

SENATE BILL No. 1378

September 9, 2004, Introduced by Senators CHERRY, BASHAM, OLSHOVE, SCHAUER, SWITALSKI, CLARKE, BRATER, EMERSON, JACOBS and PATTERSON and referred to the Committee on Judiciary.

A bill to amend 1970 PA 91, entitled "Child custody act of 1970," by amending section 6c (MCL 722.26c), as added by 1993 PA 259.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6c. (1) A third person may bring an action for custody
2 of a child if the court finds either of the following:

3 (a) Both of the following:

4 (i) The child was placed for adoption with the third person
5 under the adoption laws of this or another state, and the
6 placement order is still in effect at the time the action is
7 filed.

8 (ii) After the placement, the child has resided with the
9 third person for a minimum of 6 months.

10 (b) All of the following:

11 (i) The child's biological parents have never been married

1 to one another.

2 (ii) The child's parent who has custody of the child dies,
3 **is incapacitated**, or is missing and the other parent has not been
4 granted legal custody under court order.

5 (iii) The third person is related to the child within the
6 fifth degree by marriage, blood, or adoption.

7 (2) A third person shall include with an action filed under
8 this section both of the following:

9 (a) An affidavit setting forth facts relative to the
10 existence of the prerequisites required by subsection (1)(a) or
11 (b).

12 (b) Notice that a defense or objection to a third person's
13 right to bring an action for custody may be raised as an
14 affirmative defense or by a motion for summary disposition based
15 on lack of standing as provided in the Michigan court rules.

16 (3) **As used in this section, "incapacitated" means impaired**
17 **by reason of mental illness, mental deficiency, physical illness**
18 **or disability, chronic use of drugs, chronic intoxication, or**
19 **other cause to the extent of lacking sufficient understanding or**
20 **capacity to make or communicate informed decisions.**