SLS 18RS-468 ENGROSSED

2018 Regular Session

SENATE BILL NO. 366

BY SENATOR WARD

CHILDREN. Provides relative to visitation rights of grandparents and siblings. (8/1/18)

1	AN ACT
2	To amend and reenact Civil Code Art. 136, relative to children; to provide relative to
3	visitation rights; to provide relative to visitation rights of grandparents and siblings;
4	to provide certain terms, conditions, requirements, and procedures; and to provide
5	for related matters.
6	Be it enacted by the Legislature of Louisiana:
7	Section 1. Civil Code Art. 136 is hereby amended and reenacted to read as follows:
8	Art. 136. Award of visitation rights
9	A. A parent not granted custody or joint custody of a child is entitled to
10	reasonable visitation rights unless the court finds, after a hearing, that visitation
11	would not be in the best interest of the child.
12	B. In addition to the parents referred to in Paragraph A of this Article,
13	the following persons may be granted visitation in a proceeding initiated by a
14	parent of the child:
15	(1) A grandparent may be granted reasonable visitation rights if the court
16	finds that it is in the best interest of the child. Before making this determination, the
17	court shall hold a contradictory hearing as provided for in R.S. 9:345 in order to

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2	C.(2) Under extraordinary circumstances, any other relative, by blood or
3	affinity, or a former stepparent or stepgrandparent may be granted reasonable
4	visitation rights if the court finds that it is in the best interest of the child.
5	Extraordinary circumstances shall include a determination by a court that a parent
6	is abusing a controlled dangerous substance.
7	(3) Before making this determination, the court shall hold a
8	contradictory hearing as provided for in R.S. 9:345 in order to determine
9	whether the court should appoint an attorney to represent the child.
10	D.C. In determining the best interest of the child under Paragraphs B and C
11	Subparagraphs (B)(1) and (2) of this Article, the court shall consider only the
12	following factors:
13	(1) The length and quality of the prior relationship between the child and the
14	relative.
15	(2) Whether the child is in need of guidance, enlightenment, or tutelage
16	which can best be provided by the relative.
17	(3) The preference of the child if he is determined to be of sufficient maturity
18	to express a preference.
19	(4) The willingness of the relative to encourage a close relationship between
20	the child and his parent or parents.
21	(5) The mental and physical health of the child and the relative.
22	E.D. In the event of a conflict between this Article and R.S. 9:344, the
23	provisions of the statute shall supersede those of this Article. If the parents of a
24	child are married and have not filed for divorce or they are living in
25	concubinage, the provisions of R.S. 9:344 shall apply.

determine whether the court should appoint an attorney to represent the child.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Jerry G. Jones.

DIGEST 2018 Regular Session

SB 366 Engrossed

Ward

<u>Present law</u> relative to children and awards of visitation rights provides that a parent not granted custody or joint custody of a child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would not be in the best interest of the child.

Proposed law retains present law.

<u>Present law</u> provides for grandparent visitation rights if the court finds that it is in the best interest of the child. Also provides that the court shall hold a contradictory hearing to determine whether the court should appoint an attorney to represent the child. Further provides that under extraordinary circumstances, any other relative, by blood or affinity, or a former stepparent or stepgrandparent may be granted reasonable visitation rights if the court finds that it is in the best interest of the child. Extraordinary circumstances shall include a determination by a court that a parent is abusing a controlled dangerous substance.

<u>Proposed law</u> retains <u>present law</u>, except to require a determination in both instances of whether an attorney should be appointed to represent the child.

<u>Present law</u> provides that in determining the best interest of the child in grandparent and other relative visitation, certain factors shall be considered by the court, including:

- (1) The length and quality of the prior relationship between the child and the relative.
- (2) Whether the child is in need of guidance, enlightenment, or tutelage, which can best be provided by the relative.
- (3) The preference of the child if he is determined to be of sufficient maturity to express a preference.
- (4) The willingness of the relative to encourage a close relationship between the child and his parent or parents.
- (5) The mental and physical health of the child and the relative.

<u>Proposed law</u> retains <u>present law</u>, except to make these the only factors that can be considered by the court.

<u>Present law</u> provides that in the event of a conflict between <u>present law</u> and other law relative to grandparent and sibling visitation, the other law controls. <u>Proposed law</u> provides that if the parents of a child are married and have not filed for divorce or they are living in concubinage, the provisions of the other law relative to grandparent and sibling visitation applies.

Effective August 1, 2018.

(Amends C.C. Art. 136)