

HOUSE BILL No. 4153

February 14, 1989, Introduced by Reps. Gubow, Van Regenmorter, Munsell, DeBeaussaert, Berman, Bennett, Middaugh, Dunaskiss, Dolan, Stabenow, Emerson, Power, Gire, Palamara, Ciaramitaro, Webb, Runco, DeMars, Perry Bullard, Muxlow, Sikkema, Hunter, Bankes, Honigman and Gilmer and referred to the Committee on Judiciary.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 7b of Act No. 91 of the Public Acts of
2 1970, as added by Act No. 340 of the Public Acts of 1982, being
3 section 722.27b of the Michigan Compiled Laws, is amended to read
4 as follows:

5 Sec. 7b. (1) ~~Except as provided in this subsection, a~~ A
6 grandparent of ~~the~~ A child may seek ~~an order for~~ A GRANDCHILD
7 visitation ORDER UNDER ANY OF THE FOLLOWING CIRCUMSTANCES: ~~in~~
8 ~~the manner set forth in this section only if a child custody~~
9 ~~dispute with respect to that child is pending before the court.~~

~~1 If a natural parent of an unmarried child is deceased, a parent
2 of the deceased person may commence an action for visitation.
3 Adoption of the child by a stepparent under chapter X of Act
4 No. 288 of the Public Acts of 1939, being sections 710.21 to
5 710.70 of the Michigan Compiled Laws, does not terminate the
6 right of a parent of the deceased person to commence an action
7 for visitation.~~

8 (A) IF AN ACTION FOR DIVORCE, SEPARATE MAINTENANCE, OR
9 ANNULMENT INVOLVING THE PARENTS OF THE GRANDCHILD IS PENDING
10 BEFORE THE COURT.

11 (B) IF THE PARENTS OF THE GRANDCHILD ARE DIVORCED, SEPARATED
12 UNDER A JUDGMENT OF SEPARATE MAINTENANCE, OR THEIR MARRIAGE HAS
13 BEEN ANNULLED.

14 (C) IF A GRANDPARENT'S CHILD IS DECEASED AND THAT CHILD IS
15 THE PARENT OF THE GRANDCHILD.

16 (D) IF LEGAL CUSTODY OF THE GRANDCHILD HAS BEEN GIVEN TO A
17 PERSON OTHER THAN THE GRANDCHILD'S PARENT, OR A CHILD IS PLACED
18 OUTSIDE OF AND DOES NOT RESIDE IN THE HOME OF A PARENT, EXCLUDING
19 ANY CHILD WHO HAS BEEN PLACED FOR ADOPTION WITH OTHER THAN A
20 STEPPARENT, OR WHOSE ADOPTION BY OTHER THAN A STEPPARENT HAS BEEN
21 LEGALLY FINALIZED.

22 (E) IF 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 PURSUANT TO A COURT ORDER, AT
25 ANY TIME DURING THE LIFE OF THE GRANDCHILD.

26 (F) IF A PARENT OF A GRANDCHILD HAS WITHHELD VISITATION
27 OPPORTUNITIES WITH THE CHILD FROM A GRANDPARENT TO RETALIATE

1 AGAINST THE GRANDPARENT FOR REPORTING CHILD ABUSE OR NEGLECT TO A
2 GOVERNMENTAL AUTHORITY WHERE THE GRANDPARENT HAS REASONABLE CAUSE
3 TO SUSPECT CHILD ABUSE OR NEGLECT.

4 (G) IF A PARENT OF THE GRANDCHILD IS LIVING SEPARATE AND
5 AWAY FROM THE OTHER PARENT AND GRANDCHILD FOR MORE THAN 1 YEAR.

6 (H) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2), IF THE
7 PARENTS OF THE GRANDCHILD HAVE NEVER BEEN MARRIED AND ARE NOT
8 RESIDING IN THE SAME HOUSEHOLD.

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

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

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

25 (3) A grandparent seeking a grandchild visitation order
26 ~~may~~ SHALL commence an action for grandchild visitation AS
27 FOLLOWS: ~~, by complaint or complaint and motion for an order to~~

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

4 (A) IF THE CIRCUIT COURT IN THIS STATE HAS CONTINUING JURIS-
5 DICTION OVER A CHILD, A GRANDPARENT OF THE CHILD SHALL SEEK A
6 GRANDCHILD VISITATION ORDER BY FILING A MOTION FOR VISITATION
7 WITH THE CIRCUIT COURT IN THE COUNTY WHERE THE COURT HAS CONTINU-
8 ING JURISDICTION.

9 (B) IF THE CIRCUIT COURT DOES NOT HAVE CONTINUING JURISDIC-
10 TION OVER A CHILD, A GRANDPARENT OF THE CHILD SHALL SEEK A GRAND-
11 CHILD VISITATION ORDER BY FILING A COMPLAINT IN THE CIRCUIT COURT
12 IN THE COUNTY WHERE THE CHILD RESIDES.

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

~~1 best interests of the child. A grandchild visitation order shall~~
~~2 not be entered for the parents of a putative father unless the~~
~~3 father has acknowledged paternity in writing, has been adjudi-~~
~~4 cated to be the father by a court of competent jurisdiction, or~~
~~5 has contributed regularly to the support of the child or~~
~~6 children.~~ The court shall make a record of the reasons for ~~a~~
~~7 denial of a requested~~ GRANTING OR DENYING A REQUEST FOR grand-
~~8 child visitation. order.~~

~~9 (4) A grandparent may not file more than once every 2~~
~~10 years, absent a showing of good cause, a complaint or motion~~
~~11 seeking a grandchild visitation order. If the court finds there~~
~~12 is good cause to allow a grandparent to file more than 1 com-~~
~~13 plaint or motion under this section in a 2 year period, the court~~
~~14 shall allow the filing and shall consider the complaint or~~
~~15 motion. The court may order reasonable attorney fees to the pre-~~
~~16 vailing party.~~

17 (5) IF A GRANDPARENT SEEKS A GRANDCHILD VISITATION ORDER BY
18 FILING A MOTION FOR VISITATION IN A PENDING DIVORCE, SEPARATE
19 MAINTENANCE, OR ANNULMENT ACTION, ENTRY OF THE JUDGMENT OF
20 DIVORCE, SEPARATE MAINTENANCE, OR ANNULMENT SHALL NOT ACT AS A
21 DISMISSAL OF THE GRANDPARENT'S MOTION.

22 (6) A COMPLAINT OR MOTION FOR VISITATION FILED UNDER THIS
23 ACT MAY BE REFERRED BY THE COURT TO THE FRIEND OF THE COURT MEDI-
24 ATION SERVICE UNDER SECTION 13 OF THE FRIEND OF THE COURT ACT,
25 ACT NO. 294 OF THE PUBLIC ACTS OF 1982, BEING SECTION 552.513 OF
26 THE MICHIGAN COMPILED LAWS. IF THE COMPLAINT IS REFERRED TO THE
27 FRIEND OF THE COURT MEDIATION SERVICE, AND IF NO SETTLEMENT IS

1 REACHED THROUGH FRIEND OF THE COURT MEDIATION WITHIN 30 DAYS
2 AFTER THE DATE OF REFERRAL, THE COMPLAINT OR MOTION FOR VISITA-
3 TION SHALL BE HEARD BY THE COURT AS OTHERWISE PROVIDED IN THIS
4 SECTION.

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

11 (8) ~~(6)~~ A grandchild visitation order entered in accord-
12 ance with this section shall not be considered to have created
13 parental rights in the person or persons to whom grandchild visi-
14 tation rights are granted. The entry of a grandchild visitation
15 order shall not prevent a court of competent jurisdiction from
16 acting upon the custody of the child, the parental rights of the
17 child, or the adoption of the child.

18 (9) ~~(7)~~ The court AFTER A HEARING may enter an order modi-
19 fying or terminating a grandchild visitation order whenever
20 ~~such~~ THERE IS A CHANGE OF CIRCUMSTANCES AND a modification or
21 termination is in the best interests of the child.

22 (10) ADOPTION OF THE CHILD BY A STEPPARENT UNDER THE
23 MICHIGAN ADOPTION CODE, CHAPTER X OF ACT NO. 288 OF THE PUBLIC
24 ACTS OF 1939, BEING SECTIONS 710.21 TO 710.70 OF THE MICHIGAN
25 COMPILED LAWS, DOES NOT TERMINATE THE RIGHT OF A GRANDPARENT TO
26 COMMENCE AN ACTION FOR VISITATION.

1 (11) THIS SECTION DOES NOT APPLY TO A GRANDPARENT OF A CHILD
2 WHO HAS BEEN PLACED FOR ADOPTION WITH A PERSON OTHER THAN A
3 STEPPARENT OR WHOSE ADOPTION BY A PERSON OTHER THAN A STEPPARENT
4 HAS BEEN LEGALLY FINALIZED.

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

12 (13) UPON MOTION OF A PARTY, IF THE COURT FINDS THAT A PARTY
13 HAS ASSERTED A VEXATIOUS CLAIM OR DEFENSE, THE COURT MAY AWARD
14 COURT COSTS AND REASONABLE ATTORNEY FEES TO THE PREVAILING
15 PARTY. AS USED IN THIS SUBSECTION, "VEXATIOUS" MEANS THAT AT
16 LEAST 1 OF THE FOLLOWING CONDITIONS IS MET:

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

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

21 (14) AS USED IN THIS SECTION:

22 (A) "GRANDPARENT" MEANS A NATURAL OR ADOPTIVE PARENT OF A
23 CHILD'S NATURAL OR ADOPTIVE PARENT.

24 (B) "PARENT" MEANS THE NATURAL OR ADOPTIVE PARENT OF A
25 CHILD.

1 Section 2. This amendatory act shall not take effect unless
2 Senate Bill No. _____ or House Bill No. 4071 (request
3 no. 00507'89 a) of the 85th Legislature is enacted into law.