

1 HB348
2 124469-3
3 By Representative Shiver
4 RFD: Judiciary
5 First Read: 24-MAR-11

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8 SYNOPSIS: Under existing law, a grandparent may
9 petition a court for visitation under certain
10 circumstances if visitation is in the best interest
11 of the child. Under existing law, the authority of
12 a court to award visitation to the grandparent is
13 limited where the parent related to the grandparent
14 has either given up legal custody voluntarily or by
15 court order or where the parent has abandoned the
16 child financially unless the grandparent has
17 previously established a relationship with the
18 child. A court may order a grandparent visitation
19 if the court determines that visitation is in the
20 best interests of the child.

21 This bill would authorize the grandparent of
22 a child to petition for visitation even if the
23 parent related to the grandparent has given up
24 legal custody, either voluntarily or by court
25 order, or has financially abandoned the child. This
26 bill would authorize a grandparent who has not
27 established a relationship with the child to

1 intervene in any action for custody or any action
2 seeking termination of parental rights for the
3 purpose of an adoption, but would provide that the
4 right of a grandparent to petition for visitation
5 of a child terminates upon the approval by a court
6 of a petition for adoption by a party who is not
7 the stepparent or biological relative of the child.

8 This bill would create a rebuttable
9 presumption that the parent or parents with whom
10 the child is living know what is in the best
11 interest of the child. This bill would authorize
12 the court to consider, in determining what is in
13 the best interest of the child, the fact that a
14 parent who is related to a grandparent petitioning
15 for visitation has either given up legal custody
16 voluntarily or by court order or has abandoned the
17 child financially.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT
22

23 To amend Section 30-3-4.1, Code of Alabama 1975;
24 relating to grandparent visitation; to provide further for
25 circumstances in which a grandparent may petition for and in
26 which a court may award to the grandparent visitation of a
27 minor child; to create a rebuttable presumption that the

1 parent or parents with whom a child is living know what is in
2 the best interest of the child.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

6 "§30-3-4.1.

7 "(a) For the purposes of this section, the term
8 "grandparent" means the parent of a parent of a minor child,
9 including an adopted child, the parent of a minor child's
10 parent who has died, or the parent of a minor child's parent
11 whose parental rights have been terminated when the child has
12 been adopted pursuant to Section 26-10A-27, 26-10A-28, or
13 26-10A-30, dealing with stepparent and relative adoption.

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

18 "(1) ~~When one~~ One or both parents of the child are
19 deceased.

20 "(2) ~~When the~~ The marriage of the parents of the
21 child has been dissolved.

22 "(3) ~~When a~~ A parent of the child has abandoned the
23 minor.

24 "(4) ~~When the~~ The child was born out of wedlock.

25 "(5) ~~When the~~ The child is living with one or both
26 biological or adoptive parents, who are still married to each
27 other, whether or not there is a broken relationship between

1 either or both parents of the minor and the grandparent and
2 either or both parents have used their parental authority to
3 prohibit a relationship between the child and the grandparent.

4 "(6) A parent of the child has either given up legal
5 custody voluntarily or by court order or has financially
6 abandoned the child.

7 "(c) Any grandparent may intervene in and seek to
8 obtain visitation rights in any action when any court in this
9 state has before it any question concerning the custody of a
10 minor child, a divorce proceeding of the parents or a parent
11 of the minor child, or a termination of the parental rights
12 proceeding of either parent of the minor child, provided the
13 termination of parental rights is for the purpose of adoption
14 pursuant to Sections 26-10A-27, 26-10A-28, or 26-10A-30,
15 dealing with stepparent or relative adoption. If the
16 termination of parental rights is for the purpose of adoption,
17 and the potential adoptive parent or parents are not
18 stepparents or relatives, the grandparent may intervene in the
19 action for the purpose of seeking to obtain visitation,
20 provided that the grandparent has no established relationship
21 with the child. The right of the grandparent to seek
22 visitation terminates if the court approves a petition for
23 adoption by an adoptive parent who is not a stepparent or a
24 biological relative of the child.

25 "(d) Upon the filing of an original action or upon
26 intervention in an existing proceeding pursuant to subsections
27 (b) and (c), the court shall determine if visitation by the

1 grandparent is in the best interests of the child. Visitation
2 shall not be granted if the visitation would endanger the
3 physical health of the child or impair the emotional
4 development of the child. If the child is living with one or
5 both biological or adoptive parents, there shall be a
6 rebuttable presumption that the parent or parents with whom
7 the child is living know what is in the best interest of the
8 child. In determining the best interests of the child, the
9 court shall consider the following:

10 "(1) The willingness of the grandparent or
11 grandparents to encourage a close relationship between the
12 child and the parent or parents.

13 "(2) The preference of the child, if the child is
14 determined to be of sufficient maturity to express a
15 preference.

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

17 "(4) The mental and physical health of the
18 grandparent or grandparents.

19 "(5) Evidence of domestic violence inflicted by one
20 parent upon the other parent or the child. If the court
21 determines that evidence of domestic violence exists,
22 visitation provisions shall be made in a manner protecting the
23 child or children, parents, or grandparents from further
24 abuse.

25 "(6) If a parent has relinquished custody either
26 voluntary- voluntarily or by court order or if a parent has
27 abandoned a child financially, whether the grandparent has an

1 ~~established relationship with the child if the grandparent has~~
2 ~~an established relationship with the child and the court finds~~
3 ~~that visitation with the grandparent is in the best interest~~
4 ~~of the child.~~

5 ~~"(6) (7) Other relevant factors in the particular~~
6 ~~circumstances, including the~~ The wishes of any parent who is
7 living.

8 ~~"(8) Other relevant factors in the particular~~
9 ~~circumstances.~~

10 "(e) The court shall make specific written findings
11 of fact in support of its rulings. An original action
12 requesting visitation rights shall not be filed by any
13 grandparent more than once during any two-year period and
14 shall not be filed during any year in which another custody
15 action has been filed concerning the child. After visitation
16 rights have been granted to any grandparent, the legal
17 custodian, guardian, or parent of the child may petition the
18 court for revocation or amendment of the visitation rights,
19 for good cause shown, which the court, in its discretion, may
20 grant or deny. Unless evidence of abuse is alleged or other
21 exceptional circumstances, a petition shall not be filed more
22 than once in any two-year period.

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

1 ~~"(g) Notwithstanding the foregoing, a grandparent~~
2 ~~may not be granted visitation with a grandchild where the~~
3 ~~parent related to the grandparent has either given up legal~~
4 ~~custody voluntarily or by court order or has abandoned the~~
5 ~~child financially unless the grandparent has an established~~
6 ~~relationship with the child and the court finds that~~
7 ~~visitation with the grandparent is in the best interests of~~
8 ~~the child."~~

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