

# SENATE BILL No. 1425

June 26, 2008, Introduced by Senator JANSEN and referred to the Committee on Families and Human Services.

A bill to amend 1970 PA 91, entitled  
"Child custody act of 1970,"  
by amending section 7b (MCL 722.27b), as amended by 2006 PA 353.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 7b. (1) A child's grandparent may seek a grandparenting  
2 time order under 1 or more of the following circumstances:

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

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

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

1 (d) The child's parents have never been married, they are not  
2 residing in the same household, and paternity has been established  
3 by the completion of an acknowledgment of parentage under the  
4 acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 to  
5 722.1013, by an order of filiation entered under the paternity act,  
6 1956 PA 205, MCL 722.711 to 722.730, or by a determination by a  
7 court of competent jurisdiction that the individual is the father  
8 of the child.

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

13 (f) In the year preceding the commencement of an action under  
14 subsection (3) for grandparenting time, the grandparent provided an  
15 established custodial environment for the child as described in  
16 section 7, whether or not the grandparent had custody under a court  
17 order.

18 (2) A court shall not permit a parent of a father who has  
19 never been married to the child's mother to seek an order for  
20 grandparenting time under this section unless the father has  
21 completed an acknowledgment of parentage under the acknowledgment  
22 of parentage act, 1996 PA 305, MCL 722.1001 to 722.1013, an order  
23 of filiation has been entered under the paternity act, 1956 PA 205,  
24 MCL 722.711 to 722.730, or the father has been determined to be the  
25 father by a court of competent jurisdiction. The court shall not  
26 permit the parent of a putative father to seek an order for  
27 grandparenting time unless the putative father has provided

1 substantial and regular support or care in accordance with the  
2 putative father's ability to provide the support or care.

3 (3) A grandparent seeking a grandparenting time order shall  
4 commence an action for grandparenting time, as follows:

5 (a) If the circuit court has continuing jurisdiction over the  
6 child, the child's grandparent shall seek a grandparenting time  
7 order by filing a motion with the circuit court in the county where  
8 the court has continuing jurisdiction.

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

13 (4) All of the following apply to an action for grandparenting  
14 time under subsection (3):

15 (a) The complaint or motion for grandparenting time filed  
16 under subsection (3) shall be accompanied by an affidavit setting  
17 forth facts supporting the requested order. The grandparent shall  
18 give notice of the filing to each person who has legal custody of,  
19 or an order for parenting time with, the child. A party having  
20 legal custody may file an opposing affidavit. A hearing shall be  
21 held by the court on its own motion or if a party requests a  
22 hearing. At the hearing, parties submitting affidavits shall be  
23 allowed an opportunity to be heard.

24 (b) In order to give deference to the decisions of fit  
25 parents, it is presumed in a proceeding under this subsection that  
26 a fit parent's decision to deny grandparenting time does not create  
27 a substantial risk of harm to the child's mental, physical, or

1 emotional health. To rebut the presumption created in this  
2 subdivision, a grandparent filing a complaint or motion under this  
3 section must prove by a preponderance of the evidence that the  
4 parent's decision to deny grandparenting time creates a substantial  
5 risk of harm to the child's mental, physical, or emotional health.  
6 If the grandparent does not overcome the presumption, the court  
7 shall dismiss the complaint or deny the motion.

8 (c) If a court of appellate jurisdiction determines in a final  
9 and nonappealable judgment that the burden of proof described in  
10 subdivision (b) is unconstitutional, a grandparent filing a  
11 complaint or motion under this section must prove by clear and  
12 convincing evidence that the parent's decision to deny  
13 grandparenting time creates a substantial risk of harm to the  
14 child's mental, physical, or emotional health to rebut the  
15 presumption created in subdivision (b).

16 (5) If 2 fit parents sign an affidavit stating that they both  
17 oppose an order for grandparenting time, the court shall dismiss a  
18 complaint or motion seeking an order for grandparenting time filed  
19 under subsection (3). This subsection does not apply if 1 of the  
20 fit parents is a stepparent who adopted a child under the Michigan  
21 adoption code, chapter X of the probate code of 1939, 1939 PA 288,  
22 MCL 710.21 to 710.70, and the grandparent seeking the order is the  
23 natural or adoptive parent of a parent of the child who is deceased  
24 or whose parental rights have been terminated.

25 (6) If the court finds that a grandparent has met the standard  
26 for rebutting the presumption described in subsection (4), the  
27 court shall consider whether it is in the best interests of the

1 child to enter an order for grandparenting time. If the court finds  
2 by a preponderance of the evidence that it is in the best interests  
3 of the child to enter a grandparenting time order, the court shall  
4 enter an order providing for reasonable grandparenting time of the  
5 child by the grandparent by general or specific terms and  
6 conditions. In determining the best interests of the child under  
7 this subsection, the court shall consider all of the following:

8 (a) The love, affection, and other emotional ties existing  
9 between the grandparent and the child.

10 (b) The length and quality of the prior relationship between  
11 the child and the grandparent, the role performed by the  
12 grandparent, and the existing emotional ties of the child to the  
13 grandparent.

14 (c) The grandparent's moral fitness.

15 (d) The grandparent's mental and physical health.

16 (e) The child's reasonable preference, if the court considers  
17 the child to be of sufficient age to express a preference.

18 (f) The effect on the child of hostility between the  
19 grandparent and the parent of the child.

20 (g) The willingness of the grandparent, except in the case of  
21 abuse or neglect, to encourage a close relationship between the  
22 child and the parent or parents of the child.

23 (h) Any history of physical, emotional, or sexual abuse or  
24 neglect of any child by the grandparent.

25 (i) Whether the parent's decision to deny, or lack of an offer  
26 of, grandparenting time is related to the child's well-being or is  
27 for some other unrelated reason.

1 (j) Any other factor relevant to the physical and  
2 psychological well-being of the child.

3 (7) If the court has determined that a grandparent has met the  
4 standard for rebutting the presumption described in subsection (4),  
5 the court may refer that grandparent's complaint or motion for  
6 grandparenting time filed under subsection (3) to ~~domestic~~  
7 ~~relations mediation~~ **ALTERNATIVE DISPUTE RESOLUTION** as provided by  
8 supreme court rule. If the complaint or motion is referred to the  
9 friend of the court ~~mediation service~~ **FOR ALTERNATIVE DISPUTE**  
10 **RESOLUTION** and no settlement is reached through friend of the court  
11 ~~mediation~~ **ALTERNATIVE DISPUTE RESOLUTION** within a reasonable time  
12 after the date of referral, the complaint or motion shall be heard  
13 by the court as provided in this section.

14 (8) A grandparent may not file more than once every 2 years,  
15 absent a showing of good cause, a complaint or motion under  
16 subsection (3) seeking a grandparenting time order. If the court  
17 finds there is good cause to allow a grandparent to file more than  
18 1 complaint or motion under this section in a 2-year period, the  
19 court shall allow the filing and shall consider the complaint or  
20 motion. Upon motion of a person, the court may order reasonable  
21 attorney fees to the prevailing party.

22 (9) The court shall not enter an order prohibiting an  
23 individual who has legal custody of a child from changing the  
24 domicile of the child if the prohibition is primarily for the  
25 purpose of allowing a grandparent to exercise the rights conferred  
26 in a grandparenting time order entered under this section.

27 (10) A grandparenting time order entered under this section

1 does not create parental rights in the individual or individuals to  
2 whom grandparenting time rights are granted. The entry of a  
3 grandparenting time order does not prevent a court of competent  
4 jurisdiction from acting upon the custody of the child, the  
5 parental rights of the child, or the adoption of the child.

6 (11) A court shall not modify or terminate a grandparenting  
7 time order entered under this section unless it finds by a  
8 preponderance of the evidence, on the basis of facts that have  
9 arisen since entry of the grandparenting time order or were unknown  
10 to the court at the time it entered that order, that a change has  
11 occurred in the circumstances of the child or his or her custodian  
12 and that a modification or termination of the existing order is  
13 necessary to avoid creating a substantial risk of harm to the  
14 mental, physical, or emotional health of the child. A court  
15 modifying or terminating a grandparenting time order under this  
16 subsection shall include specific findings of fact in its order in  
17 support of its decision.

18 (12) The court shall make a record of its analysis and  
19 findings under subsections (4), (6), (8), and (11), including the  
20 reasons for granting or denying a requested grandparenting time  
21 order.

22 (13) Except as otherwise provided in this subsection, adoption  
23 of a child or placement of a child for adoption under the Michigan  
24 adoption code, chapter X of the probate code of 1939, 1939 PA 288,  
25 MCL 710.21 to 710.70, terminates the right of a grandparent to  
26 commence an action for grandparenting time with that child.  
27 Adoption of a child by a stepparent under the Michigan adoption

1 code, chapter X of the probate code of 1939, 1939 PA 288, MCL  
2 710.21 to 710.70, does not terminate the right of the parent of a  
3 deceased parent of the child to commence an action for  
4 grandparenting time with that child.

5 Enacting section 1. This amendatory act does not take effect  
6 unless Senate Bill No. 1423

7 of the 94th Legislature is enacted into law.