

HOUSE BILL No. 6008

June 9, 2004, Introduced by Reps. Hager, Hummel, Wenke, Richardville, Vander Veen, Voorhees, Stahl, Kooiman, Emmons, Meyer and Hardman and referred to the Committee on Judiciary.

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:

CHAPTER X

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

(2) If an adoption petitioner has been unable to obtain the consent required by section 43(1)(b), (c), or (d) of this chapter, the petitioner may file a ~~motion~~ **petition for judicial review** with the court ~~alleging that~~ **for a determination of**

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1 **whether** the decision to withhold consent was ~~arbitrary and~~
2 ~~capricious~~ **proper and in the best interests of the child.** A
3 motion under this subsection shall contain information regarding
4 both of the following:

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

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

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

14 (a) Fifty-six days following the entry of the order placing
15 the child.

16 (b) Entry of an order of adoption.

17 (4) **Upon entry of a final order of adoption, the court shall**
18 **not conduct a hearing on a motion under this section if any 1 of**
19 **the following has not been filed in a timely manner:**

20 (a) An appeal from the order of adoption.

21 (b) A motion or an order for rehearing.

22 (c) Any other motion relating to the adoption or consent.

23 (5) **Upon the filing of a motion under this section, the**
24 **petitioner, the department, and the supervising state agency**
25 **shall provide the court with the names and addresses of all**
26 **parties required to be subpoenaed under this section. The court**
27 **shall issue a subpoena requiring all of the following individuals**

1 to appear and be prepared to provide testimony or documentation
2 with reference to the matter within the scope of the judicial
3 review:

4 (a) The adoptive parents.

5 (b) The foster parents.

6 (c) The child's custodian, if other than the foster
7 parents.

8 (d) The child's attorney or guardian ad litem.

9 (e) Any other individual who has filed a petition for
10 adoption for the child who is the subject of a petition filed
11 under this section.

12 (f) The Michigan children's institute superintendent.

13 (6) The court shall provide notice of a motion brought under
14 this section to all interested parties as described in section
15 24a(1) of this chapter.

16 (7) ~~-(4)-~~ Upon the filing of a petition to adopt a child and
17 the motion described in subsection (2), the court may waive or
18 modify the full investigation of the petition provided in
19 section 46 of this chapter. The court shall decide the motion
20 within 91 days after the filing of the motion unless good cause
21 is shown.

22 (8) ~~-(5)-~~ Unless the petitioner establishes by clear and
23 convincing evidence that the decision to withhold consent was
24 arbitrary and capricious, the court shall deny the motion
25 described in subsection (2) and dismiss the petition to adopt.

26 (9) ~~-(6)-~~ If the court finds by clear and convincing
27 evidence that the decision to withhold consent was arbitrary and

1 capricious, the court may terminate the rights of the appropriate
2 court, child placing agency, or department and may enter further
3 orders in accordance with this chapter or section 18 of
4 chapter XIIIA as the court considers appropriate. In addition,
5 the court may grant to the petitioner reimbursement for
6 petitioner's costs of preparing, filing, and arguing the motion
7 alleging the withholding of consent was arbitrary and capricious,
8 including a reasonable allowance for attorney fees.

9 (10) ~~-(7)-~~ If the consent at issue is that required of the
10 court under section 43(1)(c) of this chapter, the motion shall be
11 heard by a visiting judge assigned ~~pursuant~~ **according** to
12 section 8212 of the revised judicature act of 1961, ~~Act No. 236~~
13 ~~of the Public Acts of 1961, being section 600.8212 of the~~
14 ~~Michigan Compiled Laws- 1961 PA 236, MCL 600.8212.~~

15 (11) In making a decision on a motion filed under this
16 section, the court shall make a determination regarding the best
17 interests of the child.

18 (12) For a motion brought under this section, the court
19 shall provide all interested parties with the opportunity for a
20 fair hearing. All interested parties shall be allowed to offer
21 testimony and documentation regarding their position on the
22 motion or on the adoption of the child.

23 (13) If a motion or petition filed under this section does
24 not meet all of the filing requirements of this section, the
25 court shall notify the petitioner of the deficiencies in the
26 motion or petition and allow 21 days for the petitioner to
27 correct the motion or petition. If, after 21 days from

1 notification of the deficiencies by the court, the petitioner has
2 not corrected the deficiencies in the motion or petition, the
3 court shall dismiss the motion or petition.

4 (14) The court may provide sanctions on the petitioner, the
5 department or supervising agency, or a court employee if they
6 fail to provide the appropriate notice or names and addresses
7 required under this section.