

1 HB237
2 165098-1
3 By Representatives Shiver, Gaston, Standridge, Shedd, Pettus,
4 Alexander, Sells, Wilcox, Moore (M), Boyd, McMillan, Whorton
5 (R), Faust, Beech, Ledbetter, Moore (B), Bracy, Grimsley,
6 Williams (JW), Hanes, Forte, Lawrence, Hall, Drummond, Clarke,
7 Hill (J), Melton, Ingram, Baker and Davis
8 RFD: Judiciary
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8 SYNOPSIS: Under existing statutory law, grandparents
9 may petition for visitation with their
10 grandchildren under certain circumstances. The
11 Alabama Supreme Court declared parts of Alabama's
12 existing grandparent visitation law
13 unconstitutional.

14 This bill would repeal the existing
15 grandparent visitation law and replace it with a
16 new grandparent visitation law that requires the
17 petitioning grandparent to prove, by clear and
18 convincing evidence, that the grandparent has an
19 existing relationship with the grandchild and
20 visitation is in the best interest of the child.
21 This bill would specify the factors that establish
22 a significant and viable relationship for the
23 purposes of establishing clear and convincing
24 evidence. This bill would also establish the
25 criteria and procedures for filing a petition.

26
27 A BILL

1 TO BE ENTITLED

2 AN ACT

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4 Relating to grandparent visitation; to establish
5 procedures by which certain grandparents may petition for
6 visitation with their grandchildren; to provide for the burden
7 of proof of the petitioner; and to repeal Section 30-3-4.1 of
8 the Code of Alabama 1975.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. (a) For the purposes of this section, the
11 following words have the following meanings:

12 (1) GRANDPARENT. The parent of a parent, whether the
13 relationship is created biologically or by adoption.

14 (2) HARM. A finding by the court, by clear and
15 convincing evidence, that without court-ordered visitation by
16 the grandparent, the child's emotional, mental, or physical
17 well-being has been, could reasonably be, or would be
18 jeopardized.

19 (b) A grandparent may file an original action in a
20 circuit court, or any other court exercising jurisdiction with
21 respect to his or her grandchild, or file a motion to
22 intervene in any action when any court in this state has
23 before it any issue concerning custody of his or her
24 grandchild, including a domestic relations proceeding
25 involving the parent or parents of the grandchild, for
26 reasonable visitation rights with respect to his or her

1 grandchild under this section if any of the following
2 circumstances exist:

3 (1) An action for a divorce or legal separation of
4 the parents has been filed, or the marital relationship
5 between the parents of the child has been severed by death or
6 divorce.

7 (2) The child was born out of wedlock and the
8 petitioner is a maternal grandparent of the child.

9 (3) The child was born out of wedlock, the
10 petitioner is a paternal grandparent of the child, and
11 paternity has been legally established.

12 (4) An action to terminate the parental rights of a
13 parent or parents has been filed, or the parental rights of a
14 parent has been terminated by court order; provided, however,
15 the right of the grandparent to seek visitation terminates if
16 the court approves a petition for adoption by an adoptive
17 parent, unless such visitation rights are allowed pursuant to
18 Section 26-10A-30, Code of Alabama 1975.

19 (c) (1) There is a rebuttable presumption that a fit
20 parent's decision to deny or limit visitation to the
21 petitioner is in the best interest of the child.

22 (2) To rebut the presumption, the petitioner shall
23 prove by clear and convincing evidence, both of the following:

24 a. The petitioner has established a significant and
25 viable relationship with the child for whom he or she is
26 requesting visitation; and

1 b. Visitation with the petitioner is in the best
2 interest of the child.

3 (d) To establish a significant and viable
4 relationship with the child, the petitioner shall prove by
5 clear and convincing evidence either of the following:

6 (1) a. The child resided with the petitioner for at
7 least six consecutive months with or without a parent present;

8 b. The petitioner was the caregiver to the child on
9 a regular basis for at least six consecutive months; or

10 c. The petitioner had frequent or regular contact
11 with the child for at least 12 consecutive months.

12 (2) Any other facts that establish that the loss of
13 the relationship between the petitioner and the child is
14 likely to harm the child.

15 (e) To establish that visitation with the petitioner
16 is in the best interest of the child, the petitioner shall
17 prove by clear and convincing evidence all of the following:

18 (1) That the petitioner has the capacity to give the
19 child love, affection, and guidance.

20 (2) That the loss of an opportunity to maintain a
21 significant and viable relationship between the petitioner and
22 the child has caused or is reasonably likely to cause harm to
23 the child.

24 (3) That the petitioner is willing to cooperate with
25 the parent or parents if visitation with the child is allowed.

26 (f) The court shall make specific written findings
27 of fact in support of its rulings.

1 (g) (1) No grandparent or grandparents who are
2 married to each other may file a petition seeking an order for
3 visitation more than once every 24 months absent a showing of
4 good cause. The fact that a grandparent or grandparents who
5 are married to each other have petitioned for visitation shall
6 not preclude another grandparent from subsequently petitioning
7 for visitation within the 24-month period. After an order for
8 grandparent visitation has been granted, the parent, guardian,
9 or legal custodian of the child may file a petition requesting
10 the court to modify or terminate a grandparent's visitation
11 time with a grandchild.

12 (2) The court may modify or terminate visitation
13 upon proof that a material change in circumstances has
14 occurred since the award of grandparent visitation was made,
15 and a finding by the court that the modification or
16 termination of the grandparent visitation rights is in the
17 best interest of the child.

18 (h) The court may award any party reasonable
19 expenses incurred by or on behalf of the party, including
20 costs, communication expenses, attorney's fees, guardian ad
21 litem fees, investigative fees, expenses for court-appointed
22 witnesses, travel expenses, and child care during the course
23 of the proceedings.

24 (i) (1) Notwithstanding any provisions of this act to
25 the contrary, a petition filed by a grandparent seeking
26 visitation shall be filed in probate court and is governed by

1 Section 26-10A-30, Code of Alabama 1975, rather than by this
2 act if either of the following circumstances exists:

3 a. The grandchild has been the subject of an
4 adoption proceeding other than the one creating the
5 grandparent relationship; or

6 b. The grandchild is the subject of a pending
7 adoption proceeding.

8 (2) Notwithstanding any provisions of this act to
9 the contrary, any grandparent seeking visitation pursuant to
10 Section 12-15-314, Code of Alabama 1975, shall be governed by
11 Section 12-15-314, Code of Alabama 1975, rather than by this
12 act.

13 (3) Notwithstanding any provisions of this act to
14 the contrary, a parent of a parent, whose parental rights have
15 been terminated by court order in which the petitioner was the
16 Department of Human Resources, shall not be awarded any
17 visitation rights pursuant to this act.

18 (j) The right of a grandparent to maintain
19 visitation rights pursuant to this section terminates upon the
20 adoption of the child except as provided by Section 26-10A-30
21 of the Code of Alabama 1975.

22 (k) All of the following are necessary parties to
23 any action filed under this act:

24 (1) Unless parental rights have been terminated, the
25 parent or parents of the child.

26 (2) Every other person who has been awarded custody
27 or visitation with the child pursuant to court order.

1 (3) Any agency having custody of the child pursuant
2 to court order.

3 (1) In addition, upon filing of the action, notice
4 shall be given to all other grandparents of the child as
5 herein defined. The petition shall affirmatively state the
6 name and address upon whom notice has been given.

7 (m) Service and notice shall be made in the
8 following manner:

9 (1) Service of process on necessary parties shall be
10 made in accordance with the Alabama Rules of Civil Procedure.

11 (2) As to any other person to whom notice is
12 required to be given under subsection (1), notice shall be
13 given by first class mail to the last known address of the
14 person or persons entitled to notice. Notice shall be
15 effective on the third day following mailing.

16 (n) Notwithstanding the foregoing, the notice
17 requirements provided by this act may be limited or waived by
18 the court to the extent necessary to protect the
19 confidentiality and the health, safety, or liberty of a person
20 or a child.

21 (o) Upon filing an action under this section, after
22 giving special weight to the fundamental right of a fit parent
23 to decide which associations are in the best interest of his
24 or her child, the court may enter a pendente lite order
25 granting temporary visitation rights to a grandparent, pending
26 a final order, if the court determines from the evidence that

1 visitation would be in the best interest of the child and one
2 of the following circumstances exist:

3 (1) the child resided with the grandparent for at
4 least six consecutive months;

5 (2) the grandparent was the caregiver of the child
6 on a regular basis for at least six consecutive months;

7 (3) the grandparent provided significant financial
8 support for the child for at least six consecutive months; or

9 (4) the grandparent had frequent or regular contact
10 with the child for at least 12 consecutive months.

11 Section 2. This act shall become effective
12 immediately following its passage and approval by the
13 Governor, or its otherwise becoming law.