

1 HB32  
2 116881-4  
3 By Representative Shiver  
4 RFD: Judiciary  
5 First Read: 12-JAN-10  
6 PFD: 09/23/2009

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ENROLLED, An Act,

To amend Section 30-3-4.1, Code of Alabama 1975; 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, 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 rights to a minor child if ~~it is in the best interest of the minor child and~~ one of the following conditions exist:

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

1                   "~~When the~~ The marriage of the parents of the  
2 child has been dissolved.

3                   "~~When a~~ A parent of the child has abandoned the  
4 minor.

5                   "~~When the~~ The child was born out of wedlock.

6                   "~~When the~~ The child is living with one or both  
7 biological parents, who are still married to each other,  
8 whether or not there is a broken relationship between either  
9 or both parents of the minor and the grandparent and either or  
10 both parents have used their parental authority to prohibit a  
11 relationship between the child and the grandparent.

12                   "(6) A parent of the child has either given up legal  
13 custody voluntarily or by court order or has financially  
14 abandoned the child.

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

24                   "(d) Upon the filing of an original action or upon  
25 intervention in an existing proceeding pursuant to subsections

1 (b) and (c), the court shall determine if visitation by the  
 2 grandparent is in the best interests of the child. Visitation  
 3 shall not be granted if the visitation would endanger the  
 4 physical health of the child or impair the emotional  
 5 development of the child. If the child is living with one or  
 6 both biological parents, there shall be a rebuttable  
 7 presumption that the parent or parents with whom the child is  
 8 living know what is in the best interest of the child. In  
 9 determining the best interests of the child, the court shall  
 10 consider the following:

11 "(1) The willingness of the grandparent or  
 12 grandparents to encourage a close relationship between the  
 13 child and the parent or parents.

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

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

18 "(4) The mental and physical health of the  
 19 grandparent or grandparents.

20 "(5) Evidence of domestic violence inflicted by one  
 21 parent upon the other parent or the child. If the court  
 22 determines that evidence of domestic violence exists,  
 23 visitation provisions shall be made in a manner protecting the  
 24 child or children, parents, or grandparents from further  
 25 abuse.

1           "(6) If a parent has relinquished custody either  
2 ~~voluntary~~ voluntarily or by court order or if a parent has  
3 abandoned a child financially, whether the grandparent has an  
4 ~~established relationship with the child~~ if the grandparent has  
5 an established relationship with the child and the court finds  
6 that visitation with the grandparent is in the best interest  
7 of the child.

8           "~~(6) (7) Other relevant factors in the particular~~  
9 ~~circumstances, including the~~ The wishes of any parent who is  
10 living.

11           "(8) Other relevant factors in the particular  
12 circumstances.

13           "(e) The court shall make specific written findings  
14 of fact in support of its rulings. An original action  
15 requesting visitation rights shall not be filed by any  
16 grandparent more than once during any two-year period and  
17 shall not be filed during any year in which another custody  
18 action has been filed concerning the child. After visitation  
19 rights have been granted to any grandparent, the legal  
20 custodian, guardian, or parent of the child may petition the  
21 court for revocation or amendment of the visitation rights,  
22 for good cause shown, which the court, in its discretion, may  
23 grant or deny. Unless evidence of abuse is alleged or other  
24 exceptional circumstances, a petition shall not be filed more  
25 than once in any two-year period.

1           "(f) If the court finds that the grandparent or  
2 grandparents can bear the cost without unreasonable financial  
3 hardship, the court, at the sole expense of the petitioning  
4 grandparent or grandparents, may appoint a guardian ad litem  
5 for the minor child.

6           "~~(g) Notwithstanding the foregoing, a grandparent  
7 may not be granted visitation with a grandchild where the  
8 parent related to the grandparent has either given up legal  
9 custody voluntarily or by court order or has abandoned the  
10 child financially unless the grandparent has an established  
11 relationship with the child and the court finds that  
12 visitation with the grandparent is in the best interests of  
13 the child.~~"

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

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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 28-JAN-10, as amended.

Greg Pappas  
Clerk

Senate	14-APR-10	Amended and Passed
House	21-APR-10	Concurred in Sen- ate Amendment