

Legislative Analysis



ADOPTION CODE: OUT-OF-COURT CONSENT

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4646

Sponsor: Rep. Mike Shirkey

Committee: Families, Children, and Seniors

Complete to 5-14-13

A SUMMARY OF HOUSE BILL 4646 AS INTRODUCED 4-30-13

The bill would amend the Adoption Code, which is Chapter X of the Probate Code. It would make the following amendments.

New Out-of-Court Consent Provisions

The bill would specify that in a direct placement, a parent could execute an out-of-court consent after the child's birth. Such a consent signed under this section would need to comply with both the following: (1) it must be executed before and witnessed by an adoption attorney representing the parent or guardian or a child placing agency case worker; and (2) the consent could be signed before filing a petition for adoption. If a temporary placement were made, the out-of-court consent would have to be filed with the court at the same time as the documents authorizing the temporary placement.

If an out-of-court consent were executed, the adoption attorney who witnessed it, or a caseworker from the child placing agency that accepted it, would be required to fully explain to the parent or guardian their legal rights and the fact that the parent or guardian, by virtue of the consent, voluntarily relinquishes permanently his or her rights to the child.

An out-of-court consent would be revocable from the time of execution up to 72 hours after it is executed. Revocation would need to be in writing to the adoption attorney who witnessed it or the caseworker from the child placing agency who accepted it. Upon receiving the written notification, the adoption attorney or caseworker would have to assist the parent or guardian in filing the petition to revoke the out-of-court consent. The court in which the consent was filed could determine that revocation was not in the best interest of the child.

If an adoptive parent objected to such a revocation, timely notice of the revocation would not immediately result in the return of the child to the parent. The right of parent to custody of the child would not be superior to the rights of the adoptive parent to custody of the child. A hearing before a judge would be required to determine (1) whether the notice of revocation was given in a timely and proper manner; and (2) whether the best interest of the child would be served by any of the following: (a) returning custody of the child to the parent; (b) continuing the adoption proceeding begun, or intended to be

begun by the adoptive parents; or (c) disposition appropriate to the child's welfare as authorized by Section 18 of the code under an ex parte order by the court.

Direct Placement Amendment

Currently under the Code, in a direct placement, a parent or guardian with legal physical custody of a child may make a temporary placement of a child. In an agency placement, a child placing agency, with written authorization from the parent or guardian, may make a temporary placement of the child. A parent or guardian who wishes to regain custody of a child who has been placed temporarily must file a petition with the court. The bill would specify that such a petition would have to be filed not less than 72 hours after a temporary placement had been made.

FISCAL IMPACT:

A fiscal analysis is in process.

Legislative Analyst: E. Best
Fiscal Analyst: Kevin Koorstra

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.