

## HB0418S03 compared with HB0418S02

~~{deleted text}~~ shows text that was in HB0418S02 but was deleted in HB0418S03.

inserted text shows text that was not in HB0418S02 but was inserted into HB0418S03.

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~~{Representative LaVar Christensen}~~Senator Wayne A. Harper proposes the following substitute bill:

### RIGHTS OF GRANDPARENTS TO CHILD VISITATION

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: LaVar Christensen**

Senate Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

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

##### Highlighted Provisions:

This bill:

- ▶ amends 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:

None

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### Utah Code Sections Affected:

#### AMENDS:

**30-5-1**, as last amended by Laws of Utah 2002, Chapter 85

**30-5-2**, as last amended by Laws of Utah 2005, Chapter 129

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

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

#### **30-5-1. Definitions.**

As used in this act:

(1) "District court" means the district court with proper jurisdiction over the grandchild.

(2) "Grandchild" means the child with respect to whom a grandparent is seeking visitation rights under this chapter.

(3) "Grandparent" means ~~[a person]~~ an individual whose child, either by blood, marriage, or adoption, is the parent of the grandchild.

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

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

(1) (a) As used in this section,

(i) "Grandparent" is as defined in Section 30-5-1, and includes a grandparent of a child:

(A) whose parent's rights are terminated under Title 78A, Chapter 6, Part 5,

Termination of Parental Rights Act: and

(B) who is adopted by a relative of the child at the time of adoption.

(ii) "Nonrelative" means individual who is not a relative of the grandchild at the time of adoption.

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

(A) a sibling;

(B) an aunt;

(C) an uncle; or

(D) a grandparent.

[+] (b) Grandparents have standing to bring an action in district court by petition, requesting visitation in accordance with the provisions and requirements of this section.

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Grandparents may also file a petition for visitation rights in a pending divorce proceeding or other proceeding involving custody and visitation issues.

(2) There is a rebuttable presumption that a parent's decision with regard to grandparent visitation is in the grandchild's best interests. However, the court may override the parent's decision and grant the petitioner reasonable rights of visitation if the court finds that the petitioner has rebutted the presumption based upon factors which the court considers to be relevant, such as whether:

- (a) the petitioner is a fit and proper person to have visitation with the grandchild;
- (b) visitation with the grandchild has been denied or unreasonably limited;
- (c) the parent is unfit or incompetent;
- (d) the petitioner has acted as the grandchild's custodian or caregiver, or otherwise has had a substantial relationship with the grandchild, and the loss or cessation of that relationship is likely to cause harm to the grandchild;
- (e) the petitioner's child, who is a parent of the grandchild, has died, or has become a noncustodial parent through divorce or legal separation;
- (f) the petitioner's child, who is a parent of the grandchild, has been missing for an extended period of time; or
- (g) visitation is in the best interest of the grandchild.

(3) The adoption of a grandchild by the grandchild's stepparent does not diminish or alter visitation rights previously ordered under this section.

(4) Subject to the provisions of Subsections (2) and (3), the court may inquire of the grandchild and take into account the grandchild's desires regarding visitation.

(5) On the petition of a grandparent or the legal custodian of a grandchild the court may, after a hearing, modify an order regarding grandparent visitation if:

(a) the circumstances of the grandchild, the grandparent, or the custodian 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 (2).

(6) Grandparents may petition the court to remedy a parent's wrongful noncompliance with a visitation order.

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(7) Unless the child 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 of a child are not extinguished; and

(b) a grandparent of a child may:

(i) bring an action or file a petition for visitation rights as described in Subsection (1);

or

(ii) file a petition for visitation rights in a pending adoption matter in juvenile court or district court.