

1 HB32
2 113813-1
3 By Representative Shiver
4 RFD: Judiciary
5 First Read: 12-JAN-10
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8 SYNOPSIS: Under existing law, a grandparent may
9 petition a court for visitation under certain
10 circumstances if visitation is in the best interest
11 of the child. Under existing law, the authority of
12 a court to award visitation to the grandparent is
13 limited where the parent related to the grandparent
14 has either given up legal custody voluntarily or by
15 court order or where the parent has abandoned the
16 child financially unless the grandparent has
17 previously established a relationship with the
18 child. A court may order a grandparent visitation
19 if the court determines that visitation is in the
20 best interests of the child.

21 This bill would authorize the grandparent of
22 a child to petition for visitation even if the
23 parent related to the grandparent has given up
24 legal custody, either voluntarily or by court
25 order, or has financially abandoned the child.

26 This bill would create a rebuttable
27 presumption that the parent or parents with whom

1 the child is living know what is in the best
2 interest of the child. This bill would authorize
3 the court to consider, in determining what is in
4 the best interest of the child, the fact that a
5 parent who is related to a grandparent petitioning
6 for visitation has either given up legal custody
7 voluntarily or by court order or has abandoned the
8 child financially.

9
10 A BILL
11 TO BE ENTITLED
12 AN ACT

13
14 To amend Section 30-3-4.1, Code of Alabama 1975; to
15 provide further for circumstances in which a grandparent may
16 petition for and in which a court may award to the grandparent
17 visitation of a minor child; to create a rebuttable
18 presumption that the parent or parents with whom a child is
19 living know what is in the best interest of the child.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Section 30-3-4.1, Code of Alabama 1975,
22 is amended to read as follows:

23 "§30-3-4.1.

24 "(a) For the purposes of this section, the term
25 "grandparent" means the parent of a parent of a minor child,
26 the parent of a minor child's parent who has died, or the
27 parent of a minor child's parent whose parental rights have

1 been terminated when the child has been adopted pursuant to
2 Section 26-10A-27, 26-10A-28, or 26-10A-30, dealing with
3 stepparent and relative adoption.

4 "(b) Except as otherwise provided in this section,
5 ~~any~~ a grandparent may file an original action for visitation
6 rights to a minor child if ~~it is in the best interest of the~~
7 ~~minor child and~~ one of the following conditions exist:

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

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

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

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

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

21 "(6) A parent of the child has either given up legal
22 custody voluntarily or by court order or has financially
23 abandoned the child.

24 "(c) Any grandparent may intervene in and seek to
25 obtain visitation rights in any action when any court in this
26 state has before it any question concerning the custody of a
27 minor child, a divorce proceeding of the parents or a parent

1 of the minor child, or a termination of the parental rights
2 proceeding of either parent of the minor child, provided the
3 termination of parental rights is for the purpose of adoption
4 pursuant to Sections 26-10A-27, 26-10A-28, or 26-10A-30,
5 dealing with stepparent or relative adoption.

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

18 "(1) The willingness of the grandparent or
19 grandparents to encourage a close relationship between the
20 child and the parent or parents.

21 "(2) The preference of the child, if the child is
22 determined to be of sufficient maturity to express a
23 preference.

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

25 "(4) The mental and physical health of the
26 grandparent or grandparents.

1 "(5) Evidence of domestic violence inflicted by one
2 parent upon the other parent or the child. If the court
3 determines that evidence of domestic violence exists,
4 visitation provisions shall be made in a manner protecting the
5 child or children, parents, or grandparents from further
6 abuse.

7 "(6) If a parent has relinquished custody either
8 voluntary or by court order or if a parent has abandoned a
9 child financially, whether the grandparent has an established
10 relationship with the child.

11 "~~(6) (7) Other relevant factors in the particular~~
12 ~~circumstances, including the~~ The wishes of any parent who is
13 living.

14 "(8) Other relevant factors in the particular
15 circumstances.

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

1 exceptional circumstances, a petition shall not be filed more
2 than once in any two-year period.

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

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

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