is pending, the order shall be sought~~
9 ~~by motion for an order to show cause. The~~ as follows:

10 (a) If the circuit court has continuing jurisdiction over the
11 child, the child's grandparent shall seek a grandparenting time
12 order by filing a motion with the circuit court in the county
13 where the court has continuing jurisdiction.

14 (b) If the circuit court does not have continuing
15 jurisdiction over the child, the child's grandparent shall seek a
16 grandparenting time order by filing a complaint in the circuit
17 court for the county where the child resides.

18 (5) A complaint or motion **for grandparenting time** shall be
19 accompanied by an affidavit setting forth facts supporting the
20 requested order. The grandparent shall give notice of the filing
21 to each ~~party~~ **person** who has legal custody of, ~~the grandchild~~
22 **or an order for parenting time with, the child.** A party having
23 legal custody may file an opposing affidavit. A hearing shall be
24 held by the court on its own motion or if a party ~~so~~ requests a
25 **hearing.** At the hearing, parties submitting affidavits shall be
26 allowed an opportunity to be heard. **In making a determination**
27 **under this subsection, there is a rebuttable presumption that a**

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1 fit parent's actions and decisions regarding grandparenting time
2 are in the child's best interests. The burden is on the
3 grandparent filing a complaint or motion under this section to
4 prove by clear and convincing evidence that it is in the child's
5 best interests to order grandparenting time. The court shall
6 give a fit parent's position deference when making its decision.

7 (6) <<If 2 fit parents sign an affidavit stating that they both
oppose an order for grandparenting time, the court shall dismiss the
complaint or motion seeking an order for grandparenting time.

8 ~~it~~ (7)>> At the conclusion of the hearing, if the court finds that
the grandparent's request for grandparenting time is in the
9 best interests of the child, ~~to enter a grandparenting time~~
10 ~~order,~~ the court shall enter an order providing for reasonable
11 grandparenting time of the child by the grandparent by general or
12 specific terms and conditions. ~~If a hearing is not held, the~~
13 ~~court shall enter a grandparenting time order only upon a finding~~
14 ~~that grandparenting time is in the best interests of the child.~~
15 ~~A grandparenting time order shall not be entered for the parents~~
16 ~~of a putative father unless the father has acknowledged paternity~~
17 ~~in writing, has been adjudicated to be the father by a court of~~
18 ~~competent jurisdiction, or has contributed regularly to the~~
19 ~~support of the child or children. The court shall make a record~~
20 ~~of the reasons for a denial of a requested grandparenting time~~
21 ~~order.~~ In determining the best interests of the child, the court
22 shall consider all of the following:

23 (a) The love, affection, and other emotional ties existing
24 between the grandparent and the child.

25 (b) The length and quality of the prior relationship between
26 the child and the grandparent, the role performed by the
27 grandparent, and the existing emotional ties of the child to the

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1 grandparent.

2 (c) The grandparent's moral fitness.

3 (d) The grandparent's mental and physical health.

4 (e) The child's reasonable preference, if the court considers
5 the child to be of sufficient age to express a preference.

6 (f) The effect on the child of hostility between the
7 grandparent and the parent of the child.

8 (g) The willingness of the grandparent, except in the case of
9 abuse or neglect, to encourage a close relationship between the
10 child and the parent or parents of the child.

11 (h) Any history of physical, emotional, or sexual abuse or
12 neglect of any child by the grandparent.

13 (i) Whether the child will be harmed by granting
14 grandparenting time or whether the child will be harmed by
15 denying grandparenting time.

16 (j) Any other factor relevant to the physical and
17 psychological well-being of the child.

18 <<(8)>> —(4)— A grandparent may not file more than once every 2
19 years, absent a showing of good cause, a complaint or motion
20 seeking a grandparenting time order. If the court finds there is
21 good cause to allow a grandparent to file more than 1 complaint
22 or motion under this section in a 2-year period, the court shall
23 allow the filing and shall consider the complaint or motion.

24 ~~The~~ Upon motion of a person, the court may order reasonable
25 attorney fees to the prevailing party.

26 <<(9)>> The court may refer a complaint or motion for
27 grandparenting time filed under this section to the friend of the

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1 court mediation service under section 13 of the friend of the
2 court act, 1982 PA 294, MCL 552.513. If the complaint or motion
3 is referred to the friend of the court mediation service and no
4 settlement is reached through friend of the court mediation
5 within a reasonable time after the date of referral, the
6 complaint or motion shall be heard by the court as provided in
7 this section.

8 <<(10)>> ~~—(5)—~~ The court shall not enter an order ~~—restricting the~~
9 ~~movement of the grandchild if the restriction—~~ prohibiting an
10 individual who has legal custody of a child from changing the
11 domicile of the child if the prohibition is ~~—solely—~~ primarily
12 for the purpose of allowing the grandparent to exercise the
13 rights conferred in a grandparenting time order.

14 <<(11)>> ~~—(6)—~~ A grandparenting time order entered in accordance
15 with this section ~~—shall not be considered to have created—~~ does
16 not create parental rights in the ~~—person or persons—~~ individual
17 or individuals to whom grandparenting time rights are granted.
18 The entry of a grandparenting time order ~~—shall—~~ does not prevent
19 a court of competent jurisdiction from acting upon the custody of
20 the child, the parental rights of the child, or the adoption of
21 the child.

22 <<(12)>> ~~—(7)—~~ The court may enter an order modifying or
23 terminating a grandparenting time order ~~—whenever such—~~ if there
24 is a change of circumstances and a modification or termination is
25 in the best interests of the child.

26 <<(13)>> The court shall make a record of its analysis and
27 findings under subsections <<(7), (8), and (12)>>, including the

1 reasons for granting or denying a requested grandparenting time
2 order.