

1 HB334
2 172743-3
3 By Representatives Jones, Shiver, Polizos and Gaston
4 RFD: Judiciary
5 First Read: 25-FEB-16

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ENROLLED, An Act,

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

(b) A grandparent may file an original action in a circuit court where his or her grandchild resides or any other court exercising jurisdiction with respect to the grandchild or file a motion to intervene in any action when any court in this state has before it any issue concerning custody of the grandchild, including a domestic relations proceeding involving the parent or parents of the grandchild,

1 for reasonable visitation rights with respect to the
2 grandchild if any of the following 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 the 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:

1 a. The petitioner has established a significant and
2 viable relationship with the child for whom he or she is
3 requesting visitation.

4 b. Visitation with the petitioner is in the best
5 interest of the child.

6 (d) To establish a significant and viable
7 relationship with the child, the petitioner shall prove by
8 clear and convincing evidence any of the following:

9 (1) a. The child resided with the petitioner for at
10 least six consecutive months with or without a parent present
11 within the three years preceding the filing of the petition.

12 b. The petitioner was the caregiver to the child on
13 a regular basis for at least six consecutive months within the
14 three years preceding the filing of the petition.

15 c. The petitioner had frequent or regular contact
16 with the child for at least 12 consecutive months that
17 resulted in a strong and meaningful relationship with the
18 child within the three years preceding the filing of the
19 petition.

20 (2) Any other facts that establish the loss of the
21 relationship between the petitioner and the child is likely to
22 harm the child.

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

1 (1) The petitioner has the capacity to give the
2 child love, affection, and guidance.

3 (2) The loss of an opportunity to maintain a
4 significant and viable relationship between the petitioner and
5 the child has caused or is reasonably likely to cause harm to
6 the child.

7 (3) The petitioner is willing to cooperate with the
8 parent or parents if visitation with the child is allowed.

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

11 (g) (1) A grandparent or grandparents who are married
12 to each other may not file a petition seeking an order for
13 visitation more than once every 24 months absent a showing of
14 good cause. The fact that a grandparent or grandparents who
15 are married to each other have petitioned for visitation shall
16 not preclude another grandparent from subsequently petitioning
17 for visitation within the 24-month period. After an order for
18 grandparent visitation has been granted, the parent, guardian,
19 or legal custodian of the child may file a petition requesting
20 the court to modify or terminate a grandparent's visitation
21 time with a grandchild.

22 (2) The court may modify or terminate visitation
23 upon proof that a material change in circumstances has
24 occurred since the award of grandparent visitation was made
25 and a finding by the court that the modification or

1 termination of the grandparent visitation rights is in the
2 best interest of the child.

3 (h) The court may award any party reasonable
4 expenses incurred by or on behalf of the party, including
5 costs, communication expenses, attorney's fees, guardian ad
6 litem fees, investigative fees, expenses for court-appointed
7 witnesses, travel expenses, and child care during the course
8 of the proceedings.

9 (i) (1) Notwithstanding any provisions of this act to
10 the contrary, a petition filed by a grandparent having
11 standing under Chapter 10A of Title 26 of the Code of Alabama
12 1975, seeking visitation shall be filed in probate court and
13 is governed by Section 26-10A-30, Code of Alabama 1975, rather
14 than by this act if either of the following circumstances
15 exists:

16 a. The grandchild has been the subject of an
17 adoption proceeding other than the one creating the
18 grandparent relationship.

19 b. The grandchild is the subject of a pending or
20 finalized adoption proceeding.

21 (2) Notwithstanding any provisions of this act to
22 the contrary, a grandparent seeking visitation pursuant to
23 Section 12-15-314, Code of Alabama 1975, shall be governed by
24 that section rather than by this act.

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

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

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

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

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

16 (3) Any agency having custody of the child pursuant
17 to court order.

18 (1) In addition, upon filing of the action, notice
19 shall be given to all other grandparents of the child. The
20 petition shall affirmatively state the name and address upon
21 whom notice has been given.

22 (m) Service and notice shall be made in the
23 following manner:

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

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

6 (n) Notwithstanding the foregoing, the notice
7 requirements provided by this act may be limited or waived by
8 the court to the extent necessary to protect the
9 confidentiality and the health, safety, or liberty of a person
10 or a child.

11 (o) Upon filing an action under this section, after
12 giving special weight to the fundamental right of a fit parent
13 to decide which associations are in the best interest of his
14 or her child, the court may, after a hearing, enter a pendente
15 lite order granting temporary visitation rights to a
16 grandparent, pending a final order, if the court determines
17 from the evidence that the petitioner has established a
18 significant and viable relationship with the child for whom he
19 or she is requesting visitation, visitation would be in the
20 best interest of the child, and any of the following
21 circumstances exist:

22 (1) The child resided with the grandparent for at
23 least six consecutive months within the three years preceding
24 the filing of the petition.

1 (2) The grandparent was the caregiver of the child
2 on a regular basis for at least six consecutive months within
3 the three years preceding the filing of the petition.

4 (3) The grandparent provided significant financial
5 support for the child for at least six consecutive months
6 within the three years preceding the filing of the petition.

7 (4) The grandparent had frequent or regular contact
8 with the child for at least 12 consecutive months within the
9 three years preceding the filing of the petition.

10 Section 2. As a matter of public policy, this act
11 recognizes the importance of family and the fundamental rights
12 of parents and children. In the context of grandparent
13 visitation under this act, a fit parent's decision regarding
14 whether to permit grandparent visitation is entitled to
15 special weight due to a parent's fundamental right to make
16 decisions concerning the rearing of his or her child.
17 Nonetheless, a parent's interest in a child must be balanced
18 against the long-recognized interests of the state as *parens*
19 *patriae*. Thus, as applied to grandparent visitation under this
20 act, this act balances the constitutional rights of parents
21 and children by imposing an enhanced standard of review and
22 consideration of the harm to a child caused by the parent's
23 limitation or termination of a prior relationship of a child
24 to his or her grandparent.

1 Section 3. Section 30-3-4.1, Code of Alabama 1975,
2 is repealed.

3 Section 4. The provisions of this act are severable.
4 If any part of this act is declared invalid or
5 unconstitutional, that declaration shall not affect the part
6 which remains.

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

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 22-MAR-16, as amended.

Jeff Woodard
Clerk

Senate

03-MAY-16

Passed