

SENATE BILL No. 734

September 25, 2003, Introduced by Senators CLARKE, TOY, GEORGE, BASHAM, OLSHOVE, SCOTT, CLARK-COLEMAN, THOMAS, PRUSI, BARCIA, GOSCHKA, GARCIA, LELAND and CASSIS and referred to the Committee on Judiciary.

A bill to amend 1970 PA 91, entitled "Child custody act of 1970," by amending section 7b (MCL 722.27b), as amended by 1996 PA 19.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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1 Sec. 7b. (1) ~~Except as provided in this subsection, a~~
 2 ~~grandparent of the child may seek an order for grandparenting~~
 3 ~~time in the manner set forth in this section only if a child~~
 4 ~~custody dispute with respect to that child is pending before the~~
 5 ~~court. If a natural parent of an unmarried child is deceased, a~~
 6 ~~parent of the deceased person may commence an action for~~
 7 ~~grandparenting time. Adoption of the child by a stepparent under~~
 8 ~~chapter X of Act No. 288 of the Public Acts of 1939, being~~
 9 ~~sections 710.21 to 710.70 of the Michigan Compiled Laws, does not~~
 10 ~~terminate the right of a parent of the deceased person to~~
 11 ~~commence an action for grandparenting time. A child's~~

1 grandparent may seek a grandparenting time order by filing a
2 complaint or motion as provided in subsection (3) under 1 or more
3 of the following circumstances:

4 (a) An action for divorce, separate maintenance, or annulment
5 involving the child's parents is pending before the court.

6 (b) The child's parents are divorced, separated under a
7 judgment of separate maintenance, or have had their marriage
8 annulled.

9 (c) The child's parent who is a child of the grandparents is
10 deceased.

11 (d) Except as otherwise provided in subsection (10), legal
12 custody of the child has been given to a person other than the
13 child's parent, or the child is placed outside of and does not
14 reside in the home of a parent.

15 (e) The grandparent has provided an established custodial
16 environment for the child as described in section 7, whether or
17 not the grandparent had custody under a court order, at any time
18 during the life of the child.

19 (f) The child's parent has withheld from the grandparent
20 opportunities to visit with the child to retaliate against the
21 grandparent for reporting child abuse or neglect to the family
22 independence agency or a law enforcement agency if the
23 grandparent had reasonable cause to suspect child abuse or
24 neglect.

25 (g) The child's parent lives separate and away from the other
26 parent and child for more than 1 year.

27 (h) Except as otherwise provided in subsection (2), the

1 child's parents have never been married and are not residing in
2 the same household.

3 ~~(2) As used in this section, "child custody dispute"~~
4 ~~includes a proceeding in which any of the following occurs:~~

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

8 ~~—— (b) Legal custody of the child is given to a party other than~~
9 ~~the child's parent, or the child is placed outside of and does~~
10 ~~not reside in the home of a parent, excluding any child who has~~
11 ~~been placed for adoption with other than a stepparent, or whose~~
12 ~~adoption by other than a stepparent has been legally finalized.~~

13 **(2) Unless a putative father has acknowledged paternity in**
14 **writing, has been determined to be the father by a court of**
15 **competent jurisdiction, or has contributed regularly to the**
16 **support of the child, a parent of the putative father may not**
17 **seek an order for grandparenting time.**

18 (3) A grandparent seeking a grandparenting time order ~~may~~
19 **shall** commence an action for grandparenting time ~~, by complaint~~
20 ~~or complaint and motion for an order to show cause, in the~~
21 ~~circuit court in the county in which the grandchild resides. If~~
22 ~~a child custody dispute is pending, the order shall be sought by~~
23 ~~motion for an order to show cause. The~~ **as follows:**

24 **(a) If the circuit court has continuing jurisdiction over the**
25 **child, the child's grandparent shall seek a grandparenting time**
26 **order by filing a motion with the circuit court in the county**
27 **where the court has continuing jurisdiction.**

1 (b) If the circuit court does not have continuing
2 jurisdiction over the child, the child's grandparent shall seek a
3 grandparenting time order by filing a complaint in the circuit
4 court for the county where the child resides.

5 (4) A complaint or motion for grandparenting time shall be
6 accompanied by an affidavit setting forth facts supporting the
7 requested order. If the complaint or motion for an order for
8 grandparenting time is not accompanied by an affidavit under this
9 subsection or does not comply with the requirements of subsection
10 (1), (2), or (3), the court may dismiss the complaint or motion
11 without a hearing. The grandparent shall give notice of the
12 filing to each ~~party~~ person who has legal custody of, or an
13 order for parenting time with, the ~~grandchild~~ child. ~~A party~~
14 ~~having legal custody may file an opposing affidavit. A hearing~~
15 ~~shall be held by the court on its own motion or if a party so~~
16 ~~requests. At the hearing, parties submitting affidavits shall be~~
17 ~~allowed an opportunity to be heard. In making a determination~~
18 under this subsection, there is a rebuttable presumption that a
19 fit parent's actions and decisions regarding grandparenting time
20 are in the child's best interests. The burden is on the
21 grandparent filing a complaint or motion under this section to
22 prove that the parent's actions and decisions regarding
23 grandparenting time are not in the child's best interests. The
24 court shall give a fit parent's position deference when making
25 its decision. At the conclusion of the hearing, if the court
26 finds that ~~it~~ the grandparent's request for grandparenting time
27 is in the best interests of the child, ~~to enter a grandparenting~~

1 ~~time order~~ the court shall enter an order providing for
2 reasonable grandparenting time of the child by the grandparent by
3 general or specific terms and conditions. ~~If a hearing is not~~
4 ~~held, the court shall enter a grandparenting time order only upon~~
5 ~~a finding that grandparenting time is in the best interests of~~
6 ~~the child. A grandparenting time order shall not be entered for~~
7 ~~the parents of a putative father unless the father has~~
8 ~~acknowledged paternity in writing, has been adjudicated to be the~~
9 ~~father by a court of competent jurisdiction, or has contributed~~
10 ~~regularly to the support of the child or children. The court~~
11 shall make a record of the reasons for ~~a denial of a requested~~
12 **granting or denying a request for** grandparenting time. ~~order.~~

13 ~~—— (4) A grandparent may not file more than once every 2 years,~~
14 ~~absent a showing of good cause, a complaint or motion seeking a~~
15 ~~grandparenting time order. If the court finds there is good~~
16 ~~cause to allow a grandparent to file more than 1 complaint or~~
17 ~~motion under this section in a 2-year period, the court shall~~
18 ~~allow the filing and shall consider the complaint or motion. The~~
19 ~~court may order reasonable attorney fees to the prevailing~~
20 ~~party.~~

21 (5) If a grandparent seeks a grandparenting time order by
22 filing a motion in a pending divorce, separate maintenance, or
23 annulment action, entry of the judgment of divorce, separate
24 maintenance, or annulment does not dismiss the grandparent's
25 motion for grandparenting time.

26 (6) The court may refer a complaint or motion for
27 grandparenting time filed under this section to the friend of the

1 court mediation service under section 13 of the friend of the
2 court act, 1982 PA 294, MCL 552.513. If the complaint or motion
3 is referred to the friend of the court mediation service and no
4 settlement is reached through friend of the court mediation
5 within a reasonable time after the date of referral, the
6 complaint or motion shall be heard by the court as provided in
7 this section.

8 (7) ~~—(5)—~~ The court shall not enter an order ~~—restricting the~~
9 ~~movement of the grandchild if the restriction—~~ **prohibiting a**
10 **person who has legal custody of a child from changing the**
11 **domicile of the child if the prohibition** is solely for the
12 purpose of allowing ~~—the—~~ a grandparent to exercise the rights
13 conferred in a grandparenting time order.

14 (8) ~~—(6)—~~ A grandparenting time order entered in accordance
15 with this section ~~—shall not be considered to have created—~~ **does**
16 **not create** parental rights in the ~~—person or persons—~~ **individual**
17 **or individuals** to whom grandparenting time rights are granted.
18 The entry of a grandparenting time order ~~—shall—~~ **does** not prevent
19 a court of competent jurisdiction from acting upon the custody of
20 the child, the parental rights of the child, or the adoption of
21 the child.

22 (9) ~~—(7)—The—~~ **After a hearing, the** court may enter an order
23 modifying or terminating a grandparenting time order ~~—whenever~~
24 ~~such—~~ **if there is a change of circumstances and** a modification or
25 termination is in the best interests of the child.

26 (10) **Except as otherwise provided in this subsection,**
27 **adoption of a child or placement of a child for adoption under**

1 the Michigan adoption code, chapter X of the probate code of
2 1939, 1939 PA 288, MCL 710.21 to 710.70, terminates the right of
3 a grandparent to commence an action for grandparenting time with
4 that child. Adoption of a child or placement of a child for
5 adoption by a stepparent or by a person who is related to the
6 child within the fifth degree by marriage, blood, or adoption
7 under the Michigan adoption code, chapter X of the probate code
8 of 1939, 1939 PA 288, MCL 710.21 to 710.70, does not terminate
9 the right of a grandparent to commence an action for
10 grandparenting time with that child.

11 (11) A grandparent shall not file more than once every 2
12 years, absent a showing of good cause, a complaint or motion
13 seeking a grandparenting time order. If the court finds there is
14 good cause to allow a grandparent to file more than 1 complaint
15 or motion under this section in a 2-year period, the court shall
16 allow the filing and shall consider the complaint or motion. If
17 the court finds there is not good cause to allow a grandparent to
18 file more than 1 complaint or motion under this subsection in a
19 2-year period, the court shall dismiss the complaint or motion.

20 (12) Upon motion of a person, the court may award costs and
21 fees as provided in section 2591 of the revised judicature act of
22 1961, 1961 PA 236, MCL 600.2591.

23 (13) As used in this section, "fit parent" means a parent of
24 a child if the parent has not been found by a court to be unfit
25 because of any of the following that negatively impact on the
26 parent's ability to act in the child's best interests:

27 (a) Chronic substance abuse.

1 (b) A conviction of criminal sexual conduct under sections
2 520b to 520d and 520g of the Michigan penal code, 1931 PA 328,
3 MCL 750.520b to 750.520d and 750.520g.

4 (c) A conviction of homicide under sections 316 to 329a of
5 the Michigan penal code, 1931 PA 328, MCL 750.316 to 750.329a.

6 (d) Another factor considered by the court to be relevant to
7 a determination of the parent's ability to act in the child's
8 best interests.