

HOUSE BILL No. 5039

August 13, 2003, Introduced by Reps. Gaffney, Howell, Wenke, Hune, Ward, Sheen, Moolenaar, Vander Veen, Hager, Kooiman, Huizenga, Amos, Casperson, Shaffer, Palmer, Palsrok, Stahl, Mortimer, Pappageorge, Acciavatti, Pastor, Byrum, DeRoche, Daniels, Rivet, Nitz, Stakoe, Farhat, Newell, LaJoy, Voorhees, Julian, Nofs, Stallworth, McConico, Lipsey, Accavitti, Rocca, Gillard, Elkins, Paletko, Cheeks, Vagnozzi, Hunter, Hood, Smith, Waters, Reeves, Richardville and Hardman and referred to the Committee on Judiciary.

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~~

~~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 may seek a grandparenting time order under 1 or more
10 of the following circumstances:

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

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

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

18 (d) Except as otherwise provided in subsection (10), legal
19 custody of the grandchild has been given to a person other than
20 the grandchild's parent, or the grandchild is placed outside of
21 and does not reside in the home of a parent.

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

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

1 the grandparent for reporting child abuse or neglect to the
2 family independence agency or a law enforcement agency if the
3 grandparent had reasonable cause to suspect child abuse or
4 neglect.

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

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

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

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

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

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

25 (3) A grandparent seeking a grandparenting time order ~~may~~
26 **shall** commence an action for grandparenting time ~~, by complaint~~
27 ~~or complaint and motion for an order to show cause, in the~~

~~1 circuit court in the county in which the grandchild resides. If
2 a child custody dispute is pending, the order shall be sought by
3 motion for an order to show cause. The as follows:~~

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

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

12 (4) A complaint or motion **for grandparenting time** shall be
13 accompanied by an affidavit setting forth facts supporting the
14 requested order. The grandparent shall give notice of the filing
15 to each ~~party~~ **person** who has legal custody of, **or an order for**
16 **parenting time with,** the grandchild. ~~A party having legal~~
17 ~~custody may file an opposing affidavit. A hearing shall be held~~
18 ~~by the court on its own motion or if a party so requests. At the~~
19 ~~hearing, parties submitting affidavits shall be allowed an~~
20 ~~opportunity to be heard. In making a determination under this~~
21 **subsection, there is a rebuttable presumption that a parent's**
22 **actions and decisions regarding grandparenting time are in the**
23 **child's best interest. The burden or proof regarding this**
24 **rebuttable presumption is on the petitioner filing an action or**
25 **motion under this section. The court shall give a parent's**
26 **position some special weight when making its decision. At the**
27 **conclusion of the hearing, if the court finds that ~~it~~ the**

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

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

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

1 motion for grandparenting time.

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

11 (7) ~~-(5)-~~ The court shall not enter an order ~~restricting the~~
12 ~~movement of the grandchild if the restriction~~ **prohibiting a**
13 **person who has legal custody of a child from changing the**
14 **domicile of the child if the prohibition** is solely for the
15 purpose of allowing ~~the~~ a grandparent to exercise the rights
16 conferred in a grandparenting time order.

17 (8) ~~-(6)-~~ A grandparenting time order entered in accordance
18 with this section ~~shall not be considered to have created~~ **does**
19 **not create** parental rights in the ~~person or persons~~ **individual**
20 **or individuals** to whom grandparenting time rights are granted.
21 The entry of a grandparenting time order ~~shall~~ **does** not prevent
22 a court of competent jurisdiction from acting upon the custody of
23 the child, the parental rights of the child, or the adoption of
24 the child.

25 (9) ~~-(7)-~~ ~~The~~ **After a hearing, the** court may enter an order
26 modifying or terminating a grandparenting time order whenever
27 ~~such~~ **there is a change of circumstances and** a modification or

1 termination is in the best interests of the child.

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

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

20 (12) Upon motion of a person, the court may award costs and
21 fees as provided in section 2591 of the revised judicature act of
22 1961, 1961 PA 236, MCL 600.2591.