

1 HB237
2 165098-2
3 By Representatives Shiver, Gaston, Standridge, Shedd, Pettus,
4 Alexander, Sells, Wilcox, Moore (M), Boyd, McMillan, Whorton
5 (R), Faust, Beech, Ledbetter, Moore (B), Bracy, Grimsley,
6 Williams (JW), Hanes, Forte, Lawrence, Hall, Drummond, Clarke,
7 Hill (J), Melton, Ingram, Baker and Davis
8 RFD: Judiciary
9 First Read: 11-MAR-15

1 grandchild, including a domestic relations proceeding
2 involving the parent or parents of the grandchild, for
3 reasonable visitation rights with respect to his or her
4 grandchild under this section if any of the following
5 circumstances exist:

6 (1) An action for a divorce or legal separation of
7 the parents has been filed, or the marital relationship
8 between the parents of the child has been severed by death or
9 divorce.

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

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

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

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

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

1 a. The petitioner has established a significant and
2 viable relationship with the child for whom he or she is
3 requesting visitation; and

4 b. Visitation with the petitioner is in the best
5 interest of the child.

6 (d) To establish a significant and viable
7 relationship with the child, the petitioner shall prove by
8 clear and convincing evidence either of the following:

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

11 b. The petitioner was the caregiver to the child on
12 a regular basis for at least six consecutive months; or

13 c. The petitioner had frequent or regular contact
14 with the child for at least 12 consecutive months.

15 (2) Any other facts that establish that the loss of
16 the relationship between the petitioner and the child is
17 likely to harm the child.

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

21 (1) That the petitioner has the capacity to give the
22 child love, affection, and guidance.

23 (2) That the loss of an opportunity to maintain a
24 significant and viable relationship between the petitioner and
25 the child has caused or is reasonably likely to cause harm to
26 the child.

1 (3) That the petitioner is willing to cooperate with
2 the parent or parents if visitation with the child is allowed.

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

5 (g) (1) No grandparent or grandparents who are
6 married to each other may file a petition seeking an order for
7 visitation more than once every 24 months absent a showing of
8 good cause. The fact that a grandparent or grandparents who
9 are married to each other have petitioned for visitation shall
10 not preclude another grandparent from subsequently petitioning
11 for visitation within the 24-month period. After an order for
12 grandparent visitation has been granted, the parent, guardian,
13 or legal custodian of the child may file a petition requesting
14 the court to modify or terminate a grandparent's visitation
15 time with a grandchild.

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

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

1 (i) (1) Notwithstanding any provisions of this act to
2 the contrary, a petition filed by a grandparent seeking
3 visitation shall be filed in probate court and is governed by
4 Section 26-10A-30, Code of Alabama 1975, rather than by this
5 act if either of the following circumstances exists:

6 a. The grandchild has been the subject of an
7 adoption proceeding other than the one creating the
8 grandparent relationship; or

9 b. The grandchild is the subject of a pending
10 adoption proceeding.

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

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

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

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

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

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

5 (3) Any agency having custody of the child pursuant
6 to court order.

7 (1) In addition, upon filing of the action, notice
8 shall be given to all other grandparents of the child as
9 herein defined. The petition shall affirmatively state the
10 name and address upon whom notice has been given.

11 (m) Service and notice shall be made in the
12 following manner:

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

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

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

25 (o) Upon filing an action under this section, after
26 giving special weight to the fundamental right of a fit parent
27 to decide which associations are in the best interest of his

1 or her child, the court may enter a pendente lite order
2 granting temporary visitation rights to a grandparent, pending
3 a final order, if the court determines from the evidence
4 presented at a hearing that visitation would be in the best
5 interest of the child and one of the following circumstances
6 exist:

7 (1) the child resided with the grandparent for at
8 least six consecutive months;

9 (2) the grandparent was the caregiver of the child
10 on a regular basis for at least six consecutive months;

11 (3) the grandparent provided significant financial
12 support for the child for at least six consecutive months; or

13 (4) the grandparent had frequent or regular contact
14 with the child for at least 12 consecutive months.

15 Section 2. Section 30-3-4.1 of the Code of Alabama
16 1975, is repealed.

17 Section 3. This act shall become effective
18 immediately following its passage and approval by the
19 Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Judiciary 11-MAR-15

Read for the second time and placed
on the calendar 2 amendments 09-APR-15

Read for the third time and passed
as amended..... 23-APR-15

Yeas 89, Nays 9, Abstains 3

Jeff Woodard
Clerk