

SENATE BILL No. 101

January 28, 2009, Introduced by Senators JANSEN and HARDIMAN and referred to the Committee on Families and Human Services.

A bill to amend 1970 PA 91, entitled
"Child custody act of 1970,"
by amending section 7b (MCL 722.27b), as amended by 2006 PA 353.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7b. (1) A child's grandparent may seek a grandparenting
2 time order under 1 or more of the following circumstances:

3 (a) An action for divorce, separate maintenance, or annulment
4 involving the child's parents is pending before the court.

5 (b) The child's parents are divorced, separated under a
6 judgment of separate maintenance, or have had their marriage
7 annulled.

8 (c) The child's parent who is a child of the grandparents is
9 deceased.

10 (d) The child's parents have never been married, they are not

1 residing in the same household, and paternity has been established
2 by the completion of an acknowledgment of parentage under the
3 acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 to
4 722.1013, by an order of filiation entered under the paternity act,
5 1956 PA 205, MCL 722.711 to 722.730, or by a determination by a
6 court of competent jurisdiction that the individual is the father
7 of the child.

8 (e) Except as otherwise provided in subsection (13), legal
9 custody of the child has been given to a person other than the
10 child's parent, or the child is placed outside of and does not
11 reside in the home of a parent.

12 (f) In the year preceding the commencement of an action under
13 subsection (3) for grandparenting time, the grandparent provided an
14 established custodial environment for the child as described in
15 section 7, whether or not the grandparent had custody under a court
16 order.

17 (2) A court shall not permit a parent of a father who has
18 never been married to the child's mother to seek an order for
19 grandparenting time under this section unless the father has
20 completed an acknowledgment of parentage under the acknowledgment
21 of parentage act, 1996 PA 305, MCL 722.1001 to 722.1013, an order
22 of filiation has been entered under the paternity act, 1956 PA 205,
23 MCL 722.711 to 722.730, or the father has been determined to be the
24 father by a court of competent jurisdiction. The court shall not
25 permit the parent of a putative father to seek an order for
26 grandparenting time unless the putative father has provided
27 substantial and regular support or care in accordance with the

1 putative father's ability to provide the support or care.

2 (3) A grandparent seeking a grandparenting time order shall
3 commence an action for grandparenting time, as follows:

4 (a) If the circuit court has continuing jurisdiction over the
5 child, the child's grandparent shall seek a grandparenting time
6 order by filing a motion with the circuit court in the county where
7 the court has continuing jurisdiction.

8 (b) If the circuit court does not have continuing jurisdiction
9 over the child, the child's grandparent shall seek a grandparenting
10 time order by filing a complaint in the circuit court for the
11 county where the child resides.

12 (4) All of the following apply to an action for grandparenting
13 time under subsection (3):

14 (a) The complaint or motion for grandparenting time filed
15 under subsection (3) shall be accompanied by an affidavit setting
16 forth facts supporting the requested order. The grandparent shall
17 give notice of the filing to each person who has legal custody of,
18 or an order for parenting time with, the child. A party having
19 legal custody may file an opposing affidavit. A hearing shall be
20 held by the court on its own motion or if a party requests a
21 hearing. At the hearing, parties submitting affidavits shall be
22 allowed an opportunity to be heard.

23 (b) In order to give deference to the decisions of fit
24 parents, it is presumed in a proceeding under this subsection that
25 a fit parent's decision to deny grandparenting time does not create
26 a substantial risk of harm to the child's mental, physical, or
27 emotional health. To rebut the presumption created in this

1 subdivision, a grandparent filing a complaint or motion under this
2 section must prove by a preponderance of the evidence that the
3 parent's decision to deny grandparenting time creates a substantial
4 risk of harm to the child's mental, physical, or emotional health.
5 If the grandparent does not overcome the presumption, the court
6 shall dismiss the complaint or deny the motion.

7 (c) If a court of appellate jurisdiction determines in a final
8 and nonappealable judgment that the burden of proof described in
9 subdivision (b) is unconstitutional, a grandparent filing a
10 complaint or motion under this section must prove by clear and
11 convincing evidence that the parent's decision to deny
12 grandparenting time creates a substantial risk of harm to the
13 child's mental, physical, or emotional health to rebut the
14 presumption created in subdivision (b).

15 (5) If 2 fit parents sign an affidavit stating that they both
16 oppose an order for grandparenting time, the court shall dismiss a
17 complaint or motion seeking an order for grandparenting time filed
18 under subsection (3). This subsection does not apply if 1 of the
19 fit parents is a stepparent who adopted a child under the Michigan
20 adoption code, chapter X of the probate code of 1939, 1939 PA 288,
21 MCL 710.21 to 710.70, and the grandparent seeking the order is the
22 natural or adoptive parent of a parent of the child who is deceased
23 or whose parental rights have been terminated.

24 (6) If the court finds that a grandparent has met the standard
25 for rebutting the presumption described in subsection (4), the
26 court shall consider whether it is in the best interests of the
27 child to enter an order for grandparenting time. If the court finds

1 by a preponderance of the evidence that it is in the best interests
2 of the child to enter a grandparenting time order, the court shall
3 enter an order providing for reasonable grandparenting time of the
4 child by the grandparent by general or specific terms and
5 conditions. In determining the best interests of the child under
6 this subsection, the court shall consider all of the following:

7 (a) The love, affection, and other emotional ties existing
8 between the grandparent and the child.

9 (b) The length and quality of the prior relationship between
10 the child and the grandparent, the role performed by the
11 grandparent, and the existing emotional ties of the child to the
12 grandparent.

13 (c) The grandparent's moral fitness.

14 (d) The grandparent's mental and physical health.

15 (e) The child's reasonable preference, if the court considers
16 the child to be of sufficient age to express a preference.

17 (f) The effect on the child of hostility between the
18 grandparent and the parent of the child.

19 (g) The willingness of the grandparent, except in the case of
20 abuse or neglect, to encourage a close relationship between the
21 child and the parent or parents of the child.

22 (h) Any history of physical, emotional, or sexual abuse or
23 neglect of any child by the grandparent.

24 (i) Whether the parent's decision to deny, or lack of an offer
25 of, grandparenting time is related to the child's well-being or is
26 for some other unrelated reason.

27 (j) Any other factor relevant to the physical and

1 psychological well-being of the child.

2 (7) If the court has determined that a grandparent has met the
3 standard for rebutting the presumption described in subsection (4),
4 the court may refer that grandparent's complaint or motion for
5 grandparenting time filed under subsection (3) to ~~domestic~~
6 ~~relations mediation~~ **ALTERNATIVE DISPUTE RESOLUTION** as provided by
7 supreme court rule. If the complaint or motion is referred to the
8 friend of the court ~~mediation service~~ **FOR ALTERNATIVE DISPUTE**
9 **RESOLUTION** and no settlement is reached through friend of the court
10 ~~mediation~~ **ALTERNATIVE DISPUTE RESOLUTION** within a reasonable time
11 after the date of referral, the complaint or motion shall be heard
12 by the court as provided in this section.

13 (8) A grandparent may not file more than once every 2 years,
14 absent a showing of good cause, a complaint or motion under
15 subsection (3) seeking a grandparenting time order. If the court
16 finds there is good cause to allow a grandparent to file more than
17 1 complaint or motion under this section in a 2-year period, the
18 court shall allow the filing and shall consider the complaint or
19 motion. Upon motion of a person, the court may order reasonable
20 attorney fees to the prevailing party.

21 (9) The court shall not enter an order prohibiting an
22 individual who has legal custody of a child from changing the
23 domicile of the child if the prohibition is primarily for the
24 purpose of allowing a grandparent to exercise the rights conferred
25 in a grandparenting time order entered under this section.

26 (10) A grandparenting time order entered under this section
27 does not create parental rights in the individual or individuals to

1 whom grandparenting time rights are granted. The entry of a
2 grandparenting time order does not prevent a court of competent
3 jurisdiction from acting upon the custody of the child, the
4 parental rights of the child, or the adoption of the child.

5 (11) A court shall not modify or terminate a grandparenting
6 time order entered under this section unless it finds by a
7 preponderance of the evidence, on the basis of facts that have
8 arisen since entry of the grandparenting time order or were unknown
9 to the court at the time it entered that order, that a change has
10 occurred in the circumstances of the child or his or her custodian
11 and that a modification or termination of the existing order is
12 necessary to avoid creating a substantial risk of harm to the
13 mental, physical, or emotional health of the child. A court
14 modifying or terminating a grandparenting time order under this
15 subsection shall include specific findings of fact in its order in
16 support of its decision.

17 (12) ~~The~~**A** court shall make a record of its analysis and
18 findings under subsections (4), (6), (8), and (11), including the
19 reasons for granting or denying a requested grandparenting time
20 order.

21 (13) Except as otherwise provided in this subsection, adoption
22 of a child or placement of a child for adoption under the Michigan
23 adoption code, chapter X of the probate code of 1939, 1939 PA 288,
24 MCL 710.21 to 710.70, terminates the right of a grandparent to
25 commence an action for grandparenting time with that child.
26 Adoption of a child by a stepparent under the Michigan adoption
27 code, chapter X of the probate code of 1939, 1939 PA 288, MCL

1 710.21 to 710.70, does not terminate the right of the parent of a
2 deceased parent of the child to commence an action for
3 grandparenting time with that child.

4 Enacting section 1. This amendatory act does not take effect
5 unless Senate Bill No. 99

6 of the 95th Legislature is enacted into law.