

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

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ENROLLED, An Act,

To amend Section 30-3-4.1, Code of Alabama 1975; to provide further for the filing by grandparents of a child of a petition seeking visitation; and to provide that a parent may petition for amendment or revocation of an order granting a grandparent visitation once every 24 months with respect to each order of visitation granted to a grandparent.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§30-3-4.1.

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

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

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

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

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

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

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

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

21           "(d) Upon the filing of an original action or upon  
22 intervention in an existing proceeding pursuant to subsections  
23 (b) and (c), the court shall determine if visitation by the  
24 grandparent is in the best interests of the child. Visitation  
25 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~~

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

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

24 "(g) Notwithstanding the foregoing, a grandparent  
25 may not be granted visitation with a grandchild where the

1 parent related to the grandparent has either given up legal  
2 custody voluntarily or by court order or has abandoned the  
3 child financially unless the grandparent has an established  
4 relationship with the child and the court finds that  
5 visitation with the grandparent is in the best interests of  
6 the child."

7 Section 2. 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

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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 14-APR-11.

Greg Pappas  
Clerk

Senate

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02-JUN-11

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Passed