

HOUSE BILL No. 5169

October 14, 2003, Introduced by Reps. Murphy, Whitmer, Reeves, Gleason, O'Neil, Phillips, Williams, Stallworth, Zelenko, Law, Clack, Plakas, Byrum, Sak, Tobocman, Cheeks, Accavitti, Bieda and Hardman and referred to the Committee on Judiciary.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7b. (1) Except as provided in this subsection, a
2 grandparent of the child may seek an order for grandparenting
3 time **or a sibling of the child may seek an order for sibling**
4 **visitation** in the manner set forth in this section only if a
5 child custody dispute with respect to that child is pending
6 before the court. If a natural parent of an unmarried child is
7 deceased, a parent of the deceased person may commence an action
8 for grandparenting time **or a sibling of the child may commence an**
9 **action for sibling visitation.** Adoption of the child by a
10 stepparent under ~~chapter X of Act No. 288 of the Public Acts of~~
11 ~~1939, being sections 710.21 to 710.70 of the Michigan Compiled~~

1 ~~Laws~~ the Michigan adoption code, chapter X of the probate code
 2 of 1939, 1939 PA 288, MCL 710.21 to 710.70, does not terminate
 3 the right of a parent of the deceased person to commence an
 4 action for grandparenting time **or the right of a sibling of the**
 5 **child to commence an action for sibling visitation.**

6 ~~(2) As used in this section, "child custody dispute"~~
 7 ~~includes a proceeding in which any of the following occurs:~~
 8 ~~—— (a) The marriage of the child's parents is declared invalid~~
 9 ~~or is dissolved by the court, or a court enters a decree of legal~~
 10 ~~separation with regard to the marriage.~~
 11 ~~—— (b) Legal custody of the child is given to a party other than~~
 12 ~~the child's parent, or the child is placed outside of and does~~
 13 ~~not reside in the home of a parent, excluding any child who has~~
 14 ~~been placed for adoption with other than a stepparent, or whose~~
 15 ~~adoption by other than a stepparent has been legally finalized.~~

16 **(2) —(3)—** A grandparent seeking a grandparenting time order
 17 **or a sibling of the child seeking a sibling visitation order** may
 18 commence an action for grandparenting time **or sibling visitation,**
 19 by complaint or complaint and motion for an order to show cause,
 20 in the circuit court in the county in which the ~~grandchild~~
 21 **child** resides. If a child custody dispute is pending, the order
 22 shall be sought by motion for an order to show cause. The
 23 complaint or motion shall be accompanied by an affidavit setting
 24 forth facts supporting the requested order. The grandparent **or**
 25 **sibling of the child** shall give notice of the filing to each
 26 party who has legal custody of the ~~grandchild~~ **child.** A party
 27 having legal custody may file an opposing affidavit. A hearing

1 shall be held by the court on its own motion or if a party so
2 requests. At the hearing, parties submitting affidavits shall be
3 allowed an opportunity to be heard. ~~At the conclusion of the~~
4 ~~hearing, if the court finds that it is in the best interests of~~
5 ~~the child to enter a grandparenting time order~~ In making a
6 determination under this subsection, there is a rebuttable
7 presumption that a parent's actions and decisions regarding
8 grandparenting time or sibling visitation are in the child's best
9 interest. The burden of proof regarding this rebuttable
10 presumption is on the grandparent or sibling filing a complaint
11 or motion under this section. At the conclusion of the hearing,
12 if the court finds that the parent's actions or decisions
13 regarding grandparenting time or sibling visitation are not in
14 the child's best interest, the court shall enter an order
15 providing for reasonable grandparenting time of the child by the
16 grandparent or reasonable sibling visitation with the child by
17 the sibling by general or specific terms and conditions. If the
18 court orders grandparenting time or sibling visitation, the court
19 shall make specific findings on the record that a parent's
20 actions or decisions regarding grandparenting time or sibling
21 visitation are not in the best interests of the child because the
22 parent's actions or decisions are harmful to the child and that a
23 grandparenting time or sibling visitation order will alleviate
24 that harm. The court shall not find that a parent's actions or
25 decisions are not in the best interests of the child solely
26 because the court disagrees with the parent's actions or
27 decisions or because a parent's actions or decisions are

1 **seemingly arbitrary or capricious.** If a hearing is not held, the
2 court shall enter a grandparenting time **or sibling visitation**
3 order only upon a finding that grandparenting time **or sibling**
4 **visitation** is in the best interests of the child **as provided in**
5 **this subsection.** A grandparenting time order shall not be
6 entered for the parents of a putative father unless the father
7 has acknowledged paternity in writing, has been adjudicated to be
8 the father by a court of competent jurisdiction, or has
9 contributed regularly to the support of the child or children.
10 The court shall make a record of the reasons for ~~a denial of~~
11 **granting or denying** a requested grandparenting time **or sibling**
12 **visitation** order.

13 (3) ~~—(4)—~~ A grandparent **or sibling** may not file more than
14 once every 2 years, absent a showing of good cause, a complaint
15 or motion seeking a grandparenting time **or sibling visitation**
16 order. If the court finds there is good cause to allow a
17 grandparent **or sibling** to file more than 1 complaint or motion
18 under this section in a 2-year period, the court shall allow the
19 filing and shall consider the complaint or motion. The court may
20 order reasonable attorney fees to the prevailing party.

21 (4) ~~—(5)—~~ The court shall not enter an order restricting the
22 movement of the ~~—grandchild—~~ **child** if the restriction is solely
23 for the purpose of allowing the grandparent **or sibling** to
24 exercise the rights conferred in a grandparenting time **or sibling**
25 **visitation** order.

26 (5) ~~—(6)—~~ A grandparenting time **or sibling visitation** order
27 entered in accordance with this section shall not be considered

1 to have created parental rights in the person or persons to whom
2 grandparenting time **or sibling visitation** rights are granted.
3 The entry of a grandparenting time **or sibling visitation** order
4 shall not prevent a court of competent jurisdiction from acting
5 upon the custody of the child, the parental rights of the child,
6 or the adoption of the child.

7 (6) ~~-(7)-~~ The court may enter an order modifying or
8 terminating a grandparenting time **or sibling visitation** order
9 ~~whenever such~~ **if** a modification or termination is in the best
10 interests of the child.

11 (7) As used in this section:

12 (a) "Child custody dispute" means a proceeding in which any
13 of the following occurs:

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

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

23 (b) "Sibling" or "sibling of the child" means an individual
24 who is related to the child either biologically or through
25 adoption by at least 1 common parent, regardless of whether the
26 sibling ever lived in the same household as the child. If a
27 sibling of the child is under the age of 18, sibling includes a

1 legal guardian of a sibling of the child, if the legal guardian
2 is acting on behalf of the sibling.