

**GRANDPARENTS VISITATION RIGHTS**

2000 GENERAL SESSION

STATE OF UTAH

**Sponsor: Terry R. Spencer**

AN ACT RELATING TO GRANDPARENTS; CLARIFYING GRANDPARENTS' STANDING TO BRING AN ACTION IN DISTRICT COURT; AND REMOVING THE STATUTORY PRESUMPTION REGARDING A PARENT'S DECISION.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**30-5-2**, as last amended by Chapter 104, Laws of Utah 1998

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **30-5-2** is amended to read:

**30-5-2. Visitation rights of grandparents.**

(1) Grandparents have standing to bring an action in district court requesting visitation in accordance with the provisions and requirements of this section.

~~[(1)]~~ (2) The district court may grant grandparents reasonable rights of visitation, if it is in the best interest of the grandchildren, in cases where a grandparent's child has died or has become a noncustodial parent through divorce or legal separation.

~~[(2)]~~ (3) In cases other than those described in Subsection (1), a grandparent may petition the court for reasonable rights of visitation with a grandchild. The court may enter an order granting the petitioner reasonable visitation rights in accordance with the provisions and requirements of this Subsection ~~[(2). There is a presumption that a parent's decision with regard to grandparent visitation is reasonable]~~ (3). The court may override ~~[the]~~ a parent's decision and grant reasonable visitation rights to a grandparent if it finds that:

- (a) it is in the best interest of the grandchild;
- (b) the petitioner is a fit and proper person to have rights of visitation with the grandchild;
- (c) the petitioner has repeatedly attempted to visit the grandchild and has not been allowed

28 to visit the grandchild as a direct result of the actions of the parent or parents; and  
29 (d) there is no other way for the petitioner to visit the grandchild without court  
30 intervention[;and].  
31 [~~(e) the petitioner has, by clear and convincing evidence, rebutted the presumption that the~~  
32 ~~parent's decision to refuse or limit visitation with the grandchild was reasonable.~~]  
33 [(3)] (4) Adoption of a child, voluntary or involuntary termination of parental rights, or  
34 relinquishment to a licensed child placing agency terminates all rights of a biological grandparent  
35 to petition for visitation under this section.  
36 [(4)] (5) Grandparents may petition the court as provided in Section 78-32-12.2 to remedy  
37 a parent's wrongful noncompliance with a visitation order.

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**Legislative Review Note**  
**as of 1-27-00 9:35 AM**

This legislation raises the following constitutional or statutory concerns:

This legislation removes the current statutory presumption that, in grandparent visitation cases, a parent's decision is reasonable. Some courts may interpret this removal as a violation of parents' constitutionally protected liberty interest in the care, custody, and management of their children under the 14<sup>th</sup> Amendment of the United States Constitution. Federal courts are currently split in their decisions regarding this issue. A case of first impression regarding the constitutional rights of parents and the rights and interests of grandparents in determining visitation is currently pending before the United States Supreme Court. Oral arguments were presented to the Court on January 12, 2000.

**Office of Legislative Research and General Counsel**