

SENATE BILL No. 727

September 24, 2003, Introduced by Senators SANBORN, GOSCHKA and PATTERSON and referred to the Committee on Judiciary.

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~~ **the**
7 **Michigan adoption code, chapter X of the probate code of 1939,**
8 **1939 PA 288, MCL 710.21 to 710.70,** does not terminate the right
9 of a parent of the deceased person to commence an action for
10 grandparenting time.

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

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

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

22 (3) A grandparent seeking a grandparenting time order may
23 commence an action for grandparenting time, by complaint or
24 complaint and motion for an order to show cause, in the circuit
25 court in the county in which the grandchild resides. If a child
26 custody dispute is pending, the order shall be sought by motion
27 for an order to show cause. The complaint or motion shall be

1 accompanied by an affidavit setting forth facts supporting the
2 requested order. The grandparent shall give notice of the filing
3 to each ~~party~~ **person** who has legal custody of, ~~the grandchild~~
4 **or an order for parenting time with, the child.** A party having
5 legal custody may file an opposing affidavit.

6 (4) A hearing shall be held by the court on its own motion or
7 if a party ~~so~~ requests **a hearing.** At the hearing, parties
8 submitting affidavits shall be allowed an opportunity to be
9 heard. **In making a determination under this subsection, there is**
10 **a rebuttable presumption that a fit parent's actions and**
11 **decisions regarding grandparenting time are in the child's best**
12 **interests. The burden is on the grandparent filing a complaint**
13 **or motion under this section to prove by clear and convincing**
14 **evidence that it is in the child's best interests to order**
15 **grandparenting time. The court shall give a fit parent's**
16 **position deference when making its decision.**

17 (5) At the conclusion of the hearing, if the court finds that
18 ~~it~~ **the grandparent's request for grandparenting time** is in the
19 best interests of the child, ~~to enter a grandparenting time~~
20 ~~order,~~ the court shall enter an order providing for reasonable
21 grandparenting time of the child by the grandparent by general or
22 specific terms and conditions. ~~If a hearing is not held, the~~
23 ~~court shall enter a grandparenting time order only upon a finding~~
24 ~~that grandparenting time is in the best interests of the child.~~
25 **In determining the best interests of the child, the court shall**
26 **consider all of the following:**

27 (a) The love, affection, and other emotional ties existing

1 between the grandparent and the child.

2 (b) The length and quality of the prior relationship between
3 the child and the grandparent, the role performed by the
4 grandparent, and the existing emotional ties of the child to the
5 grandparent.

6 (c) The grandparent's moral fitness.

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

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

10 (f) The effect on the child of hostility between the
11 grandparent and the parent of the child.

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

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

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

19 (6) A grandparenting time order shall not be entered for the
20 parents of a putative father unless the father has acknowledged
21 paternity in writing, has been adjudicated to be the father by a
22 court of competent jurisdiction, or has contributed regularly to
23 the support of the child or children. ~~The court shall make a~~
24 ~~record of the reasons for a denial of a requested grandparenting~~
25 ~~time order.~~

26 (7) ~~(4)~~ A grandparent may not file more than once every 2
27 years, absent a showing of good cause, a complaint or motion

1 seeking a grandparenting time order. If the court finds there is
2 good cause to allow a grandparent to file more than 1 complaint
3 or motion under this section in a 2-year period, the court shall
4 allow the filing and shall consider the complaint or motion. The
5 court may order reasonable attorney fees to the prevailing
6 party.

7 (8) ~~—(5)—~~ The court shall not enter an order ~~—restricting the~~
8 ~~movement of the grandchild if the restriction—~~ **prohibiting an**
9 **individual who has legal custody of a child from changing the**
10 **domicile of the child if the prohibition is ~~—solely—~~ primarily**
11 for the purpose of allowing the grandparent to exercise the
12 rights conferred in a grandparenting time order.

13 (9) ~~—(6)—~~ A grandparenting time order entered in accordance
14 with this section ~~—shall not be considered to have created—~~ **does**
15 **not create** parental rights in the ~~—person or persons—~~ **individual**
16 **or individuals** to whom grandparenting time rights are granted.
17 The entry of a grandparenting time order ~~—shall—~~ **does** not prevent
18 a court of competent jurisdiction from acting upon the custody of
19 the child, the parental rights of the child, or the adoption of
20 the child.

21 (10) ~~—(7)—The—~~ **After a hearing, the** court may enter an order
22 modifying or terminating a grandparenting time order ~~—whenever~~
23 ~~such—~~ **if there is a change of circumstances and** a modification or
24 termination is in the best interests of the child.

25 (11) The court shall make a record of its analysis and
26 findings under subsections (5), (7), and (10), including the
27 reasons for granting or denying a requested grandparenting time

1 order.