

A SUMMARY OF HOUSE BILL 5039 AS INTRODUCED 8-13-03

The bill would amend the grandparenting time provisions of the Child Custody Act of 1970 (MCL 722.22 and 722.27b). Under the act, a grandparent may seek an order for grandparenting time of his or her grandchild only if a child custody dispute regarding that child is pending before the court. In addition, if a natural parent of a child is deceased, a parent of the deceased parent may commence an action for parenting time. Furthermore, the act states that a stepparent adoption under the Adoption Code does not terminate the right of a parent of a deceased parent to commence an action for grandparenting time.

House Bill 5039 would delete the above provisions and permit a child's grandparent to seek an order for grandparenting time under any of the following conditions:

- An action for divorce, separate maintenance, or annulment involving the child's parents is pending.
- The child's parents are divorced, separated through a separate maintenance judgment, or have had their marriage annulled.
- The child's parent (who is a child of the grandparent) is deceased.
- With certain exceptions (described in the final paragraph of this summary), legal custody of the child has been granted to a person other than the child's parent, or the child is placed outside of, and does not reside in, the home of a parent.
- The grandparent has provided an established custodial environment at any time during the child's life, regardless of whether or not the grandparent has custody.
- The child's parent has withheld visitation opportunities from the grandparent to retaliate against the grandparent for reporting child abuse or neglect to the Family Independence Agency or law enforcement.
- The child's parent has lived separate and away from the other parent and grandchild for more than one year.
- With certain exceptions, the child's parents have never been married and are not residing in the same household.

Under the act, a grandparent seeking a grandparenting time order *may* commence an action by filing a complaint or a motion for order to show cause in the circuit court in the county in which the child resides. However, if a dispute is pending, a grandparent is required to file a motion for an order to show cause. Under the bill, a grandparent seeking a grandparenting time

order would be required to file a motion in the circuit court in the county where the court has continuing jurisdiction, or to file a complaint in the circuit for the county where the child resides, if the local circuit court does not have continuing jurisdiction over the child.

The act requires that, in addition to a complaint or motion, the grandparent file an affidavit stating the facts in support of the request for grandparenting time. The act also permits a party having legal custody of the child to submit an opposing affidavit, and requires that a hearing be held if the court or either party requests one. The bill would delete the language pertaining to the filing of an opposing affidavit and conducting a hearing, as well as delete a provision that requires the court to enter an order for grandparenting time only upon a finding that such time is in the child's best interests, if a hearing is not held. Though the bill would delete the reference to a hearing, the bill would retain current language that requires the court, at the conclusion of the hearing, to enter an order for grandparenting time, if the court finds that it is in the child's best interest to grant such time.

The bill would retain the requirement that the grandparent submit an affidavit supporting an order for grandparenting time; however, the bill would specify that in making a determination, there is a rebuttable presumption that a parent's actions and decisions regarding grandparenting time was in the child's best interest. The burden of proof would be on the petitioner filing the action or motion. The court would have to give a parent's position some special weight when making its decision. The court currently must make a record of the reasons for denying a request for grandparenting time; under the bill, the court would have to make a record of the reasons for granting a request, as well.

The bill adds that, if a grandparent seeks a grandparenting time order and files a motion during a pending proceeding for a divorce, separate maintenance, or annulment, entry of an order would not dismiss the grandparent's motion for grandparenting time. In addition, a court could refer a complaint or motion for grandparenting time to the Friend of the Court for mediation. If a complaint or motion is referred and no settlement is reached within a reasonable period of time, the complaint or motion would be heard by the court.

The act states that the court shall not enter an order restricting the movement of a child if the movement is solely for the purpose of allowing a grandparent to exercise his or her rights to grandparenting time. The bill would rewrite this provision, so that the court would be prohibited from entering an order prohibiting a person who has legal custody of a child from changing the domicile of the child if the prohibition is solely for the purpose of allowing a grandparent to exercise his or her grandparenting time.

Finally, the bill adds that adoption of a child or the placement of a child for adoption under the Adoption Code would terminate the right of a grandparent to commence an action for grandparenting time with that child, unless the child was adopted, or placed for adoption, by a stepparent or a person related to the child within the fifth degree.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.