

HOUSE BILL No. 5690

March 23, 2004, Introduced by Reps. Stahl, Pastor, Stakoe, Gaffney, Ward, Casperson, DeRossett, Van Regenmorter, Moolenaar, Huizenga, Kooiman, Lipsey, Rocca, Sheen, Hoogendyk, Hager, Ehardt, Newell, Shaffer, Voorhees, Richardville and Hummel and referred to the Committee on Judiciary.

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending sections 23b, 23d, 23e, and 46 of chapter X (MCL 710.23b, 710.23d, 710.23e, and 710.46), section 23b as added and section 46 as amended by 1994 PA 222, section 23d as amended by 1996 PA 409, and section 23e as amended by 2000 PA 55.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER X

Sec. 23b. (1) A child placing agency or the department that acquires legal and physical custody of a child ~~pursuant to~~ **under** section 29 of this chapter or chapter XIIIA may formally place a child for adoption under section 51 of this chapter. A child placing agency that acquires written authorization ~~pursuant~~ **according** to subsection (3) from the parent or guardian having legal custody of a child may make a temporary

1 placement of the child under section 23d of this chapter. A
2 child placing agency may assist a parent or guardian to make a
3 direct placement under section 23a of this chapter.

4 (2) In an agency placement, a child placing agency or the
5 department may involve the parent or guardian of a child in the
6 selection of an adoptive parent and may facilitate the exchange
7 of identifying information or meetings between a biological
8 parent and an adoptive parent.

9 (3) In a written document signed by a witness and by the
10 parent or guardian in the presence of the witness, a parent or
11 guardian having legal and physical custody of a child may
12 authorize a child placing agency to make a temporary placement of
13 the child under section 23d of this chapter. If the parent of
14 the child being temporarily placed is an unemancipated minor, the
15 authorization is not valid unless it is also signed in the
16 presence of the witness by a parent or guardian of that minor
17 parent.

18 (4) A child placing agency is not required to perform,
19 assist, counsel, recommend, facilitate, refer, or participate in
20 a placement that violates the child placing agency's written
21 religious or moral convictions or policies. A state or local
22 government entity may not deny a child placing agency a grant,
23 contract, or participation in a government program because of the
24 child placing agency's objection to performing, assisting,
25 counseling, recommending, facilitating, referring, or
26 participating in a placement that violates the child placing
27 agency's written religious or moral convictions or policies.

1 Refusal by a child placing agency to perform, assist, counsel,
2 recommend, facilitate, refer, or participate in a placement that
3 violates the child placing agency's written religious or moral
4 convictions or policies does not constitute a determination that
5 the proposed adoption is not in the best interests of the
6 adoptee.

7 Sec. 23d. (1) In a direct placement, a parent or guardian
8 with legal and physical custody of a child may make a temporary
9 placement of the child as prescribed by this section. In an
10 agency placement, a child placing agency with written
11 authorization from the parent or guardian ~~pursuant to~~ **under**
12 section 23b of this chapter may make a temporary placement of the
13 child as prescribed by this section. A temporary placement shall
14 meet all of the following requirements:

15 (a) The prospective adoptive parent with whom a child is
16 temporarily placed is a Michigan resident.

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

19 (c) In the presence of a witness who also signs the
20 document, the parent, guardian, or representative of the child
21 placing agency signs a statement evidencing the transfer of
22 physical custody of the child. If the parent making the
23 temporary placement is an unemancipated minor, the statement is
24 not valid unless it is also signed in the presence of the witness
25 by a parent or guardian of that minor parent. The statement
26 shall contain all of the following:

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

1 (ii) Language providing that the transfer is for the purpose
2 of adoption by the prospective adoptive parent who is a Michigan
3 resident.

4 (iii) Language indicating that unless the parent or guardian
5 and the prospective adoptive parent agree otherwise, the
6 prospective adoptive parent has the authority to consent to all
7 medical, surgical, psychological, educational, and related
8 services for the child and language indicating that the parent or
9 guardian otherwise retains full parental rights to the child
10 being temporarily placed and that the temporary placement may be
11 revoked by the filing of a petition under subsection (5).

12 (iv) Language providing that the person making the transfer
13 has read a preplacement assessment of the prospective adoptive
14 parent completed or updated within 1 year before the date of the
15 transfer with a finding that the prospective adoptive parent is
16 suitable to be a parent of an adoptee. If a child placing agency
17 makes the transfer of physical custody, the statement shall
18 include a verification that the child placing agency has given
19 the parent or guardian who authorized the temporary placement an
20 opportunity to review the preplacement assessment.

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

25 (d) In the presence of a witness who also signs the
26 document, the prospective adoptive parent signs a statement
27 setting forth the date of the transfer of physical custody and

1 the name and address of the prospective adoptive parent and
2 attesting to both of the following:

3 (i) That the prospective adoptive parent understands that
4 the temporary placement will not become a formal placement until
5 the parents consent or release their parental rights and the
6 court orders the termination of parental rights and approves the
7 placement and that the prospective adoptive parent must
8 relinquish custody of the child within 24 hours after being
9 served with an order ~~pursuant to~~ **under** section 23e(2) of this
10 chapter.

11 (ii) That the prospective adoptive parent agrees to reside
12 with the child in Michigan until a change of residence is
13 approved by the court after formal placement occurs.

14 (2) Not later than 2 days, excluding weekends and holidays,
15 after a transfer of physical custody of a child ~~pursuant to~~
16 **under** subsection (1), the adoption attorney or child placing
17 agency who assists with the temporary placement or the child
18 placing agency that makes the temporary placement shall submit to
19 the court in the county in which the prospective adoptive parent
20 resides a report that contains all of the following:

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

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

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

26 (d) Even if only 1 parent is making the temporary placement,
27 the name and address of both parents of the child, including, in

1 the case of a child born out of wedlock, the name of each
2 putative father, if known.

3 (e) The documents required under subsection (1)(c) and (d)
4 and, if applicable, the authorization required under section 23b
5 of this chapter.

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

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

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

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

1 prosecutor is not required to file a petition.

2 (5) A parent or guardian who wishes to regain custody of a
3 child who has been placed temporarily shall file a petition in
4 the court that received the report described in subsection (2)
5 requesting that the temporary placement be revoked and that the
6 child be returned to the parent or guardian. Upon request of the
7 parent or guardian, the adoption attorney or child placing agency
8 who assisted in making the temporary placement shall assist the
9 parent or guardian in filing the petition to revoke the temporary
10 placement. If the temporary placement was made by a child
11 placing agency ~~pursuant to~~ **under** section 23b(3) of this
12 chapter, the child placing agency shall file the petition on
13 behalf of a parent or guardian who wishes to regain custody of
14 the child.

15 (6) If a prospective adoptive parent with whom a child has
16 been temporarily placed is either unwilling or unable to proceed
17 with the adoption, the prospective adoptive parent may file a
18 petition in the court that received the report described in
19 subsection (2) for disposition of the child ~~pursuant~~ **according**
20 to section 23e of this chapter.

21 (7) If a child placing agency that temporarily placed a child
22 is unable to proceed with an adoption because of the
23 unavailability of a parent or guardian to execute a release, or
24 if a child placing agency with legal custody of a child decides
25 not to proceed with the adoption by a prospective adoptive parent
26 with whom the child has been temporarily placed and the
27 prospective adoptive parent refuses upon the agency's request to

1 return the child to the agency, the child placing agency shall
2 file a petition in the court that received the report described
3 in subsection (2) for disposition of the child ~~pursuant~~
4 **according** to section 23e of this chapter.

5 (8) Except as otherwise agreed to by the parties, the
6 prospective adoptive parent with whom a child is temporarily
7 placed under this section may consent to all medical, surgical,
8 psychological, educational, and related services for the child.

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

13 (10) A child placing agency is not required to perform,
14 assist, counsel, recommend, facilitate, refer, or participate in
15 a placement that violates the child placing agency's written
16 religious or moral convictions or policies. A state or local
17 government entity may not deny a child placing agency a grant,
18 contract, or participation in a government program because of the
19 child placing agency's objection to performing, assisting,
20 counseling, recommending, facilitating, referring, or
21 participating in a placement that violates the child placing
22 agency's written religious or moral convictions or policies.
23 Refusal by a child placing agency to perform, assist, counsel,
24 recommend, facilitate, refer, or participate in a placement that
25 violates the child placing agency's written religious or moral
26 convictions or policies does not constitute a determination that
27 the proposed adoption is not in the best interests of the

1 adoptee.

2 Sec. 23e. (1) Not later than 14 days after the filing of a
3 petition by the prosecutor as required by section 23d(4) of this
4 chapter, by a prospective adoptive parent as permitted in section
5 23d(6) of this chapter, or by a child placing agency as required
6 by section 23d(7) of this chapter, the court shall hold a hearing
7 to determine the custody of a child for whom a temporary
8 placement has been made.

9 (2) Upon receiving a petition filed under section 23d(5) of
10 this chapter, the court shall immediately issue an ex parte order
11 directing the prospective adoptive parent to return the child to
12 the parent or guardian with legal custody within 24 hours after
13 receipt of the order, unless the court proceeds under subsection
14 (3).

15 (3) The court may appoint an attorney to represent the child
16 or refer the matter to the department. The attorney or the
17 department may file a petition on the child's behalf requesting
18 the court to take jurisdiction under section 2(b) of chapter
19 XIIIA. If that petition has not been filed within 14 days after
20 the court appoints an attorney or refers the matter to the
21 department under this section, the court shall order the return
22 of the child to the parent or guardian with legal custody.
23 During the period before the petition for jurisdiction under
24 section 2(b) of chapter XIIIA is filed and a preliminary hearing
25 is held or the return of custody is ordered, the court shall
26 remove the child from the home of the prospective adoptive parent
27 and make a temporary disposition appropriate for the welfare of

1 the child as authorized by section 18 of chapter XIIIA.

2 (4) Subject to subsection (2), the court may appoint a
3 guardian under the estates and protected individuals code, 1998
4 PA 386, MCL 700.1101 to 700.8102, in response to a petition filed
5 by the prospective adoptive parent or another individual
6 interested in the child's welfare, and make a temporary
7 disposition appropriate for the child's welfare as authorized by
8 section 18 of chapter XIIIA until an order of guardianship is
9 entered.

10 (5) The court may order the return of a child to a child
11 placing agency that has obtained legal custody of the child.

12 (6) The court may appoint a guardian ad litem for the child
13 or for a minor parent of the child.

14 (7) This act provides the exclusive remedy for all custody
15 disputes arising out of a temporary placement.

16 **(8) Refusal by a child placing agency under section 23b or**
17 **23d of this chapter to perform, assist, counsel, recommend,**
18 **facilitate, refer, or participate in a placement that violates**
19 **the child placing agency's written religious or moral convictions**
20 **or policies does not constitute a determination that the proposed**
21 **adoption is not in the best interests of the adoptee.**

22 Sec. 46. (1) Upon the filing of an adoption petition, the
23 court shall direct a full investigation by an employee or agent
24 of the court, a child placing agency, or the department. The
25 court may use the preplacement assessment described in
26 section 23f of this chapter and may order an additional
27 investigation by an employee or agent of the court or a child

1 placing agency. The following shall be considered in the
2 investigation:

3 (a) The best interests of the adoptee.

4 (b) The adoptee's family background, including names and
5 identifying data regarding the parent or parents, if obtainable.

6 (c) The reasons for the adoptee's placement away from his or
7 her parent or parents.

8 (2) A written report of the investigation shall be filed
9 within 3 months after the order for investigation.

10 (3) If the adoptee has been placed for foster care with the
11 petitioner for 12 months or longer and the foster family study
12 was completed or updated not more than 12 months before the
13 petition was filed, the court, upon motion by the petitioner, may
14 waive the full investigation required by this section. The
15 foster family study, with information added as necessary to
16 update or supplement the original study, may be substituted for
17 the written report required under subsection (2).

18 **(4) Refusal by a child placing agency under section 23b or**
19 **23d of this chapter to perform, assist, counsel, recommend,**
20 **facilitate, refer, or participate in a placement that violates**
21 **the child placing agency's written religious or moral convictions**
22 **or policies does not constitute a determination that the proposed**
23 **adoption is not in the best interests of the adoptee.**