

SENATE BILL No. 420

April 26, 2005, Introduced by Senators CLARK-COLEMAN, SANBORN, PATTERSON, BIRKHOLZ, BROWN, TOY, PRUSI, JACOBS, CLARKE, BERNERO, BRATER, BARCIA, EMERSON, THOMAS, LELAND, BASHAM, SCHAUER, JELINEK, HARDIMAN and SCOTT and referred to the Committee on Senior Citizens and Veterans Affairs.

A bill to amend 1970 PA 91, entitled
"Child custody act of 1970,"
by amending section 7b (MCL 722.27b), as amended by 2004 PA 542.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7b. (1) A child's grandparent may seek a grandparenting
2 time order under 1 or more of the following circumstances:

3 (a) An action for divorce, separate maintenance, or annulment
4 involving the child's parents is pending before the court.

5 (b) The child's parents are divorced, separated under a
6 judgment of separate maintenance, or have had their marriage
7 annulled.

8 (c) The child's parent who is a child of the grandparents is
9 deceased.

1 (d) The child's parents have never been married, they are not
2 residing in the same household, and paternity has been established
3 by the completion of an acknowledgment of parentage under the
4 acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 to
5 722.1013, by an order of filiation entered under the paternity act,
6 1956 PA 205, MCL 722.711 to 722.730, or by a determination by a
7 court of competent jurisdiction that the individual is the father
8 of the child.

9 (e) Except as otherwise provided in subsection (13), legal
10 custody of the child has been given to a person other than the
11 child's parent, or the child is placed outside of and does not
12 reside in the home of a parent.

13 (f) In the year preceding the commencement of an action under
14 subsection (3) for grandparenting time, the grandparent provided an
15 established custodial environment for the child as described in
16 section 7, whether or not the grandparent had custody under a court
17 order.

18 (2) A court shall not permit a parent of a father who has
19 never been married to the child's mother to seek an order for
20 grandparenting time under this section unless the father has
21 completed an acknowledgment of parentage under the acknowledgment
22 of parentage act, 1996 PA 305, MCL 722.1001 to 722.1013, an order
23 of filiation has been entered under the paternity act, 1956 PA 205,
24 MCL 722.711 to 722.730, or the father has been determined to be the
25 father by a court of competent jurisdiction. The court shall not
26 permit the parent of a putative father to seek an order for
27 grandparenting time unless the putative father has provided

1 substantial and regular support or care in accordance with the
2 putative father's ability to provide the support or care.

3 (3) A grandparent seeking a grandparenting time order shall
4 commence an action for grandparenting time, as follows:

5 (a) If the circuit court has continuing jurisdiction over the
6 child, the child's grandparent shall seek a grandparenting time
7 order by filing a motion with the circuit court in the county where
8 the court has continuing jurisdiction.

9 (b) If the circuit court does not have continuing jurisdiction
10 over the child, the child's grandparent shall seek a grandparenting
11 time order by filing a complaint in the circuit court for the
12 county where the child resides.

13 (4) All of the following apply to an action for grandparenting
14 time under subsection (3):

15 (a) The complaint or motion for grandparenting time filed
16 under subsection (3) shall be accompanied by an affidavit setting
17 forth facts supporting the requested order. The grandparent shall
18 give notice of the filing to each person who has legal custody of,
19 or an order for parenting time with, the child. A party having
20 legal custody may file an opposing affidavit. A hearing shall be
21 held by the court on its own motion or if a party requests a
22 hearing. At the hearing, parties submitting affidavits shall be
23 allowed an opportunity to be heard.

24 (b) In order to give deference to the decisions of fit
25 parents, it is presumed in a proceeding under this subsection that
26 a fit parent's decision to deny grandparenting time does not create
27 a substantial risk of harm to the child's mental, physical, or

1 emotional health. To rebut the presumption created in this
2 subdivision, a grandparent filing a complaint or motion under this
3 section must prove by a preponderance of the evidence that the
4 parent's decision to deny grandparenting time creates a substantial
5 risk of harm to the child's mental, physical, or emotional health.
6 If the grandparent does not overcome the presumption, the court
7 shall dismiss the complaint or deny the motion.

8 (c) If a court of appellate jurisdiction determines in a final
9 and nonappealable judgment that the burden of proof described in
10 subdivision (b) is unconstitutional, a grandparent filing a
11 complaint or motion under this section must prove by clear and
12 convincing evidence that the parent's decision to deny
13 grandparenting time creates a substantial risk of harm to the
14 child's mental, physical, or emotional health to rebut the
15 presumption created in subdivision (b).

16 (5) If 2 fit parents sign an affidavit stating that they both
17 oppose an order for grandparenting time, the court shall dismiss a
18 complaint or motion seeking an order for grandparenting time filed
19 under subsection (3). This subsection does not apply if 1 of the
20 fit parents is a stepparent who adopted a child under the Michigan
21 adoption code, chapter X of the probate code of 1939, 1939 PA 288,
22 MCL 710.21 to 710.70, and the grandparent seeking the order is the
23 natural or adoptive parent of a parent of the child who is deceased
24 or whose parental rights have been terminated.

25 (6) If the court finds that a grandparent has met the standard
26 for rebutting the presumption described in subsection (4), the
27 court shall consider whether it is in the best interests of the

1 child to enter an order for grandparenting time. If the court finds
2 by a preponderance of the evidence that it is in the best interests
3 of the child to enter a grandparenting time order, the court shall
4 enter an order providing for reasonable grandparenting time of the
5 child by the grandparent by general or specific terms and
6 conditions. In determining the best interests of the child under
7 this subsection, the court shall consider all of the following:

8 (a) The love, affection, and other emotional ties existing
9 between the grandparent and the child.

10 (b) The length and quality of the prior relationship between
11 the child and the grandparent, the role performed by the
12 grandparent, and the existing emotional ties of the child to the
13 grandparent.

14 (c) The grandparent's moral fitness.

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

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

18 (f) The effect on the child of hostility between the
19 grandparent and the parent of the child.

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

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

25 (i) Whether the parent's decision to deny, or lack of an offer
26 of, grandparenting time is related to the child's well-being or is
27 for some other unrelated reason.

1 (j) Any other factor relevant to the physical and
2 psychological well-being of the child.

3 (7) If the court has determined that a grandparent has met the
4 standard for rebutting the presumption described in subsection (4),
5 the court may refer that grandparent's complaint or motion for
6 grandparenting time filed under subsection (3) to domestic
7 relations mediation as provided by supreme court rule. If the
8 complaint or motion is referred to the friend of the court
9 mediation service and no settlement is reached through friend of
10 the court mediation within a reasonable time after the date of
11 referral, the complaint or motion shall be heard by the court as
12 provided in this section.

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

21 (9) The court shall not enter an order prohibiting an
22 individual who has legal custody of a child from changing the
23 domicile of the child if the prohibition is primarily for the
24 purpose of allowing a grandparent to exercise the rights conferred
25 in a grandparenting time order entered under this section.

26 (10) A grandparenting time order entered under this section
27 does not create parental rights in the individual or individuals to

1 whom grandparenting time rights are granted. The entry of a
2 grandparenting time order does not prevent a court of competent
3 jurisdiction from acting upon the custody of the child, the
4 parental rights of the child, or the adoption of the child.

5 (11) A court shall not modify or terminate a grandparenting
6 time order entered under this section unless it finds by a
7 preponderance of the evidence, on the basis of facts that have
8 arisen since entry of the grandparenting time order or were unknown
9 to the court at the time it entered that order, that a change has
10 occurred in the circumstances of the child or his or her custodian
11 and that a modification or termination of the existing order is
12 necessary to avoid creating a substantial risk of harm to the
13 mental, physical, or emotional health of the child. A court
14 modifying or terminating a grandparenting time order under this
15 subsection shall include specific findings of fact in its order in
16 support of its decision.

17 (12) The court shall make a record of its analysis and
18 findings under subsections (4), (6), (8), and (11), including the
19 reasons for granting or denying a requested grandparenting time
20 order.

21 (13) Except as otherwise provided in this subsection, adoption
22 of a child or placement of a child for adoption under the Michigan
23 adoption code, chapter X of the probate code of 1939, 1939 PA 288,
24 MCL 710.21 to 710.70, terminates the right of a grandparent to
25 commence an action for grandparenting time with that child.
26 Adoption of a child by a stepparent under the Michigan adoption
27 code, chapter X of the probate code of 1939, 1939 PA 288, MCL

1 710.21 to 710.70, does not terminate the right of ~~a grandparent~~
2 **THE PARENT OF A DECEASED PARENT OF THE CHILD** to commence an action
3 for grandparenting time with that child.