

HB3005S01 compared with HB3005

~~deleted text~~ shows text that was in HB3005 but was deleted in HB3005S01.

inserted text shows text that was not in HB3005 but was inserted into HB3005S01.

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Senator Todd Weiler proposes the following substitute bill:

GRANDPARENT RIGHTS AMENDMENTS

2016 THIRD SPECIAL SESSION

STATE OF UTAH

Chief Sponsor: LaVar Christensen

Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill enacts provisions concerning the visitation rights of a grandparent.

Highlighted Provisions:

This bill:

- ▶ enacts definitions; and
- ▶ provides that a grandparent may petition for visitation after a parent's rights have been terminated, unless the grandchild is adopted by a nonrelative.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

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ENACTS:

30-5-3, Utah Code Annotated 1953

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

Section 1. Section 30-5-3 is enacted to read:

30-5-3. Special considerations.

(1) As used in this section:

(a) "Grandparent" means an individual:

(i) whose child, either by blood, marriage, or adoption, has had the child's parental rights terminated under Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act; and

(ii) whose grandchild is being adopted by a relative.

(b) "Nonrelative" means an individual who is not a relative and is not related to the grandchild by marriage or blood at the time of adoption.

(c) "Relative" means an individual related to the grandchild by marriage or blood as:

(i) a sibling;

(ii) an aunt;

(iii) an uncle; or

(iv) a grandparent.

(2) Unless the grandchild is adopted by a nonrelative, when a parent's rights are terminated under Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act:

(a) the rights of a grandparent are not extinguished; and

(b) a grandparent ~~{may}~~ shall file a petition for visitation rights in ~~{juvenile or district}~~ the court where the adoption decree was entered.

(3) (a) There is a ~~{rebuttable}~~ presumption that the adoptive parent's decision with regard to grandparent visitation is in the grandchild's best interest.

(b) ~~{Despite}~~ The court may override the presumption ~~{provided in Subsection (3)(a); the court may grant the petitioner reasonable rights of visitation if the court finds that the petitioner has rebutted the presumption and finds that}~~ that the adoptive parent's decision regarding grandparent visitation is in the grandchild's best interest ~~{. The court may consider relevant factors, including whether:~~

~~——~~ (i) the petitioner} and may grant the grandparent reasonable rights of visitation only in

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the exceptional case where the court finds that denying visitation would result substantial harm to the grandchild from the loss of a substantial relationship with the grandparent.

(c) For purposes of this Subsection (3), "a substantial relationship" means that the grandparent has fulfilled the role of custodian or caregiver to the grandchild.

(d) If the court finds that denying visitation would cause substantial harm to the grandchild as described in Subsection (3)(b), the court may also consider:

(i) whether the grandparent is a fit and proper ~~{individual}~~ person to have visitation with the grandchild;

~~—— (ii) visitation with the grandchild has been unfairly denied or unreasonably limited, and without just or compelling cause;~~

~~—— (iii) the petitioner has acted as the grandchild's custodian or caregiver, or otherwise has had a substantial and positive bonding relationship with the grandchild, and the loss or cessation of that relationship is likely to cause harm to the grandchild; or~~

~~—— (iv) visitation will not disrupt the formation of a new family unit.~~

~~—— (4) In considering the provisions of Subsection (3), the court may inquire of the grandchild and take into account } or~~

(ii) the grandchild's desires regarding ~~{grandparent}~~ visitation.

(~~{5}~~4) On the petition of a grandparent or the adoptive parent of the grandchild, the court may, after a hearing, modify an order regarding grandparent visitation if:

(a) the circumstances of the grandchild, the grandparent, or the adoptive parent have materially and substantially changed since the entry of the order to be modified, or the order has become unworkable or inappropriate under existing circumstances; and

(b) the court determines that a modification is appropriate based upon the factors set forth in Subsection (3).

(~~{6}~~5) A grandparent may petition the court to remedy an adoptive parent's wrongful noncompliance with a visitation order.

(~~{7}~~6) A grandparent's petition for visitation rights for an adoption that is finalized on or after January 1, 2017, shall be filed within two years of the date on which:

(a) the final decree of adoption is entered; or

(b) the adoptive parent ended the grandparent's visitation.

(~~{8}~~7) For an adoption that is finalized before January 1, 2017, or for a circumstance in

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which an adoptive parent ended the grandparent's visitation before January 1, 2017, the grandparent may not file a petition for visitation rights ~~{ on or before December 31, 2019}~~.

~~{9}~~8) A grandparent may not file multiple petitions for visitation rights under this section.

~~{10}~~9) For any adoption by a relative, as defined in this section, that is finalized after January 1, 2017, the court shall give notice or confirm actual notice to the adoptive parents of the provisions of this section.

Section 2. **Effective date.**

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

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Legislative Review Note

Office of Legislative Research and General Counsel