

1 SB276
2 209219-4
3 By Senator Butler
4 RFD: Judiciary
5 First Read: 02-MAR-21

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to grandparent visitation; to amend Section
12 30-3-4.2, Code of Alabama 1975; to provide that in certain
13 circumstances, there is a rebuttable presumption that a fit
14 grandparent's ability to exercise visitation with the child is
15 in the best interest of the child; to provide for the rebuttal
16 of that presumption; to provide for temporary orders granting
17 visitation to a grandparent in certain circumstances, pending
18 a final order; and to prohibit courts of this state from
19 enforcing certain visitation orders in certain circumstances.
20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Section 30-3-4.2, Code of Alabama 1975,
22 is amended to read as follows:

23 "§30-3-4.2.

24 "(a) For the purposes of this section, the following
25 words have the following meanings:

26 "(1) GRANDPARENT. The parent of a parent, whether
27 the relationship is created biologically or by adoption.

1 "(2) HARM. A finding by the court, by clear and
2 convincing evidence, that without court-ordered visitation by
3 the grandparent, the child's emotional, mental, or physical
4 well-being has been, could reasonably be, or would be
5 jeopardized.

6 "(b) A grandparent may file an original action in a
7 circuit court where his or her grandchild resides or any other
8 court exercising jurisdiction with respect to the
9 grandchild or file a motion to intervene in any action when
10 any court in this state has before it any issue concerning
11 custody of the grandchild, including a domestic relations
12 proceeding involving the parent or parents of the grandchild,
13 for reasonable visitation rights with respect to the
14 grandchild if any of the following circumstances exist:

15 "(1) An action for a divorce or legal separation of
16 the parents has been filed, or the marital relationship
17 between the parents of the child has been severed by death or
18 divorce.

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

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

24 "(4) An action to terminate the parental rights of a
25 parent or parents has been filed or the parental rights of a
26 parent has been terminated by court order; provided, however,
27 the right of the grandparent to seek visitation terminates if

1 the court approves a petition for adoption by an adoptive
2 parent, unless the visitation rights are allowed pursuant to
3 Section 26-10A-30.

4 "(c) (1) ~~There~~ Except as provided in subsection (d),
5 there is a rebuttable presumption that a fit parent's decision
6 to deny or limit visitation to the petitioner is in the best
7 interest of the child.

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

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

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

15 "(d) (1) There is a rebuttable presumption that a fit
16 grandparent's ability to exercise visitation with the child is
17 in the best interest of the child when any of the following
18 are true:

19 "a. An action for a divorce or legal separation of
20 the parents has been filed.

21 "b. The marital relationship between the parents of
22 the child has been severed by death or divorce.

23 "c. An action to establish paternity, custody,
24 visitation, or support has been filed by or on behalf of a
25 parent.

26 "d. Regardless of marital status, either parent has
27 failed to offer financial support or emotional support for the

1 child or has otherwise failed to maintain a significant
2 parental relationship with the child for a period of six
3 months or more.

4 "e. A grandparent has had primary custody of the
5 child for more than one calendar year.

6 "(2) To rebut the presumption, the respondent shall
7 prove by clear and convincing evidence that visitation with
8 the child by the petitioner is not in the best interest of the
9 child.

10 "(e) To establish a significant and viable
11 relationship with the child, the petitioner shall prove by
12 clear and convincing evidence any of the following:

13 "(1) a. The child resided with the petitioner for at
14 least six consecutive months with or without a parent present
15 within the ~~three~~ five years preceding the filing of the
16 petition.

17 "b. The petitioner was the caregiver to the child on
18 a regular basis for at least six consecutive months within the
19 ~~three~~ five years preceding the filing of the petition.

20 "c. The petitioner had frequent or regular contact
21 with the child for at least 12 consecutive months that
22 resulted in a strong and meaningful relationship with the
23 child within the ~~three~~ five years preceding the filing of the
24 petition.

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

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

5 "(1) The petitioner has the capacity to give the
6 child love, affection, and guidance.

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

11 "(3) The petitioner is willing to cooperate with the
12 parent or parents if visitation with the child is allowed.

13 "~~(f)~~ (g) The court shall make specific written
14 findings of fact in support of its rulings.

15 "~~(g)~~ (h) (1) A grandparent or grandparents who are
16 married to each other may not file a petition seeking an order
17 for visitation more than once every 24 months absent a showing
18 of good cause. The fact that a grandparent or grandparents who
19 are married to each other have petitioned for visitation shall
20 not preclude another grandparent from subsequently petitioning
21 for visitation within the 24-month period. After an order for
22 grandparent visitation has been granted, the parent, guardian,
23 or legal custodian of the child may file a petition requesting
24 the court to modify or terminate a grandparent's visitation
25 time with a grandchild.

26 "(2) The court may modify or terminate visitation
27 upon proof that a material change in circumstances has

1 occurred since the award of grandparent visitation was made
2 and a finding by the court that the modification or
3 termination of the grandparent visitation rights is in the
4 best interest of the child.

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

11 "~~(i)~~(j) (1) Notwithstanding any provisions of this
12 section to the contrary, a petition filed by a grandparent
13 having standing under Chapter 10A of Title 26, seeking
14 visitation shall be filed in probate court and is governed by
15 Section 26-10A-30, rather than by this section if either of
16 the following circumstances exists:

17 "a. The grandchild has been the subject of an
18 adoption proceeding other than the one creating the
19 grandparent relationship.

20 "b. The grandchild is the subject of a pending or
21 finalized adoption proceeding.

22 "(2) Notwithstanding any provisions of this section
23 to the contrary, a grandparent seeking visitation pursuant to
24 Section 12-15-314 shall be governed by that section rather
25 than by this section.

26 "(3) Notwithstanding any provisions of this section
27 to the contrary, a parent of a parent whose parental rights

1 have been terminated by a court order in which the petitioner
2 was the Department of Human Resources, shall not be awarded
3 any visitation rights pursuant to this section.

4 "~~(j)~~(k) The right of a grandparent to maintain
5 visitation rights pursuant to this section terminates upon the
6 adoption of the child except as provided by Section 26-10A-30.

7 "~~(k)~~(l) All of the following are necessary parties
8 to any action filed under this section:

9 "(1) Unless parental rights have been terminated,
10 the parent or parents of the child.

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

13 "(3) Any agency having custody of the child pursuant
14 to court order.

15 "~~(l)~~(m) In addition, upon filing of the action,
16 notice shall be given to all other grandparents of the child.
17 The petition shall affirmatively state the name and address
18 upon whom notice has been given.

19 "~~(m)~~(n) Service and notice shall be made in the
20 following manner:

21 "(1) Service of process on necessary parties shall
22 be made in accordance with the Alabama Rules of Civil
23 Procedure.

24 "(2) As to any other person to whom notice is
25 required to be given under subsection (1), notice shall be
26 given by first class mail to the last known address of the

1 person or persons entitled to notice. Notice shall be
2 effective on the third day following mailing.

3 "~~(n)~~(o) Notwithstanding the foregoing, the notice
4 requirements provided by this section may be limited or waived
5 by the court to the extent necessary to protect the
6 confidentiality and the health, safety, or liberty of a person
7 or a child.

8 "~~(o)~~ Upon (p) (1) Except as provided in subdivision
9 (2), upon filing an action under this section, after giving
10 special weight to the fundamental right of a fit parent to
11 decide which associations are in the best interest of his or
12 her child, the court may, after a hearing, enter a pendente
13 lite order granting temporary visitation rights to a
14 grandparent, pending a final order, if the court determines
15 from the evidence that the petitioner has established a
16 significant and viable relationship with the child for whom he
17 or she is requesting visitation, visitation would be in the
18 best interest of the child, and any of the following
19 circumstances exist:

20 "~~(1)~~a. The child resided with the grandparent for at
21 least six consecutive months within the three years preceding
22 the filing of the petition.

23 "~~(2)~~b. The grandparent was the caregiver of the
24 child on a regular basis for at least six consecutive months
25 within the three years preceding the filing of the petition.

26 "~~(3)~~c. The grandparent provided significant
27 financial support for the child for at least six consecutive

1 months within the three years preceding the filing of the
2 petition.

3 ~~"(4)~~d. The grandparent had frequent or regular
4 contact with the child for at least 12 consecutive months
5 within the three years preceding the filing of the petition.

6 "(2) Upon filing an action under this section, if
7 the petitioner is a grandparent, and any of the following are
8 true, the court, after a hearing, may enter a pendente lite
9 order granting temporary visitation rights to a grandparent,
10 pending a final order, if the court determines that the
11 presumption that a fit grandparent's ability to exercise
12 visitation with the child is in the best interest of the child
13 has not been rebutted by the respondent:

14 "a. An action for a divorce or legal separation of
15 the parents has been filed.

16 "b. The marital relationship between the parents of
17 the child has been severed by death or divorce.

18 "c. An action to establish paternity, custody,
19 visitation, or support has been filed by or on behalf of a
20 parent.

21 "d. Regardless of marital status, either parent has
22 failed to offer financial support or emotional support for the
23 child or has otherwise failed to maintain a significant
24 parental relationship with the child for a period of six
25 months or more.

26 "(g) The courts of this state may not enforce,
27 including through the power of contempt, any grandparent

1 visitation order issued by a court of a foreign state that
2 purports to apply to a child who resided in this state at the
3 time of the issuance of the foreign state court order. Any
4 grandparent seeking visitation with a child who resides in
5 this state must do so under this section.

6 "(r) The courts of this state may not enforce,
7 including through the power of contempt, a visitation order
8 issued by a court of a foreign state that does not include
9 specific written findings of fact based on clear and
10 convincing evidence sufficient to rebut the respective
11 presumptions provided for in this section. To be enforced, the
12 foreign state order must provide specific written findings of
13 fact based on clear and convincing evidence that both of the
14 following are true:

15 "(1) The petitioner has established a significant
16 and viable relationship with the child for whom the foreign
17 state court issued an order of visitation.

18 "(2) Visitation with the petitioner is in the best
19 interest of the child.

20 ~~(p)~~(s) As a matter of public policy, this section
21 recognizes the importance of family and the fundamental rights
22 of parents and children. In the context of grandparent
23 visitation under this section, a fit parent's decision
24 regarding whether to permit grandparent visitation is entitled
25 to special weight due to a parent's fundamental right to make
26 decisions concerning the rearing of his or her child.
27 Nonetheless, a parent's interest in a child must be balanced

1 against the long-recognized interests of the state as parens
2 patriae. Thus, as applied to grandparent visitation under this
3 section, this section balances the constitutional rights of
4 parents and children by imposing an enhanced standard of
5 review and consideration of the harm to a child caused by the
6 parent's limitation or termination of a prior relationship of
7 a child to his or her grandparent."

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

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Senate

Read for the first time and referred to the Senate
committee on Judiciary..... 02-MAR-21

Read for the second time and placed on the calen-
dar..... 01-APR-21

Read for the third time and passed as amended 15-APR-21

Yeas 27
Nays 0

Patrick Harris,
Secretary.