

1 HB97
2 125458-1
3 By Representative Gaston
4 RFD: Judiciary
5 First Read: 01-MAR-11

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8 SYNOPSIS: Under existing law, only one petition
9 requesting visitation may be filed by any
10 grandparents of a child within a 24-month period.

11 This bill would stipulate that a grandparent
12 who petitions for visitation may do so only once
13 every 24 months, but the fact that one grandparent
14 has petitioned for visitation shall not preclude
15 another grandparent for petitioning for visitation
16 within the 24-month period.

17 Under existing law, a parent may not
18 petition the court for amendment or revocation of
19 visitation granted to a grandparent more than once
20 in a 24-month period except in cases of exceptional
21 circumstances or if abuse is alleged.

22 This bill would provide that the parent may
23 petition for amendment or revocation of visitation
24 granted with respect to each grandparent who has
25 petitioned for and received visitation no more than
26 once every 24-month period for each order of
27 visitation.

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2 A BILL
3 TO BE ENTITLED
4 AN ACT
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6 To amend Section 30-3-4.1, Code of Alabama 1975; to
7 provide further for the filing by grandparents of a child of a
8 petition seeking visitation; and to provide that a parent may
9 petition for amendment or revocation of an order granting a
10 grandparent visitation once every 24 months with respect to
11 each order of visitation granted to a grandparent.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. Section 30-3-4.1, Code of Alabama 1975,
14 is amended to read as follows:

15 "§30-3-4.1.

16 "(a) For the purposes of this section, the term
17 "grandparent" means the parent of a parent of a minor child,
18 the parent of a minor child's parent who has died, or the
19 parent of a minor child's parent whose parental rights have
20 been terminated when the child has been adopted pursuant to
21 Section 26-10A-27, 26-10A-28, or 26-10A-30, dealing with
22 stepparent and relative adoption.

23 "(b) Except as otherwise provided in this section,
24 any grandparent may file an original action for visitation
25 rights to a minor child if it is in the best interest of the
26 minor child and one of the following conditions exist:

1 "(1) When one or both parents of the child are
2 deceased.

3 "(2) When the marriage of the parents of the child
4 has been dissolved.

5 "(3) When a parent of the child has abandoned the
6 minor.

7 "(4) When the child was born out of wedlock.

8 "(5) When the child is living with both biological
9 parents, who are still married to each other, whether or not
10 there is a broken relationship between either or both parents
11 of the minor and the grandparent and either or both parents
12 have used their parental authority to prohibit a relationship
13 between the child and the grandparent.

14 "(c) Any grandparent may intervene in and seek to
15 obtain visitation rights in any action when any court in this
16 state has before it any question concerning the custody of a
17 minor child, a divorce proceeding of the parents or a parent
18 of the minor child, or a termination of the parental rights
19 proceeding of either parent of the minor child, provided the
20 termination of parental rights is for the purpose of adoption
21 pursuant to Sections 26-10A-27, 26-10A-28, or 26-10A-30,
22 dealing with stepparent or relative adoption.

23 "(d) Upon the filing of an original action or upon
24 intervention in an existing proceeding pursuant to subsections
25 (b) and (c), the court shall determine if visitation by the
26 grandparent is in the best interests of the child. Visitation
27 shall not be granted if the visitation would endanger the

1 physical health of the child or impair the emotional
2 development of the child. In determining the best interests of
3 the child, the court shall consider the following:

4 "(1) The willingness of the grandparent or
5 grandparents to encourage a close relationship between the
6 child and the parent or parents.

7 "(2) The preference of the child, if the child is
8 determined to be of sufficient maturity to express a
9 preference.

10 "(3) The mental and physical health of the child.

11 "(4) The mental and physical health of the
12 grandparent or grandparents.

13 "(5) Evidence of domestic violence inflicted by one
14 parent upon the other parent or the child. If the court
15 determines that evidence of domestic violence exists,
16 visitation provisions shall be made in a manner protecting the
17 child or children, parents, or grandparents from further
18 abuse.

19 "(6) Other relevant factors in the particular
20 circumstances, including the wishes of any parent who is
21 living.

22 "(e) The court shall make specific written findings
23 of fact in support of its rulings. ~~An original action~~
24 ~~requesting visitation rights shall not be filed by any~~
25 ~~grandparent more than once during any two-year period and~~
26 ~~shall not be filed during any year in which another custody~~
27 ~~action has been filed concerning the child. A grandparent who~~

1 petitions for visitation may do so no more than once every 24
2 months. The fact that one grandparent has petitioned for
3 visitation shall not preclude another grandparent from
4 subsequently petitioning for visitation within the 24-month
5 period. After visitation rights have been granted to any
6 grandparent, the legal custodian, guardian, or parent of the
7 child may petition the court for revocation or amendment of
8 the visitation rights, for good cause shown, which the court,
9 in its discretion, may grant or deny. Unless evidence of abuse
10 is alleged or other exceptional circumstances, a petition
11 shall not be filed with respect to any one grandparent who has
12 been granted visitation more than once in any two-year period.
13 If more than one grandparent has successfully petitioned for
14 visitation, the parent may petition no more than once every 24
15 months for revocation or amendment of visitation with respect
16 to each order of visitation.

17 "(f) If the court finds that the grandparent or
18 grandparents can bear the cost without unreasonable financial
19 hardship, the court, at the sole expense of the petitioning
20 grandparent or grandparents, may appoint a guardian ad litem
21 for the minor child.

22 "(g) Notwithstanding the foregoing, a grandparent
23 may not be granted visitation with a grandchild where the
24 parent related to the grandparent has either given up legal
25 custody voluntarily or by court order or has abandoned the
26 child financially unless the grandparent has an established
27 relationship with the child and the court finds that

1 visitation with the grandparent is in the best interests of
2 the child."

3 Section 2. This act shall become effective on the
4 first day of the third month following its passage and
5 approval by the Governor, or its otherwise becoming law.