

HOUSE BILL No. 4197

February 5, 2009, Introduced by Reps. Espinoza, Leland, Polidori, Roberts and McMillin and referred to the Committee on Families and Children's Services.

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 2005 PA 327 and section 7b as amended by 2006 PA 353.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Active military duty" means when a reserve unit member or
3 national guard unit member is called into active military duty.

4 (b) "Agency" means a legally authorized public or private
5 organization, or governmental unit or official, whether of this
6 state or of another state or country, concerned in the welfare of
7 minor children, including a licensed child placement agency.

8 (c) "Attorney" means, if appointed to represent a child under
9 this act, an attorney serving as the child's legal advocate in a

1 traditional attorney-client relationship with the child, as
2 governed by the Michigan rules of professional conduct. An attorney
3 **AS** defined under this subdivision owes the same duties of undivided
4 loyalty, confidentiality, and zealous representation of the child's
5 expressed wishes as the attorney would to an adult client.

6 (d) "Child" means minor child and children. Subject to section
7 5b of the support and parenting time enforcement act, 1982 PA 295,
8 MCL 552.605b, for purposes of providing support, child includes a
9 child and children who have reached 18 years of age.

10 (e) "Grandparent" means a natural or adoptive parent of a ~~THE~~
11 child's natural or adoptive parent, **OR A GREAT-GRANDPARENT.**

12 **(F) "GREAT-GRANDPARENT" MEANS A NATURAL OR ADOPTIVE**
13 **GRANDPARENT OF THE CHILD'S NATURAL OR ADOPTIVE PARENT.**

14 (G) ~~(f)~~ "Guardian ad litem" means an individual whom the court
15 appoints to assist the court in determining the child's best
16 interests. A guardian ad litem does not need to be an attorney.

17 (H) ~~(g)~~ "Lawyer-guardian ad litem" means an attorney appointed
18 under section 4. A lawyer-guardian ad litem represents the child,
19 and has the powers and duties, as set forth in section 4.

20 (I) ~~(h)~~ "Parent" means the natural or adoptive parent of a ~~THE~~
21 child.

22 (J) ~~(i)~~ "State disbursement unit" or "SDU" means the entity
23 established in section 6 of the office of child support act, 1971
24 PA 174, MCL 400.236.

25 (K) ~~(j)~~ "Third person" means an individual other than a
26 parent.

27 Sec. 7b. (1) A child's grandparent may seek a grandparenting

1 time order under 1 or more of the following circumstances:

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

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

7 (c) The child's parent who is a child **OR GRANDCHILD** of the
8 ~~grandparents~~ **GRANDPARENT** is deceased.

9 (d) The child's parents have never been married, they are not
10 residing in the same household, and paternity has been established
11 by the completion of an acknowledgment of parentage under the
12 acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 to
13 722.1013, by an order of filiation entered under the paternity act,
14 1956 PA 205, MCL 722.711 to 722.730, or by a determination by a
15 court of competent jurisdiction that the individual is the father
16 of the child.

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

21 (f) In the year preceding the commencement of an action under
22 subsection (3) for grandparenting time, the grandparent provided an
23 established custodial environment for the child as described in
24 section 7, whether or not the grandparent had custody under a court
25 order.

26 (2) A court shall not permit a parent **OR GRANDPARENT** of a
27 father who has never been married to the child's mother to seek an

1 order for grandparenting time under this section unless the father
2 has completed an acknowledgment of parentage under the
3 acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 to
4 722.1013, an order of filiation has been entered under the
5 paternity act, 1956 PA 205, MCL 722.711 to 722.730, or the father
6 has been determined to be the father by a court of competent
7 jurisdiction. The court shall not permit the parent **OR GRANDPARENT**
8 of a putative father to seek an order for grandparenting time
9 unless the putative father has provided substantial and regular
10 support or care in accordance with the putative father's ability to
11 provide the support or care.

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

14 (a) If the circuit court has continuing jurisdiction over the
15 child, the child's grandparent shall seek a grandparenting time
16 order by filing a motion with the circuit court in the county where
17 the court has continuing jurisdiction.

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

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

24 (a) The complaint or motion for grandparenting time filed
25 under subsection (3) shall be accompanied by an affidavit setting
26 forth facts supporting the requested order. The grandparent shall
27 give notice of the filing to each person who has legal custody of,

1 or an order for parenting time with, the child. A party having
2 legal custody may file an opposing affidavit. A hearing shall be
3 held by the court on its own motion or if a party requests a
4 hearing. At the hearing, parties submitting affidavits shall be
5 allowed an opportunity to be heard.

6 (b) In order to give deference to the decisions of fit
7 parents, it is presumed in a proceeding under this subsection that
8 a fit parent's decision to deny grandparenting time does not create
9 a substantial risk of harm to the child's mental, physical, or
10 emotional health. To rebut the presumption created in this
11 subdivision, a grandparent filing a complaint or motion under this
12 section must prove by a preponderance of the evidence that the
13 parent's decision to deny grandparenting time creates a substantial
14 risk of harm to the child's mental, physical, or emotional health.
15 If the grandparent does not overcome the presumption, the court
16 shall dismiss the complaint or deny the motion.

17 (c) If a court of appellate jurisdiction determines in a final
18 and nonappealable judgment that the burden of proof described in
19 subdivision (b) is unconstitutional, a grandparent filing a
20 complaint or motion under this section must prove by clear and
21 convincing evidence that the parent's decision to deny
22 grandparenting time creates a substantial risk of harm to the
23 child's mental, physical, or emotional health to rebut the
24 presumption created in subdivision (b).

25 (5) If 2 fit parents sign an affidavit stating that they both
26 oppose an order for grandparenting time, the court shall dismiss a
27 complaint or motion seeking an order for grandparenting time filed

1 under subsection (3). This subsection does not apply if 1 of the
2 fit parents is a stepparent who adopted a child under the Michigan
3 adoption code, chapter X of the probate code of 1939, 1939 PA 288,
4 MCL 710.21 to 710.70, and the grandparent seeking the order is the
5 natural or adoptive parent **OR GRANDPARENT** of a parent of the child
6 who is deceased or whose parental rights have been terminated.

7 (6) If the court finds that a grandparent has met the standard
8 for rebutting the presumption described in subsection (4), the
9 court shall consider whether it is in the best interests of the
10 child to enter an order for grandparenting time. If the court finds
11 by a preponderance of the evidence that it is in the best interests
12 of the child to enter a grandparenting time order, the court shall
13 enter an order providing for reasonable grandparenting time of the
14 child by the grandparent by general or specific terms and
15 conditions. In determining the best interests of the child under
16 this subsection, the court shall consider all of the following:

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

19 (b) The length and quality of the prior relationship between
20 the child and the grandparent, the role performed by the
21 grandparent, and the existing emotional ties of the child to the
22 grandparent.

23 (c) The grandparent's moral fitness.

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

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

27 (f) The effect on the child of hostility between the

1 grandparent and the parent of the child.

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

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

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

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

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

22 (8) A grandparent may not file more than once every 2 years,
23 absent a showing of good cause, a complaint or motion under
24 subsection (3) seeking a grandparenting time order. If the court
25 finds there is good cause to allow a grandparent to file more than
26 1 complaint or motion under this section in a 2-year period, the
27 court shall allow the filing and shall consider the complaint or

1 motion. Upon motion of a person, the court may order reasonable
2 attorney fees to the prevailing party.

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

8 (10) A grandparenting time order entered under this section
9 does not create parental rights in the individual or individuals to
10 whom grandparenting time rights are granted. The entry of a
11 grandparenting time order does not prevent a court of competent
12 jurisdiction from acting upon the custody of the child, the
13 parental rights of the child, or the adoption of the child.

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

26 (12) The court shall make a record of its analysis and
27 findings under subsections (4), (6), (8), and (11), including the

1 reasons for granting or denying a requested grandparenting time
2 order.

3 (13) Except as otherwise provided in this subsection, adoption
4 of a child or placement of a child for adoption under the Michigan
5 adoption code, chapter X of the probate code of 1939, 1939 PA 288,
6 MCL 710.21 to 710.70, terminates the right of a grandparent to
7 commence an action for grandparenting time with that child.
8 Adoption of a child by a stepparent under the Michigan adoption
9 code, chapter X of the probate code of 1939, 1939 PA 288, MCL
10 710.21 to 710.70, does not terminate the right of the parent **OR**
11 **GRANDPARENT** of a deceased parent of the child to commence an action
12 for grandparenting time with that child.