




Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 420 (Substitute S-1 as reported)
House Bill 5602 (Substitute S-1 as reported)
Sponsor: Senator Irma Clark-Coleman (S.B. 420)
Representative Tonya Schuitmaker (H.B. 5602)
Senate Committee: Senior Citizens and Veterans Affairs (S.B. 420)
Judiciary (H.B. 5602)
House Committee: Judiciary (H.B. 5602)

(as enrolled)

Date Completed: 6-5-06

RATIONALE

Michigan's grandparenting time statute is found in Section 7b of the Child Custody Act, which was re-enacted by Public Act 542 of 2004 after the Michigan Supreme Court found the previous version of Section 7b unconstitutional in 2003. This section allows individuals, under certain circumstances, to seek a court order granting them time with their grandchildren. One of the provisions in Section 7b addresses a person's ability to seek an order for grandparenting time with a child who has been adopted. As a rule, the adoption of a child or the placement of a child for adoption terminates the ability of a grandparent to bring an action for grandparenting time. If a child is adopted by a stepparent, however, a grandparent still may bring an action. This provision differs from the previous law, under which a stepparent adoption did not terminate the right of a parent of a *deceased* person to bring a grandparenting time action. Many people believe that the current language is the result of a drafting error that occurred when Public Act 542 was written. It has been suggested that this aspect of the law should be returned to the previous version. (For more information about the present statute and the case law, please see **BACKGROUND**, below.)

The issue of grandparenting time actions also is addressed in Section 60 of the Michigan Adoption Code, which otherwise pertains to the inheritance rights of a person who has been adopted. Under both the Michigan Adoption Code and the Estates and Protected Individuals Code (EPIC), an adoptee is no longer the heir of a parent

whose parental rights have been terminated. The Estates and Protected Individuals Code also provides, however, that the adoption of a child by the spouse of a natural parent (i.e., by a stepparent) does not affect the child's right to inherit from or through the other natural parent. It has been suggested that this apparent conflict between the Codes should be resolved, and the Adoption Code should recognize the provision in EPIC that preserves inheritance rights in stepparent adoption situations.

CONTENT

Senate Bill 420 (S-1) would amend Section 7b of the Child Custody Act to limit grandparenting time actions in stepparent adoption situations to grandparents whose own child is deceased.

House Bill 5602 (S-1) would amend the Michigan Adoption Code to make an exception to a provision under which an adoptee is no longer the heir of a parent whose parental rights have been terminated. The bill also would revise language concerning grandparenting time proceedings.

Senate Bill 420 (S-1) is tie-barred to House Bill 5602.

Senate Bill 420 (S-1)

Section 7b of the Child Custody Act states that adoption of a child by a stepparent does not terminate the right of a grandparent to

commence an action for grandparenting time with the child. The bill provides, instead, that adoption of a child by a stepparent would not terminate the right of the parent of a deceased parent of the child to bring an action for grandparenting time. The bill retains the current provision under which adoption of a child or placement of a child for adoption otherwise terminates the right of a grandparent to commence an action for grandparenting time with the child.

House Bill 5602 (S-1)

Rights of Inheritance

Under Section 60(2) of the Adoption Code, after entry of an order of adoption, an adopted child is no longer an heir at law of a parent whose parental rights have been terminated under the Adoption Code or the juvenile code, or the lineal or collateral kindred of that parent. That section also specifies that an adopted adult is not an heir at law of a person who was his or her parent at the time the adoption order was entered or the lineal or collateral kindred of that person.

Under the bill, Section 60(2) would apply except as provided in Section 2114(2) of EPIC. Under Section 2114(2), adoption of a child by the spouse of either natural parent has no effect on the right of the child or his or her descendants to inherit from or through the other natural parent.

Grandparenting Time

Section 60 of the Adoption Code states it does not prohibit the entry of an order for grandparenting time under Section 7b of the Child Custody Act. While a stepparent adoption proceeding is pending, a parent of a natural parent may seek an order for grandparenting time of the adoptee in the same manner as set forth in Section 7b. The bill would delete that provision.

Under the bill, Section 60 would not prohibit either the filing of an action or the entry of an order for grandparenting time as provided in Section 7b.

MCL 722.27b (S.B. 420)
710.60 (H.B. 5602)

BACKGROUND

Michigan's previous grandparenting time statute was found unconstitutional by the Michigan Supreme Court in July 2003 (*DeRose v DeRose*, 469 Mich 320), following a divided 1999 U.S. Supreme Court decision that struck down the State of Washington's grandparent visitation law (*Troxel v Granville*, 530 U.S. 57). Since 1971, Michigan law has allowed grandparents to seek visitation in limited circumstances, and Section 7b of the Child Custody Act was enacted in 1982. Essentially, the law allowed a person to seek a grandparenting time order only if a child custody dispute with respect to the child was pending before the court; also, if the natural parent of an unmarried child was deceased, a parent of the deceased person could bring an action for grandparenting time.

The Michigan Supreme Court decision precluded grandparents from obtaining court orders granting them time with their grandchildren. In cases in which individuals already had obtained such orders, some custodial parents sought to have the orders overturned. In March 2004, the Michigan Court of Appeals held that the *DeRose* decision should be given full retroactive effect and that the orders issued under the law were void.

Public Act 542 of 2004 took effect on January 3, 2005. The Act allows individuals to seek grandparenting time orders under specific circumstances (which are broader than under the 1982 law); establishes a rebuttable presumption that a fit parent's decision to deny grandparenting time does not create a substantial risk of harm to the child; places the burden on the grandparent to rebut the presumption by a preponderance of the evidence (or, if that standard of proof is found unconstitutional, by clear and convincing evidence); and requires the court to dismiss a complaint for grandparenting time if two fit parents sign an affidavit opposing a grandparenting time order.

Previously, Section 7b(1) stated, "If a natural parent of an unmarried child is deceased, a parent of the deceased person may commence an action for grandparenting time. Adoption of the child by a stepparent...does not terminate the right of a parent of the deceased person to commence

an action for grandparenting time.” Section 7b(13) now states, “Except as otherwise provided in this subsection, adoption of a child or placement of a child for adoption under the Michigan adoption code...terminates the right of a grandparent to commence an action for grandparenting time with the child. Adoption of a child by a stepparent...does not terminate the right of a grandparent to commence an action for grandparenting time with that child.”

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

When Public Act 542 of 2004 re-enacted the grandparenting time law, it inadvertently gave grandparents of children who are adopted by a stepparent more rights than other grandparents received. Under the law, adoption normally terminates the right of a person to seek grandparenting time with a grandchild who has been adopted. Because a grandparent’s rights flow from the rights of the parent, a grandparent’s rights are severed if the parent’s rights have been terminated—as they are in an adoption situation, unless the natural parent has died. Thus, the previous law carved out a narrow exception to the rule for cases in which a child’s parent had died and the child was adopted by a stepparent. In such a case, the parent of the child’s deceased parent could seek grandparenting time. The current law, however, also allows a grandparenting time action when a child is adopted by a stepparent after the child’s natural parent lost or gave up his or her parental rights. It is widely believed that the present language resulted from a drafting error. Senate Bill 420 (S-1) simply would return the law to what it had been before, with respect to grandparenting time actions in stepparent adoption situations.

Supporting Argument

House Bill 5602 (S-1) would eliminate a conflict between the Adoption Code and EPIC concerning the inheritance rights of a person who is adopted by a stepparent. The standard principle of inheritance after an adoption is that the adopted individual becomes the child of the adopting parents, and each can inherit from the other, but the adoptee ceases to be the child of the natural

parents and mutual inheritance rights between the adopted child and the natural parents cease. Both the Adoption Code and EPIC recognize this premise, but EPIC also contains a well recognized exception: that adoption by the spouse of either natural parent has no effect on the right of the adopted child to inherit from or through the other natural parent. The bill would preserve this exception by eliminating a statutory conflict that might suggest otherwise. This change has been recommended by the Probate and Estate Planning Section of the State Bar of Michigan.

Supporting Argument

House Bill 5602 (S-1) would update language in Section 60 of the Adoption Code concerning grandparenting time actions. The current language, which predates the 2004 re-enactment of the grandparenting time law, allows a person to seek a grandparenting time order only while a stepparent adoption proceeding is pending. By deleting this language, and providing that Section 60 would not prohibit the filing of an action or entry of an order for grandparenting time as provided in Section 7b of the Child Custody Act, the bill would bring consistency to the statutes and allow Section 7b to control.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Stephanie Yu

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.