

1998 PUBLIC AND LOCAL ACTS

[No. 482]

(SB 956)

AN ACT to amend 1970 PA 91, entitled "An act to declare the inherent rights of minor children; to establish rights and duties to their custody, support, and parenting time in disputed actions; to establish rights and duties to provide support for a child after the child reaches the age of majority under certain circumstances; to provide for certain procedure and appeals; and to repeal certain acts and parts of acts," by amending sections 2, 4, and 7 (MCL 722.22, 722.24, and 722.27), section 2 as amended by 1990 PA 245 and sections 4 and 7 as amended by 1996 PA 19.

The People of the State of Michigan enact:

722.22 Definitions. [M.S.A. 25.312(2)]

Sec. 2. As used in this act:

(a) "Agency" means any legally authorized public or private organization, or governmental unit or official, whether of this state or of another state or country, concerned in the welfare of minor children, including a licensed child placement agency.

(b) "Attorney" means, if appointed to represent a child under this act, an attorney serving as the child's legal advocate in a traditional attorney-client relationship with the child, as governed by the Michigan rules of professional conduct. An attorney defined under this subdivision owes the same duties of undivided loyalty, confidentiality, and zealous representation of the child's expressed wishes as the attorney would to an adult client.

(c) "Child" means minor child and children. Subject to section 4a, for purposes of providing support, child includes a child and children who have reached 18 years of age.

(d) "Guardian ad litem" means an individual whom the court appoints to assist the court in determining the child's best interests. A guardian ad litem does not need to be an attorney.

(e) "Lawyer-guardian ad litem" means an attorney appointed under section 4. A lawyer-guardian ad litem represents the child, and has the powers and duties, as set forth in section 4.

(f) "Third person" means any individual other than a parent.

722.24 Child custody disputes; powers of court; appointment of lawyer-guardian ad litem. [M.S.A. 25.312(4)]

Sec. 4. (1) In all actions involving dispute of a minor child's custody, the court shall declare the child's inherent rights and establish the rights and duties as to the child's custody, support, and parenting time in accordance with this act.

(2) If, at any time in the proceeding, the court determines that the child's best interests are inadequately represented, the court may appoint a lawyer-guardian ad litem to represent the child. A lawyer-guardian ad litem represents the child and has powers and duties in relation to that representation as set forth in section 17d of chapter XIIA of 1939 PA 288, MCL 712A.17d. All provisions of section 17d of chapter XIIA of 1939 PA 288, MCL 712A.17d, apply to a lawyer-guardian ad litem appointed under this act.

(3) In a proceeding in which a lawyer-guardian ad litem represents a child, he or she may file a written report and recommendation. The court may read the report and recommendation. The court shall not, however, admit the report and recommendation into

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evidence unless all parties stipulate the admission. The parties may make use of the report and recommendation for purposes of a settlement conference.

(4) After a determination of ability to pay, the court may assess all or part of the costs and reasonable fees of the lawyer-guardian ad litem against 1 or more of the parties involved in the proceedings or against the money allocated from marriage license fees for family counseling services under section 3 of 1887 PA 128, MCL 551.103. A lawyer-guardian ad litem appointed under this section shall not be paid a fee unless the court first receives and approves the fee.

722.27 Child custody disputes; powers of court; support order; amount; deviation from formula; provisions of support order; "support" defined; health care coverage; enforcement of judgment or order. [M.S.A. 25.312(7)]

Sec. 7. (1) If a child custody dispute has been submitted to the circuit court as an original action under this act or has arisen incidentally from another action in the circuit court or an order or judgment of the circuit court, for the best interests of the child the court may do 1 or more of the following:

(a) Award the custody of the child to 1 or more of the parties involved or to others and provide for payment of support for the child, until the child reaches 18 years of age. Subject to section 4a, the court may also order support as provided in this section for a child after he or she reaches 18 years of age. The court may require that support payments shall be made through the friend of the court or court clerk.

(b) Provide for reasonable parenting time of the child by the parties involved, by the maternal or paternal grandparents, or by others, by general or specific terms and conditions. Parenting time of the child by the parents is governed by section 7a.

(c) Modify or amend its previous judgments or orders for proper cause shown or because of change of circumstances until the child reaches 18 years of age and, subject to section 4a, until the child reaches 19 years and 6 months of age. The court shall not modify or amend its previous judgments or orders or issue a new order so as to change the established custodial environment of a child unless there is presented clear and convincing evidence that it is in the best interest of the child. The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered.

(d) Utilize a guardian ad litem or the community resources in behavioral sciences and other professions in the investigation and study of custody disputes and consider their recommendations for the resolution of the disputes.

(e) Take any other action considered to be necessary in a particular child custody dispute.

(f) Upon petition consider the reasonable grandparenting time of maternal or paternal grandparents as provided in section 7b and, if denied, make a record of such denial.

(2) Except as otherwise provided in this section, the court shall order support in an amount determined by application of the child support formula developed by the state friend of the court bureau. The court may enter an order that deviates from the formula if the court determines from the facts of the case that application of the child support formula would be unjust or inappropriate and sets forth in writing or on the record all of the following:

(a) The support amount determined by application of the child support formula.

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(b) How the support order deviates from the child support formula.

(c) The value of property or other support awarded in lieu of the payment of child support, if applicable.

(d) The reasons why application of the child support formula would be unjust or inappropriate in the case.

(3) Subsection (2) does not prohibit the court from entering a support order that is agreed to by the parties and that deviates from the child support formula, if the requirements of subsection (2) are met.

(4) Beginning January 1, 1991, each support order entered, modified, or amended by the court shall provide that each party shall keep the office of the friend of the court informed of both of the following:

(a) The name and address of his or her current source of income. As used in this subdivision, "source of income" means that term as defined in section 2 of the support and parenting time enforcement act, 1982 PA 295, MCL 552.602.

(b) Any health care coverage that is available to him or her as a benefit of employment or that is maintained by him or her; the name of the insurance company, health care organization, or health maintenance organization; the policy, certificate, or contract number; and the names and birth dates of the persons for whose benefit he or she maintains health care coverage under the policy, certificate, or contract.

(5) For the purposes of this act, "support" may include payment of the expenses of medical, dental, and other health care, child care expenses, and educational expenses. The court shall require 1 or both parents of a child who is the subject of a petition under this section to obtain or maintain any health care coverage that is available to them at a reasonable cost, as a benefit of employment, for the benefit of the child. If a parent is self-employed and maintains health care coverage, the court shall require the parent to obtain or maintain dependent coverage for the benefit of the child, if available at a reasonable cost.

(6) A judgment or order entered under this act providing for the support of a child is enforceable as provided in the support and parenting time enforcement act, 1982 PA 295, MCL 552.601 to 552.650.

Effective date.

Enacting section 1. This amendatory act takes effect March 1, 1999.

This act is ordered to take immediate effect.

Approved December 31, 1998.

Filed with Secretary of State January 4, 1999.
