

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 6008

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending section 45 of chapter X (MCL 710.45), as amended by
1996 PA 409.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER X

2 Sec. 45. (1) A court shall not allow the filing of a
3 petition to adopt a child if the consent of a representative or
4 court is required ~~pursuant to~~ **by** section 43(1)(b), (c), or (d)
5 of this chapter unless the petition is accompanied by the
6 required consent or a motion as provided in subsection (2).

7 (2) If an adoption petitioner has been unable to obtain the
8 consent required by section 43(1)(b), (c), or (d) of this
9 chapter, the petitioner may file a motion with the court alleging
10 that the decision to withhold consent was arbitrary and

1 capricious. A motion under this subsection shall contain
2 information regarding both of the following:

3 (a) The specific steps taken by the petitioner to obtain the
4 consent required and the results, if any.

5 (b) The specific reasons why the petitioner believes the
6 decision to withhold consent was arbitrary and capricious.

7 (3) If consent has been given to another petitioner and if
8 the child has been placed with that other petitioner ~~pursuant~~
9 **according** to an order under section 51 of this chapter, a motion
10 under this section shall not be brought after either of the
11 following:

12 (a) Fifty-six days following the entry of the order placing
13 the child.

14 (b) Entry of an order of adoption.

15 (4) **In an adoption proceeding in which there is more than 1**
16 **applicant, the petition for adoption shall be filed with the**
17 **court of the county where the parent's parental rights were**
18 **terminated or are pending termination. If both parents' parental**
19 **rights were terminated at different times and in different**
20 **courts, a petition filed under this section shall be filed in the**
21 **court of the county where parental rights were first terminated.**

22 (5) **The court shall provide notice of a motion brought under**
23 **this section to all interested parties as described in section**
24 **24a(1) of this chapter, the guardian ad litem of the prospective**
25 **adoptee if one has been appointed during a child protection**
26 **proceeding, and the applicant who received consent to adopt.**

27 (6) ~~(4)~~ Upon the filing of a petition to adopt a child and

1 the motion described in subsection (2), the court may waive or
2 modify the full investigation of the petition provided in section
3 46 of this chapter. The court shall decide the motion within 91
4 days after the filing of the motion unless good cause is shown.

5 (7) ~~—(5)—~~ Unless the petitioner establishes by clear and
6 convincing evidence that the decision to withhold consent was
7 arbitrary and capricious, the court shall deny the motion
8 described in subsection (2) and dismiss the petition to adopt.

9 (8) ~~—(6)—~~ If the court finds by clear and convincing evidence
10 that the decision to withhold consent was arbitrary and
11 capricious, the court **shall issue a written decision and** may
12 terminate the rights of the appropriate court, child placing
13 agency, or department and may enter further orders in accordance
14 with this chapter or section 18 of chapter XIIIA as the court
15 considers appropriate. In addition, the court may grant to the
16 petitioner reimbursement for petitioner's costs of preparing,
17 filing, and arguing the motion alleging the withholding of
18 consent was arbitrary and capricious, including a reasonable
19 allowance for attorney fees.

20 (9) ~~—(7)—~~ If the consent at issue is that required of the
21 court under section 43(1)(c) of this chapter, the motion shall be
22 heard by a visiting judge assigned ~~pursuant~~ **according** to
23 section 8212 of the revised judicature act of 1961, ~~Act No. 236~~
24 ~~of the Public Acts of 1961, being section 600.8212 of the~~
25 ~~Michigan Compiled Laws— 1961 PA 236, MCL 600.8212.~~

26 (10) **The court's decision on a motion brought under this**
27 **section is appealable by right to the court of appeals.**