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BILL ANALYSIS



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Senate Bill 714 (as introduced 8-31-05)  
Sponsor: Senator Patricia L. Birkholz  
Committee: Judiciary

Date Completed: 11-1-05

### **CONTENT**

**The bill would amend the Child Custody Act to do all of the following:**

- Prohibit a court from making a determination of the best interests of the child in a custody dispute based on a parent's separation from his or her child due to military service.**
- Specify that military service by a custodial parent would not be a proper cause shown or a change of circumstances sufficient to justify a modification of a previous custody judgment or order.**
- Prohibit a permanent custodial environment from being established while a parent was called to military service.**

"Military service" would mean a reserve unit member or National Guard unit member called into active military duty.

#### Best Interests of the Child

The Act provides that, if a child custody dispute is between the parents, between agencies, or between third persons, the best interests of the child control. The bill specifies that, if a parent were called to military service, the court could not make a best interest determination based on that parent's separation from his or her child due to military service.

(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.)

#### Proper Cause Shown or Change of Circumstances

Under the Act, if a child custody dispute has been submitted to the circuit court as an original action under the Act or has arisen incidentally from another action in the circuit court, or from an order or judgment of the circuit court, the court may take certain actions for the best interests of the child. One of those actions is to modify or amend the court's previous judgments or orders for proper cause shown or because of a change of circumstances until the child reaches 18 years of age, and subject to Section 5b of the Support and Parenting Time Enforcement Act, until the child reaches 19 years and six months of age. The bill specifies that military service by a custodial parent would not be a proper cause shown or a change of circumstances sufficient to justify a modification or amendment of a previous custody judgment or order.

(Section 5b of the Support and Parenting Time Enforcement Act allows a court to order support for a child after he or she reaches 18 years of age for the time the child regularly attends high school on a full-time basis.)

#### Established Custodial Environment

The Child Custody Act prohibits the court from modifying or amending its previous judgments or orders or from issuing a new order to change the established custodial environment of a child unless there is clear and convincing evidence that changing custody 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 bill specifies that, if a parent were called to military service, a permanent custodial environment could not be established during that period of service.

MCL 722.22 et al.

Legislative Analyst: Patrick Affholter

#### **FISCAL IMPACT**

The bill would 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.