

# HOUSE BILL No. 5763

June 14, 2012, Introduced by Rep. Kurtz and referred to the Committee on Families, Children, and Seniors.

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 46 as amended section 23b as added by 1994 PA 222, section 23d as amended by 2004 PA 487, 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

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

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

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

18 (4) A CHILD PLACING AGENCY IS NOT REQUIRED TO PERFORM, ASSIST,  
19 COUNSEL, RECOMMEND, FACILITATE, REFER, OR PARTICIPATE IN A  
20 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 PARTICIPATING  
26 IN A PLACEMENT THAT VIOLATES THE CHILD PLACING AGENCY'S WRITTEN  
27 RELIGIOUS OR MORAL CONVICTIONS OR POLICIES. REFUSAL BY A CHILD

1 PLACING AGENCY TO PERFORM, ASSIST, COUNSEL, RECOMMEND, FACILITATE,  
2 REFER, OR PARTICIPATE IN A PLACEMENT THAT VIOLATES THE CHILD  
3 PLACING AGENCY'S WRITTEN RELIGIOUS OR MORAL CONVICTIONS OR POLICIES  
4 DOES NOT CONSTITUTE A DETERMINATION THAT THE PROPOSED ADOPTION IS  
5 NOT IN THE BEST INTERESTS OF THE ADOPTEE.

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

14 (a) The prospective adoptive parent with whom a child is  
15 temporarily placed has had a preplacement assessment completed  
16 within 1 year before the date of the transfer with a finding that  
17 the prospective adoptive parent is suitable to be a parent of an  
18 adoptee.

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

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

1 following:

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

3 (ii) Language providing that the transfer is for the purpose of  
4 adoption by the prospective adoptive parent.

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

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

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

26 (d) In the presence of a witness who also signs the document,  
27 the prospective adoptive parent signs a statement setting forth the

1 date of the transfer of physical custody and the name and address  
2 of the prospective adoptive parent and attesting to all of the  
3 following:

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

11 (ii) That, if the prospective adoptive parent is a Michigan  
12 resident, the prospective adoptive parent agrees to reside with the  
13 child in Michigan until formal placement occurs.

14 (iii) That the prospective adoptive parent agrees to obtain  
15 approval in compliance with the interstate compact on the placement  
16 of children, 1984 PA 114, MCL 3.711 to 3.717, before the child is  
17 sent, brought, or caused to be sent or brought into a receiving  
18 state as that term is defined in section 1 of the interstate  
19 compact on the placement of children, 1984 PA 114, MCL 3.711.

20 (iv) That the prospective adoptive parent submits to this  
21 state's jurisdiction.

22 (2) Not later than 2 days, excluding weekends and holidays,  
23 after a transfer of physical custody of a child in accordance with  
24 subsection (1), the adoption attorney or child placing agency who  
25 assists with the temporary placement or the child placing agency  
26 that makes the temporary placement shall submit to the court in the  
27 county in which the child's parent or guardian or the prospective

1 adoptive parent resides, or in which the child is found, a report  
2 that contains all of the following:

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

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

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

8 (d) Even if only 1 parent is making the temporary placement,  
9 the name and address of both parents of the child, including, in  
10 the case of a child born out of wedlock, the name of each putative  
11 father, if known.

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

15 (3) Not later than 30 days after the transfer of physical  
16 custody of a child under this section, the adoption attorney or  
17 child placing agency who assists with the temporary placement or  
18 the child placing agency that makes the temporary placement shall  
19 submit to the court that received the report described in  
20 subsection (2) a report indicating whether or not 1 of the  
21 following dispositions has occurred:

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

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

25 (4) If the court has not received the report required under  
26 subsection (3) within 45 days after the transfer of physical  
27 custody of a child, the court shall immediately investigate and

1 determine whether an adoption petition has been filed or the child  
2 has been returned to a parent or other person having legal custody.  
3 If the report required under subsection (3) or the court's  
4 investigation reveals that neither disposition has occurred, the  
5 court shall immediately report to the prosecutor, who shall  
6 immediately file a petition in the court that received the report  
7 described in subsection (2) for disposition of the child as  
8 required by section 23e of this chapter. If a petition has been  
9 filed under subsection (5), (6), or (7), the prosecutor is not  
10 required to file a petition.

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

23 (6) If a prospective adoptive parent with whom a child has  
24 been temporarily placed is either unwilling or unable to proceed  
25 with the adoption, the prospective adoptive parent may file a  
26 petition in the court that received the report described in  
27 subsection (2) for disposition of the child as required by section

1 23e of this chapter.

2 (7) If a child placing agency that temporarily placed a child  
3 is unable to proceed with an adoption because of the unavailability  
4 of a parent or guardian to execute a release, or if a child placing  
5 agency with legal custody of a child decides not to proceed with  
6 the adoption by a prospective adoptive parent with whom the child  
7 has been temporarily placed and the prospective adoptive parent  
8 refuses upon the agency's request to return the child to the  
9 agency, the child placing agency shall file a petition in the court  
10 that received the report described in subsection (2) for  
11 disposition of the child as required by section 23e of this  
12 chapter.

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

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

21 (10) A CHILD PLACING AGENCY IS NOT REQUIRED TO PERFORM,  
22 ASSIST, COUNSEL, RECOMMEND, FACILITATE, REFER, OR PARTICIPATE IN A  
23 PLACEMENT THAT VIOLATES THE CHILD PLACING AGENCY'S WRITTEN  
24 RELIGIOUS OR MORAL CONVICTIONS OR POLICIES. A STATE OR LOCAL  
25 GOVERNMENT ENTITY MAY NOT DENY A CHILD PLACING AGENCY A GRANT,  
26 CONTRACT, OR PARTICIPATION IN A GOVERNMENT PROGRAM BECAUSE OF THE  
27 CHILD PLACING AGENCY'S OBJECTION TO PERFORMING, ASSISTING,



1 COUNSELING, RECOMMENDING, FACILITATING, REFERRING, OR PARTICIPATING  
2 IN A PLACEMENT THAT VIOLATES THE CHILD PLACING AGENCY'S WRITTEN  
3 RELIGIOUS OR MORAL CONVICTIONS OR POLICIES. REFUSAL BY A CHILD  
4 PLACING AGENCY TO PERFORM, ASSIST, COUNSEL, RECOMMEND, FACILITATE,  
5 REFER, OR PARTICIPATE IN A PLACEMENT THAT VIOLATES THE CHILD  
6 PLACING AGENCY'S WRITTEN RELIGIOUS OR MORAL CONVICTIONS OR POLICIES  
7 DOES NOT CONSTITUTE A DETERMINATION THAT THE PROPOSED ADOPTION IS  
8 NOT IN THE BEST INTERESTS OF THE ADOPTEE.

9       Sec. 23e. (1) Not later than 14 days after the filing of a  
10 petition by the prosecutor as required by section 23d(4) of this  
11 chapter, by a prospective adoptive parent as permitted in section  
12 23d(6) of this chapter, or by a child placing agency as required by  
13 section 23d(7) of this chapter, the court shall hold a hearing to  
14 determine the custody of a child for whom a temporary placement has  
15 been made.

16       (2) Upon receiving a petition filed under section 23d(5) of  
17 this chapter, the court shall immediately issue an ex parte order  
18 directing the prospective adoptive parent to return the child to  
19 the parent or guardian with legal custody within 24 hours after  
20 receipt of the order, unless the court proceeds under subsection  
21 (3).

22       (3) The court may appoint an attorney to represent the child  
23 or refer the matter to the department. The attorney or the  
24 department may file a petition on the child's behalf requesting the  
25 court to take jurisdiction under section 2(b) of chapter XIIIA. If  
26 that petition has not been filed within 14 days after the court  
27 appoints an attorney or refers the matter to the department under

1 this section, the court shall order the return of the child to the  
2 parent or guardian with legal custody. During the period before the  
3 petition for jurisdiction under section 2(b) of chapter XIIIA is  
4 filed and a preliminary hearing is held or the return of custody is  
5 ordered, the court shall remove the child from the home of the  
6 prospective adoptive parent and make a temporary disposition  
7 appropriate for the welfare of the child as authorized by section  
8 18 of chapter XIIIA.

9 (4) Subject to subsection (2), the court may appoint a  
10 guardian under the estates and protected individuals code, 1998 PA  
11 386, MCL 700.1101 to ~~700.8102~~, **700.8206**, in response to a petition  
12 filed by the prospective adoptive parent or another individual  
13 interested in the child's welfare, and make a temporary disposition  
14 appropriate for the child's welfare as authorized by section 18 of  
15 chapter XIIIA until an order of guardianship is entered.

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

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

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

22 **(8) REFUSAL BY A CHILD PLACING AGENCY UNDER SECTION 23B OR 23D**  
23 **OF THIS CHAPTER TO PERFORM, ASSIST, COUNSEL, RECOMMEND, FACILITATE,**  
24 **REFER, OR PARTICIPATE IN A PLACEMENT THAT VIOLATES THE CHILD**  
25 **PLACING AGENCY'S WRITTEN RELIGIOUS OR MORAL CONVICTIONS OR POLICIES**  
26 **DOES NOT CONSTITUTE A DETERMINATION THAT THE PROPOSED ADOPTION IS**  
27 **NOT IN THE BEST INTERESTS OF THE ADOPTEE.**

1           Sec. 46. (1) Upon the filing of an adoption petition, the  
2 court shall direct a full investigation by an employee or agent of  
3 the court, a child placing agency, or the department. The court may  
4 use the preplacement assessment described in section 23f of this  
5 chapter and may order an additional investigation by an employee or  
6 agent of the court or a child placing agency. The following shall  
7 be considered in the investigation:

8           (a) The best interests of the adoptee.

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

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

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

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

23           **(4) REFUSAL BY A CHILD PLACING AGENCY UNDER SECTION 23B OR 23D**  
24 **OF THIS CHAPTER TO PERFORM, ASSIST, COUNSEL, RECOMMEND, FACILITATE,**  
25 **REFER, OR PARTICIPATE IN A PLACEMENT THAT VIOLATES THE CHILD**  
26 **PLACING AGENCY'S WRITTEN RELIGIOUS OR MORAL CONVICTIONS OR POLICIES**  
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