

**SUBSTITUTE FOR
HOUSE BILL NO. 5039**

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 2002 PA 9 and section 7b as amended by 1996 PA 19.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

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

6 (b) "Attorney" means, if appointed to represent a child under
7 this act, an attorney serving as the child's legal advocate in a
8 traditional attorney-client relationship with the child, as
9 governed by the Michigan rules of professional conduct. An
10 attorney defined under this subdivision owes the same duties of

1 undivided loyalty, confidentiality, and zealous representation of
2 the child's expressed wishes as the attorney would to an adult
3 client.

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

9 (d) **"Grandparent" means a natural or adoptive parent of a**
10 **child's natural or adoptive parent.**

11 (e) (d) "Guardian ad litem" means an individual whom the
12 court appoints to assist the court in determining the child's
13 best interests. A guardian ad litem does not need to be an
14 attorney.

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

19 (g) **"Parent" means the natural or adoptive parent of a child.**

20 (h) (f) "State disbursement unit" or "SDU" means the entity
21 established in section 6 of the office of child support act, 1971
22 PA 174, MCL 400.236.

23 (i) (g) "Third person" means an individual other than a
24 parent.

25 Sec. 7b. ~~(1) Except as provided in this subsection, a~~
26 ~~grandparent of the child may seek an order for grandparenting~~
27 ~~time in the manner set forth in this section only if a child~~

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1 ~~custody dispute with respect to that child is pending before the~~
2 ~~court. If a natural parent of an unmarried child is deceased, a~~
3 ~~parent of the deceased person may commence an action for~~
4 ~~grandparenting time. Adoption of the child by a stepparent under~~
5 ~~chapter X of Act No. 288 of the Public Acts of 1939, being~~
6 ~~sections 710.21 to 710.70 of the Michigan Compiled Laws, does not~~
7 ~~terminate the right of a parent of the deceased person to~~
8 ~~commence an action for grandparenting time. A child's~~
9 **grandparent has standing to seek a grandparenting time order**
10 **under 1 or more of the following circumstances:**

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

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

16 (c) The child's parent who is a child of the grandparent is
17 deceased.

18 (d) Except as otherwise provided in subsection [(14)], legal
19 custody of the child has been given to a person other than the
20 child's parent, or the child is placed outside of and does not
21 reside in the home of a parent.

22 (e) The grandparent, at any time during the life of the
23 child, has provided an established custodial environment for the
24 child as described in section 7, whether or not the grandparent
25 had custody under a court order.

26 (f) The child's parent has withheld from the grandparent
27 opportunities to visit with the child to retaliate against the

1 grandparent for reporting child abuse or neglect to the family
2 independence agency or a law enforcement agency, if the court
3 finds reasonable cause to believe that child abuse or neglect has
4 occurred and the court finds that denial of grandparenting time
5 would cause harm to the child.

6 (g) The child's parent lives separate and away from the other
7 parent and child for more than 1 year.

8 (h) Except as otherwise provided in subsection (2), the
9 child's parents have never been married and are not residing in
10 the same household.

11 ~~(2) As used in this section, "child custody dispute"~~
12 ~~includes a proceeding in which any of the following occurs:~~

13 ~~—— (a) The marriage of the child's parents is declared invalid~~
14 ~~or is dissolved by the court, or a court enters a decree of legal~~
15 ~~separation with regard to the marriage.~~

16 ~~—— (b) Legal custody of the child is given to a party other than~~
17 ~~the child's parent, or the child is placed outside of and does~~
18 ~~not reside in the home of a parent, excluding any child who has~~
19 ~~been placed for adoption with other than a stepparent, or whose~~
20 ~~adoption by other than a stepparent has been legally finalized.~~

21 (2) The court shall not permit a parent of a putative father
22 to seek an order for grandparenting time unless the putative
23 father has acknowledged paternity in writing, has been determined
24 to be the father by a court of competent jurisdiction, or has
25 contributed regularly to the support of the child.

26 (3) A grandparent seeking a grandparenting time order ~~may~~
27 **shall** commence an action for grandparenting time ~~, by complaint~~

1 ~~or complaint and motion for an order to show cause, in the~~
2 ~~circuit court in the county in which the grandchild resides. If~~
3 ~~a child custody dispute is pending, the order shall be sought by~~
4 ~~motion for an order to show cause. The~~ **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
8 where the court has continuing jurisdiction.

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

13 (4) A complaint or motion **for grandparenting time** shall be
14 accompanied by an affidavit setting forth facts ~~supporting the~~
15 ~~requested order~~ **that establish the grandparent's standing and**
16 **facts that overcome the rebuttable presumption under subsection**
17 **(5).** The grandparent shall give notice of the filing to each
18 ~~party~~ **person** who has legal custody of, **or an order for**
19 **parenting time with,** the ~~grandchild~~ **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 so requests.
22 At the hearing, parties submitting affidavits shall be allowed an
23 opportunity to be heard. ~~At the conclusion of the hearing, if~~

24 (5) In making a determination under subsection (4), there is
25 a rebuttable presumption that a fit parent's actions and
26 decisions regarding grandparenting time are in the best interests
27 of the child. In making a determination about the rebuttable

1 presumption as a threshold issue, the court shall consider all of
2 the following:

3 (a) Whether the parent offered grandparenting time, whether
4 the parent offered grandparenting time with reasonable
5 conditions, and the amount of grandparenting time offered by the
6 parent.

7 (b) Whether there was an established relationship between the
8 grandparent and child during which the grandparent has been a
9 significant part of the child's life.

10 (c) The frequency of contact between the grandparent and
11 child.

12 (d) Whether the parent's objections to, or lack of an offer
13 of, grandparenting time are related to the best interests of the
14 child.

15 (6) If the grandparent does not overcome the rebuttable
16 presumption in subsection (5), the court shall dismiss the motion
17 or complaint, unless subsection (7) applies.

18 (7) If the grandparent does not overcome the rebuttable
19 presumption in subsection (5), and if the court finds that the
20 parents have offered grandparenting time that the parents believe
21 to be in the best interests of the child, the court shall order
22 grandparenting time in accordance with the parents' offer.

23 (8) If the grandparent overcomes the presumption by a
24 preponderance of the evidence, the court shall then determine
25 whether grandparenting time is in the best interests of the
26 child. If the court finds that ~~it~~ the grandparent's request
27 for grandparenting time is in the best interests of the child,

1 ~~to enter a grandparenting time order,~~ the court shall enter an
2 order providing for reasonable grandparenting time of the child
3 by the grandparent by general or specific terms and conditions.
4 ~~If a hearing is not held, the court shall enter a grandparenting~~
5 ~~time order only upon a finding that grandparenting time is in the~~
6 ~~best interests of the child. A grandparenting time order shall~~
7 ~~not be entered for the parents of a putative father unless the~~
8 ~~father has acknowledged paternity in writing, has been~~
9 ~~adjudicated to be the father by a court of competent~~
10 ~~jurisdiction, or has contributed regularly to the support of the~~
11 ~~child or children.~~ The court shall make a record of the reasons
12 for ~~a denial of a requested~~ **granting or denying a request for**
13 grandparenting time. ~~order.~~

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

22 (9) If a grandparent seeks a grandparenting time order by
23 filing a motion in a pending divorce, separate maintenance, or
24 annulment action, entry of the judgment of divorce, separate
25 maintenance, or annulment does not dismiss the grandparent's
26 motion for grandparenting time.

27 (10) The court may refer a complaint or motion for

1 grandparenting time filed under this section to the friend of the
 2 court mediation service under section 13 of the friend of the
 3 court act, 1982 PA 294, MCL 552.513. If the complaint or motion
 4 is referred to the friend of the court mediation service and no
 5 settlement is reached through friend of the court mediation
 6 within a reasonable time after the date of referral, the
 7 complaint or motion shall be heard by the court as provided in
 8 this section.

9 (11) ~~-(5)-~~ The court shall not enter an order ~~restricting~~
 10 ~~the movement of the grandchild if the restriction~~ **prohibiting a**
 11 **person who has legal custody of a child from changing the**
 12 **domicile of the child if the prohibition** is solely for the
 13 purpose of allowing ~~the~~ a grandparent to exercise the rights
 14 conferred in a grandparenting time order.

15 (12) ~~-(6)-~~ A grandparenting time order entered in accordance
 16 with this section ~~shall not be considered to have created~~ **does**
 17 **not create** parental rights in the ~~person or persons~~ **individual**
 18 **or individuals** to whom grandparenting time rights are granted.
 19 The entry of a grandparenting time order ~~shall~~ **does** not prevent
 20 a court of competent jurisdiction from acting upon the custody of
 21 the child, the parental rights of the child, or the adoption of
 22 the child.

23 (13) ~~-(7)-~~ ~~The~~ **After a hearing, the** court may enter an order
 24 modifying or terminating a grandparenting time order ~~whenever~~
 25 ~~such~~ **if there is a change of circumstances and** a modification or
 26 termination is in the best interests of the child.

27 (14) **Except as otherwise provided in this subsection,**

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1 adoption of a child or placement of a child for adoption under
2 the Michigan adoption code, chapter X of the probate code of
3 1939, 1939 PA 288, MCL 710.21 to 710.70, terminates the right of
4 a grandparent to commence an action for grandparenting time with
5 that child. Adoption of a child or placement of a child for
6 adoption by a stepparent or by a person who is related to the
7 child within the fifth degree by marriage, blood, or adoption
8 under the Michigan adoption code, chapter X of the probate code
9 of 1939, 1939 PA 288, MCL 710.21 to 710.70, does not terminate
10 the right of a grandparent to commence an action for
11 grandparenting time with that child.

12 (15) If a grandparenting time order was entered before
13 July 31, 2003, the grandparent has standing under subsection (1),
14 and the child who is the subject of the order is under 18 years
15 of age, the grandparent may petition or move for grandparenting
16 time under subsections (4) to (8).

17 (16) Absent a showing of good cause, a grandparent shall not
18 file a complaint or motion seeking a grandparenting time order
19 more than once every 2 years. If the court finds that there is
20 good cause to allow a grandparent to file more than 1 complaint
21 or motion under this section in a 2-year period, the court shall
22 allow the filing and shall consider the complaint or motion.

23 (17) Upon motion of a person, the court shall award costs and
24 fees as provided in section 2591 of the revised judicature act of
25 1961, 1961 PA 236, MCL 600.2591, if applicable.

26 (18) If standing is alleged under subsection (1)(f) and if
27 the court **[finds]** that allegations contained in the accompanying

1 affidavits or sworn statements are frivolous, the court, in
2 addition to the remedy available under subsection (17), shall
3 award actual and reasonable attorney fees.

4 Enacting section 1. This amendatory act does not take
5 effect unless House Bill No. 4104 of the 92nd Legislature is
6 enacted into law.