

1 HB334
2 172743-1
3 By Representatives Jones, Shiver, Polizos and Gaston
4 RFD: Judiciary
5 First Read: 25-FEB-16

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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

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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 file an original action in a
20 circuit court where his or her grandchild resides or any other
21 court exercising jurisdiction with respect to the
22 grandchild or file a motion to intervene in any action when
23 any court in this state has before it any issue concerning
24 custody of the grandchild, including a domestic relations
25 proceeding involving the parent or parents of the grandchild,
26 for reasonable visitation rights with respect to the
27 grandchild if any of the following circumstances exist:

1 (1) An action for a divorce or legal separation of
2 the parents has been filed, or the marital relationship
3 between the parents of the child has been severed by death or
4 divorce.

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

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

10 (4) An action to terminate the parental rights of a
11 parent or parents has been filed or the parental rights of a
12 parent has been terminated by court order; provided, however,
13 the right of the grandparent to seek visitation terminates if
14 the court approves a petition for adoption by an adoptive
15 parent, unless the visitation rights are allowed pursuant to
16 Section 26-10A-30, Code of Alabama 1975.

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

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

22 a. The petitioner has established a significant and
23 viable relationship with the child for whom he or she is
24 requesting visitation.

25 b. Visitation with the petitioner is in the best
26 interest of the child.

1 (d) To establish a significant and viable
2 relationship with the child, the petitioner shall prove by
3 clear and convincing evidence any of the following:

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

6 b. The petitioner was the caregiver to the child on
7 a regular basis for at least six consecutive months.

8 c. The petitioner had frequent or regular contact
9 with the child for at least 12 consecutive months that
10 resulted in a strong and meaningful relationship with the
11 child.

12 (2) Any other facts that establish the loss of the
13 relationship between the petitioner and the child is likely to
14 harm the child.

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

18 (1) The petitioner has the capacity to give the
19 child love, affection, and guidance.

20 (2) The loss of an opportunity to maintain a
21 significant and viable relationship between the petitioner and
22 the child has caused or is reasonably likely to cause harm to
23 the child.

24 (3) The petitioner is willing to cooperate with the
25 parent or parents if visitation with the child is allowed.

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

1 (g) (1) A grandparent or grandparents who are married
2 to each other may not file a petition seeking an order for
3 visitation more than once every 24 months absent a showing of
4 good cause. The fact that a grandparent or grandparents who
5 are married to each other have petitioned for visitation shall
6 not preclude another grandparent from subsequently petitioning
7 for visitation within the 24-month period. After an order for
8 grandparent visitation has been granted, the parent, guardian,
9 or legal custodian of the child may file a petition requesting
10 the court to modify or terminate a grandparent's visitation
11 time with a grandchild.

12 (2) The court may modify or terminate visitation
13 upon proof that a material change in circumstances has
14 occurred since the award of grandparent visitation was made
15 and a finding by the court that the modification or
16 termination of the grandparent visitation rights is in the
17 best interest of the child.

18 (h) The court may award any party reasonable
19 expenses incurred by or on behalf of the party, including
20 costs, communication expenses, attorney's fees, guardian ad
21 litem fees, investigative fees, expenses for court-appointed
22 witnesses, travel expenses, and child care during the course
23 of the proceedings.

24 (i) (1) Notwithstanding any provisions of this act to
25 the contrary, a petition filed by a grandparent having
26 standing under Chapter 10A of Title 26 of the Code of Alabama
27 1975, seeking visitation shall be filed in probate court and

1 is governed by Section 26-10A-30, Code of Alabama 1975, rather
2 than by this act if either of the following circumstances
3 exists:

4 a. The grandchild has been the subject of an
5 adoption proceeding other than the one creating the
6 grandparent relationship.

7 b. The grandchild is the subject of a pending or
8 finalized adoption proceeding.

9 (2) Notwithstanding any provisions of this act to
10 the contrary, a grandparent seeking visitation pursuant to
11 Section 12-15-314, Code of Alabama 1975, shall be governed by
12 that section rather than by this act.

13 (3) Notwithstanding any provisions of this act to
14 the contrary, a parent of a parent whose parental rights have
15 been terminated by a court order in which the petitioner was
16 the Department of Human Resources, shall not be awarded any
17 visitation rights pursuant to this act.

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

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

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

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

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

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

7 (m) Service and notice shall be made in the
8 following manner:

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

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

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

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

1 visitation would be in the best interest of the child and any
2 of the following circumstances exist:

3 (1) The child resided with the grandparent for at
4 least six consecutive months.

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

7 (3) The grandparent provided significant financial
8 support for the child for at least six consecutive months.

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

11 Section 2. As a matter of public policy, this act
12 recognizes the importance of family and the fundamental rights
13 of parents and children. In the context of grandparent
14 visitation under this act, a fit parent's decision regarding
15 whether to permit grandparent visitation is entitled to
16 special weight due to a parent's fundamental right to make
17 decisions concerning the rearing of his or her child.
18 Nonetheless, a parent's interest in a child must be balanced
19 against the long-recognized interests of the state as *parens*
20 *patriae*. Thus, as applied to grandparent visitation under this
21 act, this act balances the constitutional rights of parents
22 and children by imposing an enhanced standard of review and
23 consideration of the harm to a child caused by the parent's
24 limitation or termination of a prior relationship of a child
25 to his or her grandparent.

26 Section 3. Section 30-3-4.1, Code of Alabama 1975,
27 is repealed.

1 Section 4. The provisions of this act are severable.
2 If any part of this act is declared invalid or
3 unconstitutional, that declaration shall not affect the part
4 which remains.

5 Section 5. This act shall become effective on the
6 first day of the third month following its passage and
7 approval by the Governor, or its otherwise becoming law.