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**BILL ANALYSIS**

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Senate Bill 420 (as introduced 4-26-06)
Sponsor: Senator Irma Clark-Coleman
Committee: Senior Citizens and Veterans Affairs

Date Completed: 5-26-06

CONTENT

The bill 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.

Under Section 7b, 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. Under the bill, instead, 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 722.27b

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 grandparent 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 time with their grandchildren. In cases in which individuals already had obtained such orders, some custodial parents sought to have the 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 law 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.

Under the 1982 law, adoption of a child by a stepparent did not terminate the right of a parent of an unmarried, 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: Stephanie Yu

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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.