

1 SB190
2 155898-3
3 By Senators Allen, Dial, Blackwell, Scofield, Holley and
4 Hightower
5 RFD: Judiciary
6 First Read: 15-JAN-14

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

3
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 petition a circuit court or
20 district court of this state having jurisdiction over domestic
21 relations (designated DR) or child support cases (designated
22 CS) for reasonable visitation rights with respect to his or
23 her grandchild under this section if any of the following
24 circumstances exist:

25 (1) The marital relationship between the parents of
26 the child has been severed by death, divorce, or legal
27 separation.

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

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

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

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

11 a. The petitioner has established a significant and
12 viable relationship with the child for whom he or she is
13 requesting visitation; and

14 b. Visitation with the petitioner is in the best
15 interest of the child.

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

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

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

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

25 (2) Any other facts that establish that the loss of
26 the relationship between the petitioner and the child is
27 likely to harm the child.

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

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

6 (2) That the loss of an opportunity to maintain a
7 significant and viable relationship between the petitioner and
8 the child has caused or is reasonably likely to cause harm to
9 the child.

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

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

14 (g) (1) No grandparent or grandparents who are
15 married to each other may file a petition seeking an order for
16 visitation more than once every 24 months absent a showing of
17 good cause. The fact that a grandparent or grandparents who
18 are married to each other have petitioned for visitation shall
19 not preclude another grandparent from subsequently petitioning
20 for visitation within the 24-month period. After an order for
21 grandparent visitation has been granted, the parent, guardian,
22 or legal custodian of the child may file a petition requesting
23 the court to modify or terminate a grandparent's visitation
24 time with a grandchild.

25 (2) The court may modify or terminate visitation
26 upon proof that a material change in circumstances has
27 occurred since the award of grandparent visitation was made,

1 and a finding by the court that the modification or
2 termination of the grandparent visitation rights is in the
3 best interest of the child.

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

10 (i) Notwithstanding the foregoing, a petition filed
11 by a grandparent seeking visitation shall be filed in probate
12 court and is governed by Section 26-10A-30, Code of Alabama
13 1975, rather than by this act if either of the following
14 circumstances exists:

15 (1) The grandchild has been the subject of an
16 adoption proceeding other than the one creating the
17 grandparent relationship; or

18 (2) The grandchild is the subject of a pending
19 adoption proceeding.

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

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

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

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

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

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

9 (m) Service and notice shall be made in the
10 following manner:

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

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

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

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

1 a final order, if the court determines from the evidence that
2 visitation would be in the best interest of the child and one
3 of the following circumstances exist:

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

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

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

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

12 Section 2. Section 30-3-4.1 of the Code of Alabama
13 1975, is repealed.

14 Section 3. The provisions of this act are severable.
15 If any part of this act is declared invalid or
16 unconstitutional, that declaration shall not affect the part
17 which remains.

18 Section 4. This act shall become effective
19 immediately following its passage and approval by the
20 Governor, or its otherwise becoming law.