

HOUSE BILL No. 5908

March 23, 2006, Introduced by Reps. Stahl, Shaffer, Hummel, Caswell, Kooiman, Hildenbrand, Emmons, Gosselin, Hoogendyk, Casperson, Marleau, Moolenaar, Steil, Sheen, Stakoe, Nofs, Sheltroun, Palmer, Vander Veen, Newell, Pearce, Ward, Pastor, Garfield, Robertson, Huizenga, Elsenheimer, Palsrok, Acciavatti, LaJoy, Green, Hansen, Moore, Taub, Hune, Van Regenmorter, Brandenburg and Jones and referred to the Committee on Family and Children Services.

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending sections 23b, 23d, 23e, and 46 of chapter X (MCL 710.23b, 710.23d, 710.23e, and 710.46), section 23b as added and section 46 as amended by 1994 PA 222, section 23d as amended by 2004 PA 487, and section 23e as amended by 2000 PA 55.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER X

Sec. 23b. (1) A child placing agency or the department that acquires legal and physical custody of a child ~~pursuant to~~ **UNDER** section 29 of this chapter or chapter XIIIA may formally place a child for adoption under section 51 of this chapter. A child placing agency that acquires written authorization ~~pursuant~~

1 **ACCORDING** to subsection (3) from the parent or guardian having
2 legal custody of a child may make a temporary placement of the
3 child under section 23d of this chapter. A child placing agency may
4 assist a parent or guardian to make a direct placement under
5 section 23a of this chapter.

6 (2) In an agency placement, a child placing agency or the
7 department may involve the parent or guardian of a child in the
8 selection of an adoptive parent and may facilitate the exchange of
9 identifying information or meetings between a biological parent and
10 an adoptive parent.

11 (3) In a written document signed by a witness and by the
12 parent or guardian in the presence of the witness, a parent or
13 guardian having legal and physical custody of a child may authorize
14 a child placing agency to make a temporary placement of the child
15 under section 23d of this chapter. If the parent of the child being
16 temporarily placed is an unemancipated minor, the authorization is
17 not valid unless it is also signed in the presence of the witness
18 by a parent or guardian of that minor parent.

19 (4) **A CHILD PLACING AGENCY IS NOT REQUIRED TO PERFORM, ASSIST,**
20 **COUNSEL, RECOMMEND, FACILITATE, REFER, OR PARTICIPATE IN A**
21 **PLACEMENT THAT VIOLATES THE CHILD PLACING AGENCY'S WRITTEN**
22 **RELIGIOUS OR MORAL CONVICTIONS OR POLICIES. A STATE OR LOCAL**
23 **GOVERNMENT ENTITY MAY NOT DENY A CHILD PLACING AGENCY A GRANT,**
24 **CONTRACT, OR PARTICIPATION IN A GOVERNMENT PROGRAM BECAUSE OF THE**
25 **CHILD PLACING AGENCY'S OBJECTION TO PERFORMING, ASSISTING,**
26 **COUNSELING, RECOMMENDING, FACILITATING, REFERRING, OR PARTICIPATING**
27 **IN A PLACEMENT THAT VIOLATES THE CHILD PLACING AGENCY'S WRITTEN**

1 RELIGIOUS OR MORAL CONVICTIONS OR POLICIES. REFUSAL BY A CHILD
2 PLACING AGENCY TO PERFORM, ASSIST, COUNSEL, RECOMMEND, FACILITATE,
3 REFER, OR PARTICIPATE IN A PLACEMENT THAT VIOLATES THE CHILD
4 PLACING AGENCY'S WRITTEN RELIGIOUS OR MORAL CONVICTIONS OR POLICIES
5 DOES NOT CONSTITUTE A DETERMINATION THAT THE PROPOSED ADOPTION IS
6 NOT IN THE BEST INTERESTS OF THE ADOPTEE.

7 Sec. 23d. (1) In a direct placement, a parent or guardian with
8 legal and physical custody of a child may make a temporary
9 placement of the child as prescribed by this section. In an agency
10 placement, a child placing agency with written authorization from
11 the parent or guardian as prescribed by section 23b of this chapter
12 may make a temporary placement of the child as prescribed by this
13 section. A temporary placement shall meet all of the following
14 requirements:

15 (a) The prospective adoptive parent with whom a child is
16 temporarily placed has had a preplacement assessment completed
17 within 1 year before the date of the transfer with a finding that
18 the prospective adoptive parent is suitable to be a parent of an
19 adoptee.

20 (b) In a direct placement, the parent or guardian is assisted
21 by an adoption attorney or a child placing agency.

22 (c) In the presence of a witness who also signs the document,
23 the parent, guardian, or representative of the child placing agency
24 signs a statement evidencing the transfer of physical custody of
25 the child. If the parent making the temporary placement is an
26 unemancipated minor, the statement is not valid unless it is also
27 signed in the presence of the witness by a parent or guardian of

1 that minor parent. The statement shall contain all of the
2 following:

3 (i) The date of the transfer of physical custody.

4 (ii) Language providing that the transfer is for the purpose of
5 adoption by the prospective adoptive parent.

6 (iii) Language indicating that unless the parent or guardian and
7 the prospective adoptive parent agree otherwise, the prospective
8 adoptive parent has the authority to consent to all medical,
9 surgical, psychological, educational, and related services for the
10 child and language indicating that the parent or guardian otherwise
11 retains full parental rights to the child being temporarily placed
12 and that the temporary placement may be revoked by the filing of a
13 petition under subsection (5).

14 (iv) Language providing that the person making the transfer has
15 read a preplacement assessment of the prospective adoptive parent
16 completed or updated within 1 year before the date of the transfer
17 with a finding that the prospective adoptive parent is suitable to
18 be a parent of an adoptee. If a child placing agency makes the
19 transfer of physical custody, the statement shall include a
20 verification that the child placing agency has given the parent or
21 guardian who authorized the temporary placement an opportunity to
22 review the preplacement assessment.

23 (v) Even if only 1 parent is making the temporary placement,
24 the name and address of both parents of the child, including in the
25 case of a child born out of wedlock, the name and the address of
26 each putative father of the child, if known.

27 (d) In the presence of a witness who also signs the document,

1 the prospective adoptive parent signs a statement setting forth the
2 date of the transfer of physical custody and the name and address
3 of the prospective adoptive parent and attesting to all of the
4 following:

5 (i) That the prospective adoptive parent understands that the
6 temporary placement will not become a formal placement until the
7 parents consent or release their parental rights and the court
8 orders the termination of parental rights and approves the
9 placement and that the prospective adoptive parent must relinquish
10 custody of the child within 24 hours after being served with an
11 order under section 23e(2) of this chapter.

12 (ii) That, if the prospective adoptive parent is a Michigan
13 resident, the prospective adoptive parent agrees to reside with the
14 child in Michigan until formal placement occurs.

15 (iii) That the prospective adoptive parent agrees to obtain
16 approval in compliance with the interstate compact on the placement
17 of children, 1984 PA 114, MCL 3.711 to 3.717, before the child is
18 sent, brought, or caused to be sent or brought into a receiving
19 state as that term is defined in section 1 of the interstate
20 compact on the placement of children, 1984 PA 114, MCL 3.711.

21 (iv) That the prospective adoptive parent submits to this
22 state's jurisdiction.

23 (2) Not later than 2 days, excluding weekends and holidays,
24 after a transfer of physical custody of a child in accordance with
25 subsection (1), the adoption attorney or child placing agency who
26 assists with the temporary placement or the child placing agency
27 that makes the temporary placement shall submit to the court in the

1 county in which the child's parent or guardian or the prospective
2 adoptive parent resides, or in which the child is found, a report
3 that contains all of the following:

4 (a) The date of the transfer of physical custody.

5 (b) The name and address of the parent or guardian or the
6 child placing agency who made the temporary placement.

7 (c) The name and address of the prospective adoptive parent
8 with whom the temporary placement was made.

9 (d) Even if only 1 parent is making the temporary placement,
10 the name and address of both parents of the child, including, in
11 the case of a child born out of wedlock, the name of each putative
12 father, if known.

13 (e) The documents required under subsection (1)(c) and (d)
14 and, if applicable, the authorization required under section 23b of
15 this chapter.

16 (3) Not later than 30 days after the transfer of physical
17 custody of a child under this section, the adoption attorney or
18 child placing agency who assists with the temporary placement or
19 the child placing agency that makes the temporary placement shall
20 submit to the court that received the report described in
21 subsection (2) a report indicating whether or not 1 of the
22 following dispositions has occurred:

23 (a) A petition for adoption of the child has been filed.

24 (b) The child has been returned to the agency or to a parent
25 or other person having legal custody.

26 (4) If the court has not received the report required under
27 subsection (3) within 45 days after the transfer of physical

1 custody of a child, the court shall immediately investigate and
2 determine whether an adoption petition has been filed or the child
3 has been returned to a parent or other person having legal custody.
4 If the report required under subsection (3) or the court's
5 investigation reveals that neither disposition has occurred, the
6 court shall immediately report to the prosecutor, who shall
7 immediately file a petition in the court that received the report
8 described in subsection (2) for disposition of the child as
9 required by section 23e of this chapter. If a petition has been
10 filed under subsection (5), (6), or (7), the prosecutor is not
11 required to file a petition.

12 (5) A parent or guardian who wishes to regain custody of a
13 child who has been placed temporarily shall file a petition in the
14 court that received the report described in subsection (2)
15 requesting that the temporary placement be revoked and that the
16 child be returned to the parent or guardian. Upon request of the
17 parent or guardian, the adoption attorney or child placing agency
18 who assisted in making the temporary placement shall assist the
19 parent or guardian in filing the petition to revoke the temporary
20 placement. If the temporary placement was made by a child placing
21 agency under section 23b(3) of this chapter, the child placing
22 agency shall file the petition on behalf of a parent or guardian
23 who wishes to regain custody of the child.

24 (6) If a prospective adoptive parent with whom a child has
25 been temporarily placed is either unwilling or unable to proceed
26 with the adoption, the prospective adoptive parent may file a
27 petition in the court that received the report described in

1 subsection (2) for disposition of the child as required by section
2 23e of this chapter.

3 (7) If a child placing agency that temporarily placed a child
4 is unable to proceed with an adoption because of the unavailability
5 of a parent or guardian to execute a release, or if a child placing
6 agency with legal custody of a child decides not to proceed with
7 the adoption by a prospective adoptive parent with whom the child
8 has been temporarily placed and the prospective adoptive parent
9 refuses upon the agency's request to return the child to the
10 agency, the child placing agency shall file a petition in the court
11 that received the report described in subsection (2) for
12 disposition of the child as required by section 23e of this
13 chapter.

14 (8) Except as otherwise agreed to by the parties, the
15 prospective adoptive parent with whom a child is temporarily placed
16 under this section may consent to all medical, surgical,
17 psychological, educational, and related services for the child.

18 (9) A hospital or attending practitioner shall not release a
19 child to an individual or agency not otherwise legally entitled to
20 the physical custody of the child unless all of the requirements of
21 subsection (1) are met.

22 (10) A CHILD PLACING AGENCY IS NOT REQUIRED TO PERFORM,
23 ASSIST, COUNSEL, RECOMMEND, FACILITATE, REFER, OR PARTICIPATE IN A
24 PLACEMENT THAT VIOLATES THE CHILD PLACING AGENCY'S WRITTEN
25 RELIGIOUS OR MORAL CONVICTIONS OR POLICIES. A STATE OR LOCAL
26 GOVERNMENT ENTITY MAY NOT DENY A CHILD PLACING AGENCY A GRANT,
27 CONTRACT, OR PARTICIPATION IN A GOVERNMENT PROGRAM BECAUSE OF THE

1 CHILD PLACING AGENCY'S OBJECTION TO PERFORMING, ASSISTING,
2 COUNSELING, RECOMMENDING, FACILITATING, REFERRING, OR PARTICIPATING
3 IN A PLACEMENT THAT VIOLATES THE CHILD PLACING AGENCY'S WRITTEN
4 RELIGIOUS OR MORAL CONVICTIONS OR POLICIES. REFUSAL BY A CHILD
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7 PLACING AGENCY'S WRITTEN RELIGIOUS OR MORAL CONVICTIONS OR POLICIES
8 DOES NOT CONSTITUTE A DETERMINATION THAT THE PROPOSED ADOPTION IS
9 NOT IN THE BEST INTERESTS OF THE ADOPTEE.

10 Sec. 23e. (1) Not later than 14 days after the filing of a
11 petition by the prosecutor as required by section 23d(4) of this
12 chapter, by a prospective adoptive parent as permitted in section
13 23d(6) of this chapter, or by a child placing agency as required by
14 section 23d(7) of this chapter, the court shall hold a hearing to
15 determine the custody of a child for whom a temporary placement has
16 been made.

17 (2) Upon receiving a petition filed under section 23d(5) of
18 this chapter, the court shall immediately issue an ex parte order
19 directing the prospective adoptive parent to return the child to
20 the parent or guardian with legal custody within 24 hours after
21 receipt of the order, unless the court proceeds under subsection
22 (3).

23 (3) The court may appoint an attorney to represent the child
24 or refer the matter to the department. The attorney or the
25 department may file a petition on the child's behalf requesting the
26 court to take jurisdiction under section 2(b) of chapter XIIA. If
27 that petition has not been filed within 14 days after the court

1 appoints an attorney or refers the matter to the department under
2 this section, the court shall order the return of the child to the
3 parent or guardian with legal custody. During the period before the
4 petition for jurisdiction under section 2(b) of chapter XIIA is
5 filed and a preliminary hearing is held or the return of custody is
6 ordered, the court shall remove the child from the home of the
7 prospective adoptive parent and make a temporary disposition
8 appropriate for the welfare of the child as authorized by section
9 18 of chapter XIIA.

10 (4) Subject to subsection (2), the court may appoint a
11 guardian under the estates and protected individuals code, 1998 PA
12 386, MCL 700.1101 to 700.8102, in response to a petition filed by
13 the prospective adoptive parent or another individual interested in
14 the child's welfare, and make a temporary disposition appropriate
15 for the child's welfare as authorized by section 18 of chapter XIIA
16 until an order of guardianship is entered.

17 (5) The court may order the return of a child to a child
18 placing agency that has obtained legal custody of the child.

19 (6) The court may appoint a guardian ad litem for the child or
20 for a minor parent of the child.

21 (7) This act provides the exclusive remedy for all custody
22 disputes arising out of a temporary placement.

23 **(8) REFUSAL BY A CHILD PLACING AGENCY UNDER SECTION 23B OR 23D**
24 **OF THIS CHAPTER TO PERFORM, ASSIST, COUNSEL, RECOMMEND, FACILITATE,**
25 **REFER, OR PARTICIPATE IN A PLACEMENT THAT VIOLATES THE CHILD**
26 **PLACING AGENCY'S WRITTEN RELIGIOUS OR MORAL CONVICTIONS OR POLICIES**
27 **DOES NOT CONSTITUTE A DETERMINATION THAT THE PROPOSED ADOPTION IS**

1 NOT IN THE BEST INTERESTS OF THE ADOPTEE.

2 Sec. 46. (1) Upon the filing of an adoption petition, the
3 court shall direct a full investigation by an employee or agent of
4 the court, a child placing agency, or the department. The court may
5 use the preplacement assessment described in section 23f of this
6 chapter and may order an additional investigation by an employee or
7 agent of the court or a child placing agency. The following shall
8 be considered in the investigation:

9 (a) The best interests of the adoptee.

10 (b) The adoptee's family background, including names and
11 identifying data regarding the parent or parents, if obtainable.

12 (c) The reasons for the adoptee's placement away from his or
13 her parent or parents.

14 (2) A written report of the investigation shall be filed
15 within 3 months after the order for investigation.

16 (3) If the adoptee has been placed for foster care with the
17 petitioner for 12 months or longer and the foster family study was
18 completed or updated not more than 12 months before the petition
19 was filed, the court, upon motion by the petitioner, may waive the
20 full investigation required by this section. The foster family
21 study, with information added as necessary to update or supplement
22 the original study, may be substituted for the written report
23 required under subsection (2).

24 **(4) REFUSAL BY A CHILD PLACING AGENCY UNDER SECTION 23B OR 23D**
25 **OF THIS CHAPTER TO PERFORM, ASSIST, COUNSEL, RECOMMEND, FACILITATE,**
26 **REFER, OR PARTICIPATE IN A PLACEMENT THAT VIOLATES THE CHILD**
27 **PLACING AGENCY'S WRITTEN RELIGIOUS OR MORAL CONVICTIONS OR POLICIES**

- 1 DOES NOT CONSTITUTE A DETERMINATION THAT THE PROPOSED ADOPTION IS
- 2 NOT IN THE BEST INTERESTS OF THE ADOPTEE.