

ADOPTIONS BY TWO UNMARRIED PERSONS

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

House Bill 4131 (Substitute H-2)
Sponsor: Rep. Alma Wheeler Smith
Committee: Judiciary

First Analysis (7-27-09)

BRIEF SUMMARY: The bill would allow two unmarried persons to adopt a child; extend "stepparent adoptions" to the unmarried partner of the legal parent; and, in cases involving divorced parents or parents who never married, allow, in some cases, the parental rights of the noncustodial parent to be terminated if the partner of the legal parent petitioned to adopt the child.

FISCAL IMPACT: This bill would have minimal fiscal impact on the judiciary and local court funding units; the fiscal impact would depend on how the bill affected caseloads and related administrative costs. The bill could reduce costs to the Department of Human Services to the extent that it increased the number of children adopted out of the foster care system. In the great majority of cases, adoptive parents who adopt children out of foster care continue to receive an amount equivalent to the foster care payment for the child in the form of a state adoption subsidy. However, supervisory and oversight costs (e.g. DHS or foster care agency caseworkers) borne by the department are eliminated once a child leaves foster care.

THE APPARENT PROBLEM:

In order to adopt a child (or adult), a petition must be filed with the court. If the petitioner is married, his or her spouse must be included in the petition. In general, this provision of law has been interpreted as allowing either a single person or a married couple to adopt. Because the provision does not specifically say that two single persons cannot adopt a child together (known as a second-parent adoption), some courts have allowed it. For example, two nuns jointly adopted a special needs child a number of years ago.

Opinions on the lawful interpretation of the adoption statute continue to differ, with some believing that since the statute does not explicitly prohibit two unmarried persons from co-adopting, that it is allowed under state law. However, in 2002, the chief judge of Washtenaw County declared that the practice violated state law and ordered the other judges in that county to stop granting second-parent adoptions. Then, in 2004, an opinion issued by the state attorney general (No. 7160) stated that a same-sex couple who married in a jurisdiction allowing such unions could not legally adopt a child together in Michigan; however, one member of the same-sex couple could adopt as a single parent.

The result has been that no new petitions for adoption by two unmarried persons have been able to go forward. Where some feel that this is the proper interpretation of the

statute, and that the interpretation protects the sanctity of marriage and the family unit, others feel that this interpretation is not in the best interest of children in the state.

If two unmarried persons could legally adopt, supporters say, children would be better served in many ways. Second-parent adoptions would increase the pool of adoptive families; fewer children would age out of the foster care system; children could receive health insurance, pension, and social security benefits of either parent; continuity of care could be provided should one parent become unemployed, die, or become disabled; and, should the relationship between domestic partners end, the child's relationship with and right to financial support from both parents would be protected.

For these and other reasons, legislation has been offered to address the issue of second-parent adoption.

THE CONTENT OF THE BILL:

Currently, the adoption code specifies that if the person who petitions to adopt a child or adult is married, he or she must file the petition with his or her wife or husband.

House Bill 4131 would amend the adoption code, which is within the Probate Code, to also allow two unmarried persons to petition to adopt a child.

Secondly, in what is known as a "stepparent adoption," currently a parent having legal custody of the child does not lose parental rights when his or her spouse petitions to adopt the child. Similarly, if the spouse of a parent having legal custody petitions to adopt a stepchild after the rights of the other parent have been terminated, a child is not made a ward of the court. Under the bill, this protection would also be extended to cases in which the parent having legal custody joined in an adoption petition with another person to whom he or she was not married.

If a child's parents are divorced or never married, and the parent having legal custody remarries and his or her spouse petitions to adopt the child, the adoption code provides that the parental rights of the noncustodial parent can be terminated under certain circumstances (e.g., failing to provide regular and substantial support and regularly failing to have contact with the child). The bill would apply this provision also to situations in which a person having legal custody joins in a petition for adoption with a person to whom he or she is not married.

In addition, the bill would require any former names of the adopting petitioner to be included in the information that must be provided on a petition for adoption.

MCL 710.24, 710.41, and 710.51

BACKGROUND INFORMATION:

The bill is virtually identical to House Bill 4259 of the 2007-2008 legislative session. House Bill 4259 was reported by the Judiciary Committee but failed to see floor action.

ARGUMENTS:

For:

There appears to be some confusion regarding the intent and scope of the bill. Simply put, the bill would do two things: (1) it would allow any two adults to legally adopt a child; and (2) it would allow the domestic partner, relative, or friend of a custodial parent to adopt the custodial parent's child in a manner similar to that which occurs now when a person marries an individual with a child from a previous relationship and the person seeks to adopt the new spouse's child (known as a stepparent adoption).

The bill would not allow or encourage "group adoptions," in which multiple persons would join in an adoption. All current state statutory and departmental rules concerning adoption, as well as the screening and approval of candidates as adoptive parents, would remain in place. Thus, fears of newly cohabiting couples adopting a child like going to a shelter and adopting a dog or cat, and then quickly abandoning the child when the relationship ends, are unfounded.

Fears that the bill may legitimize gay and lesbian unions are also unfounded. The bill does not speak to the relationship between the adoptive parents, and therefore would not violate the state Constitutional amendment that only recognizes marriage or a similar union as between one man and one woman. Instead, the bill focuses on the needs and best interest of the child.

Besides, the bill has broader applicability than allowing a gay or lesbian couple to adopt. The bill would also apply to kinship adoptions, in which a family member adopts the child after the parent dies or the parent's rights are terminated (for example, due to abuse or neglect, substance abuse, or incarceration). Often, single, aging relatives are reticent about adopting because of the financial demands of raising a child and concerns regarding their own health (for instance, what would happen to the child if they became ill). Under the bill, a grandparent could be the primary caregiver, but could be joined in the adoption by another relative. Even if the adoptive parents lived in separate households, the child would know that another adult shared legal responsibility for his or her well-being. The child could also receive health insurance benefits and be named as a beneficiary of the other adoptive parent's pension fund.

The bill would also aid single parents and biological or adoptive parents in a domestic partnership. Many heterosexual couples maintain long-term, committed relationships but choose not to marry. Many homosexual relationships last longer than the average marriage. And children may be involved in these partnerships. The bill would allow a person in a domestic relationship to adopt a partner's child in the same manner currently allowed for spouses when marrying someone with children from a previous relationship. If the partnership should fail, the child's right to continue a relationship with both parents, as well as to be financially supported by both parents, would be protected.

Perhaps one of the greatest needs met by the bill is for the single parent or parent in a domestic relationship who is faced with a disabling or terminal illness to arrange for another person to adopt his or her child without needing to have parental rights terminated first. Facing impending incapacitation or death is difficult enough. The bill would enable the parent facing such a scenario to ensure the person of choice had legal

responsibility for the child while retaining his or her own legal authority. Further, the child would not be made a ward of the court or subjected to a custody battle at a time when a trusted adult could be walking the child through the grieving process.

For:

Supporters of the legislation have identified many reasons why the bill is good public policy. These reasons include the following:

- In any given year, there are about 6,000 children in foster care whose parents have had their rights terminated. About 4,500 are eligible for adoption (some over 14 choose to remain in foster care). Of these, less than 3,000 are adopted annually. Statistically, about 60 percent of foster children are aged 13 or older; after reaching nine years old, the chances of being adopted drops to 10 percent. The bill would expand the number of available homes for adoption.
- The bill would result in savings to taxpayers. If more children were placed in adoption each year, the state would see savings in fewer foster care subsidies and administrative expenses. By some estimates, if a child were adopted at age 6.6 years old, taxpayers would save more than \$40,000 by the time the child turned 18 years old (the age at which a foster child ages out of the system).
- About 54 percent of foster children drop out of high school. Approximately 500 children age out of the foster care system each year. Only two percent complete college (among other reasons, the lack of family support increases stress). Therefore, those who age out of the foster care system are at significantly higher risks for poverty, homelessness, early pregnancy, depression, substance abuse, and even incarceration. If more children were placed in permanent families, where they could have the support and guidance needed to navigate early adulthood, the savings to taxpayers from subsequent public services could be significant.
- The second parent could legally authorize medical treatment, pick the child up from school, talk to the child's teachers, etc. Currently, only the custodial parent can do these things, delaying medical treatment in urgent situations, creating confusion for the child (why can only one parent take me to the doctor, etc.) and placing a greater burden on one of the parents instead of sharing responsibilities with the second parent.
- The bill would enable children to benefit from what both parents bring to the family. For example, a child cannot be covered under the health insurance policy, be a pension beneficiary, or collect Social Security benefits from the second parent. The bill would rectify this. In this sense, the bill may result in additional savings for taxpayers if becoming eligible for health insurance under the second parent's employer-sponsored or private health insurance plan replaced coverage under a public pay program.

- Many national experts, including the American Pediatric Association, American Medical Association, American Psychological Association, North American Council on Adoptable Children, American Academy of Family Physicians, American Bar Association, Child Welfare League of America, American Psychiatric Association, and National Association of Social Workers have gone on record as supporting initiatives to legally recognize both parents of a child, such as through legalizing second parent adoptions.
- The bill would enable more kinship adoptions. Currently, many children are being cared for as foster children by grandmothers and other single relatives who are hesitant to adopt for financial reasons or fears regarding their own health status. In addition, many of these relatives are also in domestic relationships, with their partners already acting as second parents. More may be willing to adopt if their partners or another relative, such as the child's aunt or uncle, could join in the adoption petition. Such an arrangement would provide more stability—both emotionally and financially—for the child.
- At least 10 states and many other jurisdictions have recognized that second parent adoptions are in a child's best interest and explicitly allow some type of second parent adoption. Many other states allow the practice through case law.
- At least one-third of lesbian couples and almost one-fourth of gay couples have a minor child in their homes. In addition, many children are raised in homes in which their mother or father cohabit with a "stepparent." The bill would give equal parenting rights to both members of the couple, and protect the children's access to both parents (for example, if the relationship between the parents ends, the child would still have legal access to see the other parent similar to parenting time arrangements when married couples divorce). In addition, the second parent would still retain financial responsibilities for the child.
- According to many state and national child and social services associations and organizations, research is clear that children whose parents have had their rights terminated do better when placed in a loving family. Children do even better when the "family unit" is made up of two adults—whether married to each other or not.
- Many scientific and evidence-based studies by the American Psychological Association and other reputable organizations have shown that children raised by gay or lesbian parents do as well as children raised by opposite-sex parents and that no empirical data indicates children raised by gay or lesbian parents are more likely to become homosexual.

Against:

Opponents to the legislation have raised concerns that the bill would redefine the family, create an untenable legal relationship, and support unmarried households. They say that the state's public policy has consistently sought to preserve married families and

discourage unmarried family units. The bill would reverse this, even though scientific evidence, according to testimony submitted by the Michigan Family Forum, "shows that children are better off in every facet of life—socially, economically, psychologically, academically, emotionally, and physically—when they are raised by their married, biological parents."

The bill would also create an odd legal relationship in which two adults unrelated to each other would be legally responsible for raising the same child. This would raise additional questions, such as whether a court would give domestic partners who decide to split up, or two friends or relatives who had co-adopted but who have a falling out, the same legal standing that two married parents have in a divorce.

Further, the bill would erode the traditional understanding of what constitutes a family or parents by recognizing "families" and "parents" in situations in which they have not previously have been recognized. For instance, the bill would allow two old friends to combine households and parenting, or recognize as a "family" a situation in which one of the adoptive parents lived separately or even in a different state. If the intent is to provide emotional or financial stability for children, the slippery slope can quickly lead to the legalization of adoptions by multiple parties.

Michigan law already provides legal structures, such as guardianship, wills, and power of attorney that can provide an important level of security for children without undermining the institutions of marriage and family or creating potentially untenable relationships.

Against:

More should be done to strengthen the bonds between biological parents and children instead of terminating parental rights, especially in the case of stepparent adoptions, which would be extended by the bill to domestic partners. Under the bill, the parental rights of a biological parent could be terminated under certain circumstances if a domestic partner wanted to adopt his or her partner's children. Instead, more should be done to reunite the children with the absent biological parent and help that parent to reestablish financial support of his or her children.

POSITIONS:

The Department of Human Services indicated support for the bill. (4-22-09)

A representative of the Coalition for Adoption Rights Equality, Inc. (CARE) testified in support of the bill. (4-22-09)

A representative of Child and Family Services testified in support of the bill. (4-22-09)

A representative of the Michigan Women's Commission testified in support of the bill. (4-22-09)

A representative of the Michigan Psychological Association testified in support of the bill. (4-22-09)

A representative of the Family Law Section of the State Bar of Michigan testified in support of the bill. (4-22-09)

A representative of the National Association of Social Workers – Michigan Chapter testified in support of the bill. (4-22-09)

A representative of the Morning Star Adoption Center testified in support of the bill. (4-22-9)

The Michigan National Organization for Women (NOW) submitted testimony in support of the bill. (4-22-09)

Citizen Action Michigan indicated support for the bill. (4-22-09)

The Triangle Foundation indicated support for the bill. (4-22-09)

A representative of Citizens for Parental Rights testified in opposition to the bill. (4-22-09)

Michigan Family Forum submitted testimony in opposition to the bill. (4-22-09)

The Michigan Catholic Conference indicated opposition to the bill. (4-22-09)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Ben Gielczyk
Bob Schneider

■ 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.