

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: Wayne A. Harper

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

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

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

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



26 **30-5-1. Definitions.**

27 As used in this act:

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

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

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

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

35 **30-5-2. Visitation rights of grandparents.**

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

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

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

39 Termination of Parental Rights Act: and

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

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

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

44 (A) a sibling;

45 (B) an aunt;

46 (C) an uncle; or

47 (D) a grandparent.

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

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

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

- 57 (a) the petitioner is a fit and proper person to have visitation with the grandchild;
- 58 (b) visitation with the grandchild has been denied or unreasonably limited;
- 59 (c) the parent is unfit or incompetent;
- 60 (d) the petitioner has acted as the grandchild's custodian or caregiver, or otherwise has
- 61 had a substantial relationship with the grandchild, and the loss or cessation of that relationship
- 62 is likely to cause harm to the grandchild;
- 63 (e) the petitioner's child, who is a parent of the grandchild, has died, or has become a
- 64 noncustodial parent through divorce or legal separation;
- 65 (f) the petitioner's child, who is a parent of the grandchild, has been missing for an
- 66 extended period of time; or
- 67 (g) visitation is in the best interest of the grandchild.
- 68 (3) The adoption of a grandchild by the grandchild's stepparent does not diminish or
- 69 alter visitation rights previously ordered under this section.
- 70 (4) Subject to the provisions of Subsections (2) and (3), the court may inquire of the
- 71 grandchild and take into account the grandchild's desires regarding visitation.
- 72 (5) On the petition of a grandparent or the legal custodian of a grandchild the court
- 73 may, after a hearing, modify an order regarding grandparent visitation if:
- 74 (a) the circumstances of the grandchild, the grandparent, or the custodian have
- 75 materially and substantially changed since the entry of the order to be modified, or the order
- 76 has become unworkable or inappropriate under existing circumstances; and
- 77 (b) the court determines that a modification is appropriate based upon the factors set
- 78 forth in Subsection (2).
- 79 (6) Grandparents may petition the court to remedy a parent's wrongful noncompliance
- 80 with a visitation order.
- 81 (7) Unless the child is adopted by a nonrelative, when a parent's rights are terminated
- 82 under Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act:
- 83 (a) the rights of a grandparent of a child are not extinguished; and
- 84 (b) a grandparent of a child may:
- 85 (i) bring an action or file a petition for visitation rights as described in Subsection (1);
- 86 or
- 87 (ii) file a petition for visitation rights in a pending adoption matter in juvenile court or

88 district court.