

1 SB264  
2 126633-1  
3 By Senator Smith  
4 RFD: Children, Youth Affairs, and Human Resources  
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. This bill would  
21 authorize the grandparent of a child to petition  
22 for visitation even if the parent related to the  
23 grandparent has given up legal custody, either  
24 voluntarily or by court order, or has financially  
25 abandoned the child.

26 This bill would expand the definition of  
27 grandparent to include a great-grandparent.

1                   This bill would create a rebuttable  
2                   presumption that the parent or parents with whom  
3                   the child is living know what is in the best  
4                   interest of the child. This bill would authorize  
5                   the court to consider, in determining what is in  
6                   the best interest of the child, the fact that a  
7                   parent who is related to a grandparent petitioning  
8                   for visitation has either given up legal custody  
9                   voluntarily or by court order or has abandoned the  
10                  child financially.

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12                                   A BILL  
13                                   TO BE ENTITLED  
14                                   AN ACT  
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16                  To amend Section 30-3-4.1, Code of Alabama 1975; to  
17                  expand the definition of grandparent to include a  
18                  great-grandparent; to provide further for circumstances in  
19                  which a grandparent may petition for and in which a court may  
20                  award to the grandparent visitation of a minor child; to  
21                  create a rebuttable presumption that the parent or parents  
22                  with whom a child is living know what is in the best interest  
23                  of the child.

24                  BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

27                  "§30-3-4.1.

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

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

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

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

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

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

20           "(5) ~~When the~~ The child is living with one or both  
21    biological parents, who are still married to each other,  
22    whether or not there is a broken relationship between either  
23    or both parents of the minor and the grandparent and either or  
24    both parents have used their parental authority to prohibit a  
25    relationship between the child and the grandparent.

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

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

13           "(d) Upon the filing of an original action or upon  
14 intervention in an existing proceeding pursuant to subsections  
15 (b) and (c), the court shall determine if visitation by the  
16 grandparent is in the best interests of the child. Visitation  
17 shall not be granted if the visitation would endanger the  
18 physical health of the child or impair the emotional  
19 development of the child. If the child is living with one or  
20 both biological parents, there shall be a rebuttable  
21 presumption that the parent or parents with whom the child is  
22 living know what is in the best interest of the child. In  
23 determining the best interests of the child, the court shall  
24 consider the following:

25           "(1) The willingness of the grandparent or  
26 grandparents to encourage a close relationship between the  
27 child and the parent or parents.

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

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

5           "(4) The mental and physical health of the  
6 grandparent or grandparents.

7           "(5) Evidence of domestic violence inflicted by one  
8 parent upon the other parent or the child. If the court  
9 determines that evidence of domestic violence exists,  
10 visitation provisions shall be made in a manner protecting the  
11 child or children, parents, or grandparents from further  
12 abuse.

13           "(6) If a parent has relinquished custody either  
14 ~~voluntary~~ voluntarily or by court order or if a parent has  
15 abandoned a child financially, whether the grandparent has an  
16 established relationship with the child if the grandparent has  
17 an established relationship with the child and the court finds  
18 that visitation with the grandparent is in the best interest  
19 of the child.

20           "~~(6) (7) Other relevant factors in the particular~~  
21 ~~circumstances, including the~~ The wishes of any parent who is  
22 living.

23           "(8) Other relevant factors in the particular  
24 circumstances.

25           "(e) The court shall make specific written findings  
26 of fact in support of its rulings. An original action  
27 requesting visitation rights shall not be filed by any

1 grandparent more than once during any two-year period and  
2 shall not be filed during any year in which another custody  
3 action has been filed concerning the child. After visitation  
4 rights have been granted to any grandparent, the legal  
5 custodian, guardian, or parent of the child may petition the  
6 court for revocation or amendment of the visitation rights,  
7 for good cause shown, which the court, in its discretion, may  
8 grant or deny. Unless evidence of abuse is alleged or other  
9 exceptional circumstances, a petition shall not be filed more  
10 than once in any two-year period.

11 "(f) If the court finds that the grandparent or  
12 grandparents can bear the cost without unreasonable financial  
13 hardship, the court, at the sole expense of the petitioning  
14 grandparent or grandparents, may appoint a guardian ad litem  
15 for the minor child.

16 ~~"(g) Notwithstanding the foregoing, a grandparent~~  
17 ~~may not be granted visitation with a grandchild where the~~  
18 ~~parent related to the grandparent has either given up legal~~  
19 ~~custody voluntarily or by court order or has abandoned the~~  
20 ~~child financially unless the grandparent has an established~~  
21 ~~relationship with the child and the court finds that~~  
22 ~~visitation with the grandparent is in the best interests of~~  
23 ~~the child."~~

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