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BILL ANALYSIS

Senate Fiscal Agency

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House Bill 4078 (as reported with amendment)

Sponsor: Representative Teola P. Hunter

House Committee: Judiciary

Senate Committee: Judiciary

Mich. State Law Library

Date Completed: 5-26-88

RATIONALE

In 1972, the Michigan Supreme Court held that children could sue their parents for negligence, but placed certain limits on that parental liability (Plumley v Klein, 388 Mich 1). In 1977, the Court of Appeals ruled that a person who stood in loco parentis (in that case, a grandmother who had raised a grandchild) had the same limited immunity to tort liability accorded natural parents (Hush v Devilbiss Co., 77 Mich App 639). In 1985, however, the Michigan Supreme Court reversed a lower court's ruling in a case involving whether foster parents may receive the same protection under the law that others who assume a parental role can receive (Mayberry v Pryor, 422 Mich 579). The Supreme Court held that foster parents are not entitled to the immunity accorded natural parents.

Reportedly, vulnerability to lawsuits deters many people from becoming or remaining foster parents, and thus contributes to the difficulty of finding good foster homes. Many people believe that foster parents, whose role it is to nurture and care for children in the same way that natural parents are supposed to, should be granted the same limited immunity to liability as is accorded to parents.

CONTENT

The bill would amend Public Act 33 of 1980 to specify that a child could maintain an action against his or her licensed foster parent or legal guardian for injuries suffered as a result of negligence, except in either of the following instances:

- The alleged negligent act involved an exercise of reasonable parental authority over the child.
- The alleged negligent act involved an exercise of reasonable parental discretion with respect to the provision of food, clothing, housing, medical and dental services, and other care.

Under the bill, "legal guardian" would mean "a person appointed by a court of competent jurisdiction to exercise care and custody over a minor".

The bill would take effect on July 1, 1988.

MCL 722.163

SENATE COMMITTEE ACTION

The Senate Judiciary Committee adopted an amendment to the bill to provide an effective date of July 1, 1988.

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government.

ARGUMENTS**Supporting Argument**

Foster parents provide the same day-to-day care and are faced with the same daily decisions as natural parents. They should be entitled to the same protection under the law as others who raise children. Foster parents provide a public service and deserve public protection for the parental role that has been assigned to them. In specifying instances in which a child could not sue his or her foster parent or legal guardian, the bill would parallel the language of the Supreme Court in Plumley specifying exceptions to the then-new rule allowing children to sue their parents for negligence.

Opposing Argument

The Supreme Court held that foster parents assume a contractual duty to provide supervisory care and should be held responsible for any failure to use reasonable care. As the Court noted, the usual arguments for parental immunity—preservation of the family unit and domestic tranquillity, protection of family resources, and a reluctance to interfere with parenting decisions—do not apply in the foster care relationship. The Court further pointed out that, in comparison to the situation in which a person stands in loco parentis to a child, the situation is markedly different when a foster care arrangement is involved: foster children and foster parents are not related by consanguinity, marriage, or adoption, but are brought together by means of a preexisting contractual arrangement between the Department of Social Services and the foster parents in which the parents are compensated for expenses incurred in caring for the child; also, the foster parents and home must conform to specific statutory and regulatory guidelines, and the Department must monitor them. In addition, placement of the child in a foster family home generally is not voluntary and the goal of foster care is not to create a new "family" unit or encourage permanent emotional ties between the child and foster parents. The Court held that, on balance, the interests of the child outweigh those of the foster parents and that parental immunity should not be extended to foster parents.

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