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Senate Bill 386 (as introduced 4-14-05)
Senate Bill 420 (as introduced 4-26-05)
Sponsor: Senator Irma Clark-Coleman
Committee: Senior Citizens and Veterans Affairs

Date Completed: 5-18-05

CONTENT

Senate Bill 386 would amend the Michigan Adoption Code to allow the filing of an action for grandparenting time under Section 7b of the Child Custody Act, and to delete language that permits a grandparent to seek a grandparenting time order while a stepparent adoption proceeding is pending.

Senate Bill 420 would amend Section 7b of the Child Custody Act to limit grandparenting time actions in stepparent adoption situations to grandparents whose own child is deceased.

The bills are described below.

Senate Bill 386

Section 60 of the Adoption Code governs the status and rights of a person adopting an individual and of the adoptee. Section 60 states that it does not prohibit the entry of an order for grandparenting time under Section 7b of the Child Custody Act. Under the bill, Section 60 would not prohibit either the filing of an action or the entry of an order for grandparenting time as provided in Section 7b of the Child Custody Act.

Also, under Section 60, while a stepparent adoption proceeding is pending, a parent of a natural parent may seek an order for grandparenting time of the adoptee in the same manner as set forth in Section 7b of the Child Custody Act. The bill would delete that provision.

Senate Bill 420

Under Section 7b of the Child Custody Act, the adoption of a child or placement of a child for adoption terminates the right of a grandparent to commence an action for grandparenting time with the child. Adoption by a stepparent, however, does not terminate the right of a grandparent to bring an action for grandparenting time. The bill provides, instead, that adoption by a stepparent would not terminate the right of a parent of a deceased parent of the child to bring an action for grandparenting time.

MCL 710.60 (S.B. 386)
722.27b (S.B. 420)

BACKGROUND

Public Act 542 of 2004 re-enacted Michigan's grandparenting time statute, contained in Section 7b of the Child Custody Act. That law had been found unconstitutional by the Michigan Supreme Court in July 2003 (*DeRose v DeRose*, 469 Mich 320), following a divided 1999 U.S. Supreme Court decision that struck down the State of Washington's grandparenting visitation law (*Troxel v Granville*, 530 U.S. 57). Since 1971, Michigan law has allowed grandparents to seek visitation in limited circumstances, and Section 7b of the Child Custody Act was enacted in 1982. Essentially, the law allowed a person to seek a grandparenting time order only if a child custody dispute with respect to the child was pending before the court; also, if the natural parent of an unmarried child was deceased, a parent of the deceased person could bring an action for grandparenting time.

The Michigan Supreme Court decision precluded grandparents from obtaining court orders granting them the opportunity to spend time with their grandchildren. In cases in which individuals already had obtained grandparenting time orders under the law, some custodial parents sought to have those orders overturned. In March 2004, the Michigan Court of Appeals held that the *DeRose* decision should be given full retroactive effect and that the orders issued under the statute were void.

Public Act 542 of 2004 took effect on January 3, 2005. The Act allows individuals to seek grandparenting time orders under specific circumstances (which are broader than under the 1982 law); establishes a rebuttable presumption that a fit parent's decision to deny grandparenting time does not create a substantial risk of harm to the child; places the burden on the grandparent to rebut the presumption by a preponderance of the evidence (or, if that standard of proof is found unconstitutional, by clear and convincing evidence); and requires the court to dismiss a complaint for grandparenting time if two fit parents sign an affidavit opposing a grandparenting time order.

The 1982 law provided that adoption of a child by a stepparent did not terminate the right of a parent of the deceased person to commence an action for grandparenting time. Public Act 542 provides, instead, that adoption of a child by a stepparent does not terminate the right of a grandparent to bring an action for grandparenting time. Otherwise, under the Act, adoption or placement of a child for adoption terminates the right of a grandparent to commence an action for grandparenting time.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Bethany Wicksall

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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.