

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

ENGROSSED

A BILL
TO BE ENTITLED
AN ACT

To amend Section 30-3-4.1, Code of Alabama 1975; relating to grandparent visitation; to provide further for circumstances in which a grandparent may petition for and in which a court may award to the grandparent visitation of a minor child; to create a rebuttable presumption that the parent or parents with whom a child is living know what is in the best interest of the child.

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, including an adopted 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~~ a grandparent may file an original action for visitation

1 rights to a minor child if it is in the best interest of the
2 minor child and one of the following conditions exist:

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

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

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

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

10 "(5) ~~When the~~ The child is living with one or both
11 biological or adoptive parents, who are still married to each
12 other, whether or not there is a broken relationship between
13 either or both parents of the minor and the grandparent and
14 either or both parents have used their parental authority to
15 prohibit a relationship between the child and the grandparent.

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

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

1 termination of parental rights is for the purpose of adoption,
2 and the potential adoptive parent or parents are not
3 stepparents or relatives, the grandparent may intervene in the
4 action for the purpose of seeking to obtain visitation,
5 provided that the grandparent has ~~no~~ an established
6 relationship with the child. The right of the grandparent to
7 seek visitation terminates if the court approves a petition
8 for adoption by an adoptive parent who is not a stepparent or
9 a biological relative of the child.

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

23 "(1) The willingness of the grandparent or
24 grandparents to encourage a close relationship between the
25 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.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Judiciary 24-MAR-11

Read for the second time and placed
on the calendar 2 amendments 31-MAR-11

Read for the third time and passed
as amended..... 19-APR-11

Yeas 96, Nays 0, Abstains 0

Greg Pappas
Clerk