



HOUSE BILL No. 4930

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July 8, 1993, Introduced by Reps. Gubow, Porreca, Stallworth, Pitoniak and Bankes and referred to the Committee on Judiciary.

A bill to amend sections 2 and 7b of Act No. 91 of the Public Acts of 1970, entitled as amended "Child custody act of 1970," section 2 as amended by Act No. 245 of the Public Acts of 1990 and section 7b as added by Act No. 340 of the Public Acts of 1982, being sections 722.22 and 722.27b of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2 and 7b of Act No. 91 of the Public
2 Acts of 1970, section 2 as amended by Act No. 245 of the Public
3 Acts of 1990 and section 7b as added by Act No. 340 of the Public
4 Acts of 1982, being sections 722.22 and 722.27b of the Michigan
5 Compiled Laws, are amended to read as follows:

6 Sec. 2. As used in this act:

1 ~~(a) "Child" means minor child and children. Subject to~~
 2 ~~section 4a, for purposes of providing support, child includes a~~
 3 ~~child and children who have reached 18 years of age.~~

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

9 (B) "CHILD" MEANS MINOR CHILD AND CHILDREN. SUBJECT TO
 10 SECTION 4A, FOR PURPOSES OF PROVIDING SUPPORT, CHILD INCLUDES A
 11 CHILD AND CHILDREN WHO HAVE REACHED 18 YEARS OF AGE.

12 (C) "GRANDPARENT" MEANS A NATURAL OR ADOPTIVE PARENT OF A
 13 CHILD'S NATURAL OR ADOPTIVE PARENT.

14 (D) "PARENT" MEANS THE NATURAL OR ADOPTIVE PARENT OF A
 15 CHILD.

16 (E) ~~(c)~~ "Third person" means any individual other than a
 17 parent.

18 Sec. 7b. (1) ~~Except as provided in this subsection, a~~ A
 19 CHILD'S grandparent ~~of the child~~ may seek ~~an order for~~ A
 20 GRANDCHILD visitation ORDER UNDER 1 OR MORE OF THE FOLLOWING
 21 CIRCUMSTANCES: ~~in the manner set forth in this section only if a~~
 22 ~~child custody dispute with respect to that child is pending~~
 23 ~~before the court. If a natural parent of an unmarried child is~~
 24 ~~deceased, a parent of the deceased person may commence an action~~
 25 ~~for visitation. Adoption of the child by a stepparent under~~
 26 ~~chapter X of Act No. 288 of the Public Acts of 1939, being~~
 27 ~~sections 710.21 to 710.70 of the Michigan Compiled Laws, does not~~

~~1 terminate the right of a parent of the deceased person to~~
~~2 commence an action for visitation.~~

3 (A) AN ACTION FOR DIVORCE, SEPARATE MAINTENANCE, OR ANNUL-
4 MENT INVOLVING THE GRANDCHILD'S PARENTS IS PENDING BEFORE THE
5 COURT.

6 (B) THE GRANDCHILD'S PARENTS ARE DIVORCED, SEPARATED UNDER A
7 JUDGMENT OF SEPARATE MAINTENANCE, OR HAVE HAD THEIR MARRIAGE
8 ANNULLED.

9 (C) THE GRANDCHILD'S PARENT WHO IS A CHILD OF THE GRANDPAR-
10 ENTS IS DECEASED.

11 (D) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (10), LEGAL
12 CUSTODY OF THE GRANDCHILD HAS BEEN GIVEN TO A PERSON OTHER THAN
13 THE GRANDCHILD'S PARENT, OR THE GRANDCHILD IS PLACED OUTSIDE OF
14 AND DOES NOT RESIDE IN THE HOME OF A PARENT.

15 (E) THE GRANDPARENT HAS PROVIDED AN ESTABLISHED CUSTODIAL
16 ENVIRONMENT FOR THE GRANDCHILD AS DESCRIBED IN SECTION 7, WHETHER
17 OR NOT THE GRANDPARENT HAD CUSTODY PURSUANT TO A COURT ORDER, AT
18 ANY TIME DURING THE LIFE OF THE GRANDCHILD.

19 (F) THE GRANDCHILD'S PARENT HAS WITHHELD FROM THE GRANDPAR-
20 ENT VISITATION OPPORTUNITIES WITH THE GRANDCHILD TO RETALIATE
21 AGAINST THE GRANDPARENT FOR REPORTING CHILD ABUSE OR NEGLECT TO A
22 GOVERNMENTAL AUTHORITY IF THE GRANDPARENT HAD REASONABLE CAUSE TO
23 SUSPECT CHILD ABUSE OR NEGLECT.

24 (G) THE GRANDCHILD'S PARENT LIVES SEPARATE AND AWAY FROM THE
25 OTHER PARENT AND GRANDCHILD FOR MORE THAN 1 YEAR.

1 (H) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2), IF THE
2 GRANDCHILD'S PARENTS HAVE NEVER BEEN MARRIED AND ARE NOT RESIDING
3 IN THE SAME HOUSEHOLD.

4 (2) ~~As used in this section, "child custody dispute"~~
5 ~~includes a proceeding in which any of the following occurs:~~ THE
6 COURT SHALL NOT PERMIT A PARENT OF A PUTATIVE FATHER TO SEEK AN
7 ORDER FOR GRANDCHILD VISITATION UNLESS THE PUTATIVE FATHER HAS
8 ACKNOWLEDGED PATERNITY IN WRITING, HAS BEEN DETERMINED TO BE THE
9 FATHER BY A COURT OF COMPETENT JURISDICTION, OR HAS CONTRIBUTED
10 REGULARLY TO THE SUPPORT OF THE GRANDCHILD.

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

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

20 (3) A grandparent seeking a grandchild visitation order
21 ~~may~~ SHALL commence an action for grandchild visitation AS
22 FOLLOWS: ~~, by complaint or complaint and motion for an order to~~
23 ~~show cause, in the circuit court in the county in which the~~
24 ~~grandchild resides. If a child custody dispute is pending, the~~
25 ~~order shall be sought by motion for an order to show cause.~~

26 (A) IF THE CIRCUIT COURT HAS CONTINUING JURISDICTION OVER
27 THE GRANDCHILD, THE CHILD'S GRANDPARENT SHALL SEEK A GRANDCHILD

1 VISITATION ORDER BY FILING A MOTION FOR VISITATION WITH THE
2 CIRCUIT COURT IN THE COUNTY WHERE THE COURT HAS CONTINUING
3 JURISDICTION.

4 (B) IF THE CIRCUIT COURT DOES NOT HAVE CONTINUING JURISDIC-
5 TION OVER THE GRANDCHILD, THE CHILD'S GRANDPARENT SHALL SEEK A
6 GRANDCHILD VISITATION ORDER BY FILING A COMPLAINT IN THE CIRCUIT
7 COURT FOR THE COUNTY WHERE THE CHILD RESIDES.

8 (4) The complaint or motion FOR VISITATION shall be accom-
9 panied by an affidavit setting forth facts supporting the
10 requested order. The grandparent shall give notice of the filing
11 to each ~~party~~ PERSON who has legal custody OR AN ORDER FOR
12 VISITATION of the grandchild. ~~A party having legal custody may~~
13 ~~file an opposing affidavit. A hearing shall be held by the court~~
14 ~~on its own motion or if a party so requests. At the hearing,~~
15 ~~parties submitting affidavits shall be allowed an opportunity to~~
16 ~~be heard. At the conclusion of the hearing, if the court finds~~
17 IF THE GRANDPARENT SHOWS that it is in the best interests of the
18 ~~child~~ GRANDCHILD to enter a grandchild visitation order, the
19 court shall enter an order providing for reasonable visitation of
20 the ~~child~~ GRANDCHILD by the grandparent by general or specific
21 terms and conditions. ~~If a hearing is not held, the court shall~~
22 ~~enter a grandchild visitation order only upon a finding that vis-~~
23 ~~itation is in the best interests of the child. A grandchild vis-~~
24 ~~itation order shall not be entered for the parents of a putative~~
25 ~~father unless the father has acknowledged paternity in writing,~~
26 ~~has been adjudicated to be the father by a court of competent~~
27 ~~jurisdiction, or has contributed regularly to the support of the~~

1 ~~child or children.~~ The court shall make a record of the reasons
2 for ~~a denial of a requested~~ GRANTING OR DENYING A REQUEST FOR
3 grandchild visitation. ~~order.~~

4 ~~(4) A grandparent may not file more than once every 2~~
5 ~~years, absent a showing of good cause, a complaint or motion~~
6 ~~seeking a grandchild visitation order. If the court finds there~~
7 ~~is good cause to allow a grandparent to file more than 1 com~~
8 ~~plaint or motion under this section in a 2 year period, the court~~
9 ~~shall allow the filing and shall consider the complaint or~~
10 ~~motion. The court may order reasonable attorney fees to the pre~~
11 ~~vailing party.~~

12 (5) IF A GRANDPARENT SEEKS A GRANDCHILD VISITATION ORDER BY
13 FILING A MOTION FOR VISITATION IN A PENDING DIVORCE, SEPARATE
14 MAINTENANCE, OR ANNULMENT ACTION, ENTRY OF THE JUDGMENT OF
15 DIVORCE, SEPARATE MAINTENANCE, OR ANNULMENT DOES NOT DISMISS THE
16 GRANDPARENT'S MOTION FOR VISITATION.

17 (6) THE COURT MAY REFER A COMPLAINT OR MOTION FOR VISITATION
18 FILED UNDER THIS SECTION TO THE FRIEND OF THE COURT MEDIATION
19 SERVICE UNDER SECTION 13 OF THE FRIEND OF THE COURT ACT, ACT
20 NO. 294 OF THE PUBLIC ACTS OF 1982, BEING SECTION 552.513 OF THE
21 MICHIGAN COMPILED LAWS. IF THE COMPLAINT IS REFERRED TO THE
22 FRIEND OF THE COURT MEDIATION SERVICE AND NO SETTLEMENT IS
23 REACHED THROUGH FRIEND OF THE COURT MEDIATION WITHIN 30 DAYS
24 AFTER THE DATE OF REFERRAL, THE COMPLAINT OR MOTION FOR VISITA-
25 TION SHALL BE HEARD BY THE COURT AS OTHERWISE PROVIDED IN THIS
26 SECTION.

1 (7) ~~(5)~~ The court shall not enter an order ~~restricting~~
2 ~~the movement of the grandchild if the restriction~~ PROHIBITING A
3 PERSON WHO HAS LEGAL CUSTODY OF A CHILD FROM CHANGING THE DOMI-
4 CILE OF THE CHILD IF THE PROHIBITION is solely for the purpose of
5 allowing ~~the~~ A grandparent to exercise the rights conferred in
6 a grandchild visitation order.

7 (8) ~~(6)~~ A grandchild visitation order entered in accord-
8 ance with this section ~~shall not be considered to have created~~
9 DOES NOT CREATE parental rights in the person or persons to whom
10 grandchild visitation rights are granted. The entry of a grand-
11 child visitation order ~~shall~~ DOES not prevent a court of compe-
12 tent jurisdiction from acting upon the custody of the child, the
13 parental rights of the child, or the adoption of the child.

14 (9) ~~(7)~~ ~~The~~ AFTER A HEARING, THE court may enter an order
15 modifying or terminating a grandchild visitation order whenever
16 ~~such~~ THERE IS A CHANGE OF CIRCUMSTANCES AND a modification or
17 termination is in the best interests of the child.

18 (10) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, ADOP-
19 TION OF A CHILD OR PLACEMENT OF A CHILD FOR ADOPTION UNDER THE
20 MICHIGAN ADOPTION CODE, CHAPTER X OF ACT NO. 288 OF THE PUBLIC
21 ACTS OF 1939, BEING SECTIONS 710.21 TO 710.70 OF THE MICHIGAN
22 COMPILED LAWS, TERMINATES THE RIGHT OF A GRANDPARENT TO COMMENCE
23 AN ACTION FOR VISITATION OF THAT CHILD. ADOPTION OF A CHILD OR
24 PLACEMENT OF A CHILD FOR ADOPTION BY A STEPPARENT OR BY A PERSON
25 WHO IS RELATED TO THE CHILD WITHIN THE FIFTH DEGREE BY MARRIAGE,
26 BLOOD, OR ADOPTION UNDER THE MICHIGAN ADOPTION CODE, CHAPTER X OF
27 ACT NO. 288 OF THE PUBLIC ACTS OF 1939, DOES NOT TERMINATE THE

1 RIGHT OF A GRANDPARENT TO COMMENCE AN ACTION FOR VISITATION OF
2 THAT CHILD.

3 (11) A GRANDPARENT SHALL NOT FILE MORE THAN ONCE EVERY 2
4 YEARS, ABSENT A SHOWING OF GOOD CAUSE, A COMPLAINT OR MOTION
5 SEEKING A GRANDCHILD VISITATION ORDER. IF THE COURT FINDS THERE
6 IS GOOD CAUSE TO ALLOW A GRANDPARENT TO FILE MORE THAN 1 COM-
7 PLAINTE OR MOTION UNDER THIS SECTION IN A 2-YEAR PERIOD, THE COURT
8 SHALL ALLOW THE FILING AND SHALL CONSIDER THE COMPLAINT OR
9 MOTION.

10 (12) UPON MOTION OF A PERSON, IF THE COURT FINDS THAT A
11 PERSON HAS ASSERTED A FRIVOLOUS CLAIM OR DEFENSE IN AN ACTION
12 UNDER THIS SECTION, THE COURT MAY AWARD COURT COSTS AND REASON-
13 ABLE ATTORNEY FEES TO THE PREVAILING PARTY. AS USED IN THIS SUB-
14 SECTION, "FRIVOLOUS" MEANS THAT AT LEAST 1 OF THE FOLLOWING CON-
15 DITIONS IS MET:

16 (A) A PARTY ACTED TO HARASS, EMBARRASS, OR CAUSE HARDSHIP TO
17 ANOTHER PARTY.

18 (B) A PARTY HAD NO FACTUAL OR LEGAL BASIS FOR HIS OR HER
19 CLAIM OR DEFENSE.

20 Section 2. This amendatory act shall not take effect unless
21 Senate Bill No. _____ or House Bill No. 4931 (request
22 no. 03172'93) of the 87th Legislature is enacted into law.