

HOUSE BILL No. 4646

April 30, 2013, Introduced by Reps. Shirkey and Kurtz and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1939 PA 288, entitled "Probate code of 1939," by amending sections 23d, 29, and 44 of chapter X (MCL 710.23d, 710.29, and 710.44), section 23d as amended by 2004 PA 487 and sections 29 and 44 as amended by 1996 PA 409.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1
2
3
4
5
6
7
8
9

CHAPTER X

Sec. 23d. (1) In a direct placement, a parent or guardian with legal and physical custody of a child may make a temporary placement of the child as prescribed by this section. In an agency placement, a child placing agency with written authorization from the parent or guardian as prescribed by section 23b of this chapter may make a temporary placement of the child as prescribed by this section. A temporary placement shall meet all of the following requirements:

1 (a) The prospective adoptive parent with whom a child is
2 temporarily placed has had a preplacement assessment completed
3 within 1 year before the date of the transfer with a finding that
4 the prospective adoptive parent is suitable to be a parent of an
5 adoptee.

6 (b) In a direct placement, the parent or guardian is assisted
7 by an adoption attorney or a child placing agency.

8 (c) In the presence of a witness who also signs the document,
9 the parent, guardian, or representative of the child placing agency
10 signs a statement evidencing the transfer of physical custody of
11 the child. If the parent making the temporary placement is an
12 unemancipated minor, the statement is not valid unless it is also
13 signed in the presence of the witness by a parent or guardian of
14 that minor parent. The statement shall contain all of the
15 following:

16 (i) The date of the transfer of physical custody.

17 (ii) Language providing that the transfer is for the purpose of
18 adoption by the prospective adoptive parent.

19 (iii) Language indicating that unless the parent or guardian and
20 the prospective adoptive parent agree otherwise, the prospective
21 adoptive parent has the authority to consent to all medical,
22 surgical, psychological, educational, and related services for the
23 child and language indicating that the parent or guardian otherwise
24 retains full parental rights to the child being temporarily placed
25 and that the temporary placement may be revoked by the filing of a
26 petition under subsection (5).

27 (iv) Language providing that the person making the transfer has

1 read a preplacement assessment of the prospective adoptive parent
2 completed or updated within 1 year before the date of the transfer
3 with a finding that the prospective adoptive parent is suitable to
4 be a parent of an adoptee. If a child placing agency makes the
5 transfer of physical custody, the statement shall include a
6 verification that the child placing agency has given the parent or
7 guardian who authorized the temporary placement an opportunity to
8 review the preplacement assessment.

9 (v) Even if only 1 parent is making the temporary placement,
10 the name and address of both parents of the child, including in the
11 case of a child born out of wedlock, the name and the address of
12 each putative father of the child, if known.

13 (d) In the presence of a witness who also signs the document,
14 the prospective adoptive parent signs a statement setting forth the
15 date of the transfer of physical custody and the name and address
16 of the prospective adoptive parent and attesting to all of the
17 following:

18 (i) That the prospective adoptive parent understands that the
19 temporary placement will not become a formal placement until the
20 parents consent or release their parental rights and the court
21 orders the termination of parental rights and approves the
22 placement and that the prospective adoptive parent must relinquish
23 custody of the child within 24 hours after being served with an
24 order under section 23e(2) of this chapter.

25 (ii) That, if the prospective adoptive parent is a Michigan
26 resident, the prospective adoptive parent agrees to reside with the
27 child in Michigan until formal placement occurs.

1 (iii) That the prospective adoptive parent agrees to obtain
2 approval in compliance with the interstate compact on the placement
3 of children, 1984 PA 114, MCL 3.711 to 3.717, before the child is
4 sent, brought, or caused to be sent or brought into a receiving
5 state as that term is defined in section 1 of the interstate
6 compact on the placement of children, 1984 PA 114, MCL 3.711.

7 (iv) That the prospective adoptive parent submits to this
8 state's jurisdiction.

9 (2) Not later than 2 days, excluding weekends and holidays,
10 after a transfer of physical custody of a child in accordance with
11 subsection (1), the adoption attorney or child placing agency who
12 assists with the temporary placement or the child placing agency
13 that makes the temporary placement shall submit to the court in the
14 county in which the child's parent or guardian or the prospective
15 adoptive parent resides, or in which the child is found, a report
16 that contains all of the following:

17 (a) The date of the transfer of physical custody.

18 (b) The name and address of the parent or guardian or the
19 child placing agency who made the temporary placement.

20 (c) The name and address of the prospective adoptive parent
21 with whom the temporary placement was made.

22 (d) Even if only 1 parent is making the temporary placement,
23 the name and address of both parents of the child, including, in
24 the case of a child born out of wedlock, the name of each putative
25 father, if known.

26 (e) The documents required under subsection (1)(c) and (d)
27 and, if applicable, the authorization required under section 23b of

1 this chapter.

2 (3) Not later than 30 days after the transfer of physical
3 custody of a child under this section, the adoption attorney or
4 child placing agency who assists with the temporary placement or
5 the child placing agency that makes the temporary placement shall
6 submit to the court that received the report described in
7 subsection (2) a report indicating whether or not 1 of the
8 following dispositions has occurred:

9 (a) A petition for adoption of the child has been filed.

10 (b) The child has been returned to the agency or to a parent
11 or other person having legal custody.

12 (4) If the court has not received the report required under
13 subsection (3) within 45 days after the transfer of physical
14 custody of a child, the court shall immediately investigate and
15 determine whether an adoption petition has been filed or the child
16 has been returned to a parent or other person having legal custody.
17 If the report required under subsection (3) or the court's
18 investigation reveals that neither disposition has occurred, the
19 court shall immediately report to the prosecutor, who shall
20 immediately file a petition in the court that received the report
21 described in subsection (2) for disposition of the child as
22 required by section 23e of this chapter. If a petition has been
23 filed under subsection (5), (6), or (7), the prosecutor is not
24 required to file a petition.

25 (5) A parent or guardian who wishes to regain custody of a
26 child who has been placed temporarily shall file a petition in the
27 court that received the report described in subsection (2)

1 requesting that the temporary placement be revoked and that the
2 child be returned to the parent or guardian. Upon request of the
3 parent or guardian, the adoption attorney or child placing agency
4 who assisted in making the temporary placement shall assist the
5 parent or guardian in filing the petition to revoke the temporary
6 placement. If the temporary placement was made by a child placing
7 agency under section 23b(3) of this chapter, the child placing
8 agency shall file the petition on behalf of a parent or guardian
9 who wishes to regain custody of the child.

10 (6) If a prospective adoptive parent with whom a child has
11 been temporarily placed is either unwilling or unable to proceed
12 with the adoption, the prospective adoptive parent may file a
13 petition in the court that received the report described in
14 subsection (2) for disposition of the child as required by section
15 23e of this chapter.

16 (7) If a child placing agency that temporarily placed a child
17 is unable to proceed with an adoption because of the unavailability
18 of a parent or guardian to execute a release, or if a child placing
19 agency with legal custody of a child decides not to proceed with
20 the adoption by a prospective adoptive parent with whom the child
21 has been temporarily placed and the prospective adoptive parent
22 refuses upon the agency's request to return the child to the
23 agency, the child placing agency shall file a petition in the court
24 that received the report described in subsection (2) for
25 disposition of the child as required by section 23e of this
26 chapter.

27 (8) Except as otherwise agreed to by the parties, the

1 prospective adoptive parent with whom a child is temporarily placed
2 under this section may consent to all medical, surgical,
3 psychological, educational, and related services for the child.

4 (9) A hospital or attending practitioner shall not release a
5 child to an individual or agency not otherwise legally entitled to
6 the physical custody of the child unless all of the requirements of
7 subsection (1) are met.

8 (10) **A PETITION FILED UNDER THIS SECTION TO REVOKE A TEMPORARY**
9 **PLACEMENT MUST BE FILED WITH THE COURT NOT LESS THAN 72 HOURS AFTER**
10 **THE TEMPORARY PLACEMENT HAS BEEN MADE.**

11 Sec. 29. (1) Except as otherwise provided in this section, a
12 release shall be by a separate instrument executed before a judge
13 of the court or a juvenile court referee. If a parent's or
14 guardian's release is executed before a judge or referee as
15 provided in this subsection, a verbatim record of testimony related
16 to execution of the release shall be made.

17 (2) If the person from whom a release is required is in the
18 armed services or is in prison, the release may be executed and
19 acknowledged before an individual authorized by law to administer
20 oaths.

21 (3) If the release is to be given by an authorized
22 representative of a child placing agency that has jurisdiction of
23 the child to be adopted, the release may be executed and
24 acknowledged before an individual authorized by law to administer
25 oaths.

26 (4) If the release is executed in another state or country,
27 the court having jurisdiction over the adoption proceeding in this

1 state shall determine whether the release was executed in
2 accordance with the laws of that state or country or the laws of
3 this state and shall not proceed unless it finds that the release
4 was so executed.

5 (5) A PARENT OR GUARDIAN MAY EXECUTE AN OUT-OF-COURT RELEASE
6 BEFORE AN ADOPTION ATTORNEY OR A CHILD PLACING AGENCY CASEWORKER.

7 (6) ~~(5)~~ A release by a parent or guardian shall be accompanied
8 by a verified statement signed by the parent or guardian that
9 contains all of the following:

10 (a) That the parent or guardian has received a list of support
11 groups and, if the release is to a child placing agency, a copy of
12 the written document described in section 6(1)(c) of the foster
13 care and adoption services act, ~~Act No. 203 of the Public Acts of~~
14 ~~1994, being section 722.956 of the Michigan Compiled Laws.~~ **1994 PA**
15 **203, MCL 722.956.**

16 (b) That the parent or guardian has received counseling
17 related to the adoption of his or her child or waives the
18 counseling with the signing of the verified statement.

19 (c) That the parent or guardian has not received or been
20 promised any money or anything of value for the release of the
21 child, except for lawful payments that are itemized on a schedule
22 filed with the release.

23 (d) That the validity and finality of the release is not
24 affected by any collateral or separate agreement between the parent
25 or guardian and the **CHILD PLACING** agency, or the parent or guardian
26 and the prospective adoptive parent.

27 (e) That the parent or guardian understands that it serves the

1 **CHILD'S** welfare ~~of the child~~ for the parent to keep the child
2 placing agency or department informed of any health problems that
3 the parent develops that could affect the child.

4 (f) That the parent or guardian understands that it serves the
5 **CHILD'S** welfare ~~of the child~~ for the parent or guardian to keep his
6 or her address current with the child placing agency or department
7 in order to permit a response to any inquiry concerning medical or
8 social history from an adoptive parent of a minor adoptee or from
9 an adoptee who is 18 years of age or older.

10 (7) ~~(6)~~ A release by a parent or a guardian of the child shall
11 not be executed until after the investigation the court considers
12 proper and until after the judge, referee, or other individual
13 authorized in subsection (2) has fully explained to the parent or
14 guardian the legal rights of the parent or guardian and the fact
15 that the parent or guardian by virtue of the release voluntarily
16 relinquishes permanently his or her rights to the child; and, if
17 the child is over 5 years of age, the court has determined that the
18 child is best served by the release. **IF AN OUT-OF-COURT CONSENT IS**
19 **EXECUTED UNDER SECTION 44(8), THE ADOPTION ATTORNEY WHO WITNESSED**
20 **THE OUT-OF-COURT CONSENT OR A CASEWORKER FROM THE CHILD PLACING**
21 **AGENCY THAT ACCEPTED THE OUT-OF-COURT CONSENT SHALL FULLY EXPLAIN**
22 **TO THE PARENT OR GUARDIAN THE LEGAL RIGHTS OF THE PARENT OR**
23 **GUARDIAN AND THE FACT THAT THE PARENT OR GUARDIAN BY VIRTUE OF THE**
24 **OUT-OF-COURT CONSENT VOLUNTARILY RELINQUISHES PERMANENTLY HIS OR**
25 **HER RIGHTS TO THE CHILD.**

26 (8) ~~(7)~~ Upon the release of a child by a parent or guardian,
27 the court immediately shall issue an order terminating the rights

1 of that parent or guardian to that child. If the rights of both
2 parents, the surviving parent, or the guardian have been
3 terminated, the court shall issue an order committing the child to
4 the child placing agency or department to which the release was
5 given.

6 (9) ~~(8)~~—The court shall authorize foster care funding pending
7 expiration of the period of appeal or rehearing as provided in
8 sections 64 and 65 of this chapter, and pending disposition of any
9 appeal or rehearing, for all persons committed to a child placing
10 agency. Foster care funding authorized under this subsection shall
11 exclude the administrative costs of the child placing agency. The
12 costs of foster care shall be paid through the use of the child
13 care fund as provided by section 117c of the social welfare act,
14 ~~Act No. 280 of the Public Acts of 1939, being section 400.117c of~~
15 ~~the Michigan Compiled Laws, 1939 PA 280, MCL 400.117C,~~ or by any
16 successor statute. When foster care funding is authorized pursuant
17 **ACCORDING** to this subsection, the court shall send a copy of the
18 order to the department. Upon receiving a copy of this order, the
19 department shall reimburse the court child care fund of the county
20 where the court order for foster care funding was made in the total
21 amount of the court ordered payment. The reimbursement shall be
22 made monthly.

23 (10) ~~(9)~~—Entry of an order terminating the rights of both
24 parents under subsection ~~(7)~~ **(8)** terminates the jurisdiction of the
25 circuit court over the child in any divorce or separate maintenance
26 action.

27 (11) ~~(10)~~ ~~Upon~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS**

1 **SUBSECTION, UPON** petition of the same person or persons who
2 executed the release and of the department or child placing agency
3 to which the child was released, the court with which the release
4 was filed may grant a hearing to consider whether the release
5 should be revoked. A release may not be revoked if the child has
6 been placed for adoption unless the child is placed as provided in
7 section 41(2) of this chapter and a petition for rehearing or claim
8 of appeal is filed within the time required. A verbatim record of
9 testimony related to a petition to revoke a release shall be made.
10 **IN THE CASE OF AN OUT-OF-COURT RELEASE EXECUTED UNDER SUBSECTION**
11 **(5), NOTICE OF REVOCATION MUST BE SUBMITTED IN WRITING TO THE**
12 **ADOPTION ATTORNEY OR THE CHILD PLACING AGENCY CASEWORKER NOT MORE**
13 **THAN 72 HOURS AFTER THE RELEASE IS EXECUTED AND ACKNOWLEDGED.**

14 Sec. 44. (1) Except as otherwise provided in this section, the
15 consent required by section 43 of this chapter shall be by a
16 separate instrument executed before the judge having jurisdiction
17 or, at the court's direction, before another judge of the family
18 division of circuit court in this state. A consent may be executed
19 before a juvenile court referee. The consent hearing shall be held
20 within 7 days after it is requested. If the consent of a parent or
21 guardian is executed before a judge or referee as provided in this
22 subsection, a verbatim record of testimony related to execution of
23 the consent shall be made.

24 (2) If the individual whose consent is required is in any of
25 the armed services or is in prison, the consent may be executed and
26 acknowledged before any individual authorized by law to administer
27 oaths.

1 (3) If the child to be adopted is legally a ward of the
2 department or of a child placing agency, the consent required to be
3 made under section 43 of this chapter by the authorized
4 representative of the department or agency may be executed and
5 acknowledged before an individual authorized by law to administer
6 oaths.

7 (4) If the consent is executed in another state or country,
8 the court having jurisdiction over the adoption proceeding in this
9 state shall determine whether the consent was executed in
10 accordance with the laws of that state or country or the laws of
11 this state and shall not proceed unless it finds that the consent
12 was so executed.

13 (5) In a direct placement, a consent by a parent or guardian
14 shall be accompanied by a verified statement signed by the parent
15 or guardian that contains all of the following:

16 (a) That the parent or guardian has received a list of support
17 groups and a copy of the written document described in section
18 6(1)(c) of the foster care and adoption services act, ~~Act No. 203~~
19 ~~of the Public Acts of 1994, being section 722.956 of the Michigan~~
20 ~~Compiled Laws. 1994 PA 203, MCL 722.956.~~

21 (b) That the parent or guardian has received counseling
22 related to the adoption of his or her child or waives the
23 counseling with the signing of the verified statement.

24 (c) That the parent or guardian has not received or been
25 promised any money or anything of value for the consent to adoption
26 of the child, except for lawful payments that are itemized on a
27 schedule filed with the consent.

1 (d) That the validity and finality of the consent is not
2 affected by any collateral or separate agreement between the parent
3 or guardian and the adoptive parent.

4 (e) That the parent or guardian understands that it serves the
5 **CHILD'S** welfare ~~of the child~~ for the parent to keep the child
6 placing agency, court, or department informed of any health
7 problems that the parent develops ~~which~~ **THAT** could affect the
8 child.

9 (f) That the parent or guardian understands that it serves the
10 **CHILD'S** welfare ~~of the child~~ for the parent or guardian to keep his
11 or her address current with the child placing agency, court, or
12 department in order to permit a response to any inquiry concerning
13 medical or social history from an adoptive parent of a minor
14 adoptee or from an adoptee who is 18 years or older.

15 (6) If a parent's consent to adoption is required under
16 section 43 of this chapter or if a guardian's consent is required
17 ~~pursuant to~~ **UNDER** section 43(1)(e) of this chapter, the consent
18 shall not be executed until after the investigation the court
19 considers proper and until after the judge, referee, or other
20 individual authorized in subsection (2) has fully explained to the
21 parent or guardian the legal rights of the parent or guardian and
22 the fact that the parent or guardian by virtue of the consent
23 voluntarily relinquishes permanently his or her rights to the
24 child.

25 (7) If the adoptee's consent to adoption is required under
26 section 43 of this chapter, the consent shall not be executed until
27 after the investigation the court considers proper and until after

1 the judge or referee has fully explained to the adoptee the fact
2 that he or she is consenting to acquire permanently the adopting
3 parent or parents as his or her legal parent or parents as though
4 the adoptee had been born to the adopting parent or parents.

5 (8) IN A DIRECT PLACEMENT, A PARENT MAY EXECUTE AN OUT-OF-
6 COURT CONSENT AFTER THE CHILD'S BIRTH. AN OUT-OF-COURT CONSENT
7 EXECUTED UNDER THIS SUBSECTION MUST COMPLY WITH BOTH OF THE
8 FOLLOWING:

9 (A) THE OUT-OF-COURT CONSENT MUST BE EXECUTED IN FRONT OF AND
10 WITNESSED BY AN ADOPTION ATTORNEY REPRESENTING THE PARENT OR
11 GUARDIAN OR A CHILD PLACING AGENCY CASEWORKER.

12 (B) THE OUT-OF-COURT CONSENT MAY BE EXECUTED BEFORE FILING A
13 PETITION FOR ADOPTION. IF A TEMPORARY PLACEMENT IS MADE, THE OUT-
14 OF-COURT CONSENT SHALL BE FILED WITH THE COURT AT THE SAME TIME AS
15 THE DOCUMENTS AUTHORIZING THE TEMPORARY PLACEMENT.

16 (9) OUT-OF-COURT CONSENT IS REVOCABLE FROM THE TIME OF
17 EXECUTION UNTIL NOT MORE THAN 72 HOURS AFTER EXECUTION. REVOCATION
18 MUST BE IN WRITING TO THE ADOPTION ATTORNEY WHO WITNESSED THE OUT-
19 OF-COURT CONSENT OR A CASEWORKER FROM THE CHILD PLACING AGENCY THAT
20 ACCEPTED THE OUT-OF-COURT CONSENT. UPON RECEIVING THE WRITTEN
21 NOTIFICATION DESCRIBED IN THIS SUBSECTION, THE ADOPTION ATTORNEY
22 WHO WITNESSED THE OUT-OF-COURT CONSENT OR A CASEWORKER FROM THE
23 CHILD PLACING AGENCY THAT ACCEPTED THE OUT-OF-COURT CONSENT SHALL
24 ASSIST THE PARENT OR GUARDIAN IN FILING THE PETITION TO REVOKE THE
25 OUT-OF-COURT CONSENT. THE COURT IN WHICH THE OUT-OF-COURT CONSENT
26 WAS FILED MAY DETERMINE THAT REVOCATION IS NOT IN THE BEST INTEREST
27 OF THE CHILD.

1 (10) IF AN ADOPTIVE PARENT OBJECTS TO A REVOCATION SUBMITTED
2 UNDER SUBSECTION (9), TIMELY NOTICE OF REVOCATION DOES NOT
3 IMMEDIATELY RESULT IN THE RETURN OF THE CHILD TO THE PARENT. THE
4 RIGHT OF THE PARENT TO CUSTODY OF THE CHILD IS NOT SUPERIOR TO THE
5 RIGHTS OF THE ADOPTIVE PARENT TO CUSTODY OF THE CHILD. A HEARING
6 BEFORE A JUDGE WILL BE REQUIRED TO DETERMINE BOTH OF THE FOLLOWING:

7 (A) WHETHER THE NOTICE OF REVOCATION WAS GIVEN IN A TIMELY AND
8 PROPER MANNER.

9 (B) WHETHER THE BEST INTERESTS OF THE CHILD WILL BE SERVED BY
10 ANY OF THE FOLLOWING:

11 (i) RETURNING CUSTODY OF THE CHILD TO THE PARENT.

12 (ii) CONTINUING THE ADOPTION PROCEEDING COMMENCED OR INTENDED
13 TO BE COMMENCED BY THE ADOPTIVE PARENTS.

14 (iii) DISPOSITION APPROPRIATE TO THE CHILD'S WELFARE AS
15 AUTHORIZED BY SECTION 18 OF CHAPTER XIIIA UNDER AN EX PARTE ORDER
16 ENTERED BY THE COURT.