



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 714 (as enrolled)
House Bill 5100 (as enrolled)
Sponsor: Senator Patricia L. Birkholz (S.B. 714)
Representative Rick Jones (H.B. 5100)
Senate Committee: Judiciary
House Committee: Family and Children Services

PUBLIC ACT 327 of 2005
PUBLIC ACT 328 of 2005

Date Completed: 4-5-06

CONTENT

House Bill 5100 amended the Child Custody Act to prohibit a court from changing a child's placement while a parent is in "active military duty" or considering a parent's absence for active military duty in a best interest of the child determination when the parent returns from active military duty.

Senate Bill 714 amended the Act to specify that "active military duty" means when a reserve unit member or National Guard unit member is called into active military duty.

The bills were tie-barred and took effect on December 28, 2005. House Bill 5100 is described below.

Under the Act, when a child custody dispute is before the circuit court, the court may take certain actions for the best interests of the child. These include awarding custody of the child to one or more of the parties involved or to others, and providing for the payment of child support; providing for reasonable parenting time; and modifying or amending the court's previous judgments or orders for proper cause shown or because of a change of circumstances. The court may not modify or amend its previous judgments or orders or issue a new order changing the child's established custodial environment unless there is clear and convincing evidence that it is in the best interest of the child.

The bill specifies that, if a motion for change of custody is filed during the time a parent is in active military duty, the court may not enter an order modifying or amending a previous judgment or order, or issue a new order, that changes the child's placement that existed on the date the parent was called to active military duty. The court, however, may enter a temporary custody order if there is clear and convincing evidence that it is in the best interest of the child. Upon a parent's return from active military duty, the court must reinstate the custody order in effect immediately preceding that period of active military duty. If a motion for change of custody is filed after a parent returns from active military duty, the court may not consider a parent's absence due to that military duty in a best interest of the child determination.

(Under the Act, "best interests of the child" means the sum total of the following factors to be considered, evaluated, and determined by the court:

- The love, affection, and other emotional ties existing between the parties involved and the child.
- The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.
- The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted

under Michigan law in place of medical care, and other material needs.

- The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.
- The permanence, as a family unit, of the existing or proposed custodial home or homes.
- The moral fitness of the parties involved.
- The mental and physical health of the parties involved.
- The home, school, and community record of the child.
- The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.
- The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents.
- Domestic violence, regardless of whether the violence was directed against or witnessed by the child.
- Any other factor considered by the court to be relevant to a particular child custody dispute.)

MCL 722.22 (S.B. 714)
722.27 (H.B. 5100)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills will have no fiscal impact on State or local government.

Fiscal Analyst: Stephanie Yu

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.