

FILED FEB 8 2005

SENATE FILE 124
BY WARNSTADT JUDICIARY

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the granting of visitation to grandparents and
2 great-grandparents.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 124
JUDICIARY

1 Section 1. Section 598.35, Code 2005, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 598.35 GRANDPARENT -- GREAT-GRANDPARENT -- VISITATION.

5 1. The grandparent or great-grandparent of a minor child
6 may petition the district court for grandchild or great-
7 grandchild visitation rights. The district court may grant
8 limited visitation rights if the district court finds all of
9 the following by clear and convincing evidence:

10 a. The grandparent or great-grandparent has established a
11 substantial relationship with the child prior to the filing of
12 a petition.

13 b. The parent of the child is unfit to make the decision
14 regarding the appropriate extent of contact and association,
15 if any, between the child and any other person and regarding
16 who may care for, supervise, and guide the child, or the
17 parent's decision to deny visitation poses substantial harm to
18 the child's emotional, mental, or physical well-being beyond
19 the harm derived from the beneficial influence of the
20 visitation. If the court finds that substantial harm is posed
21 to the child, the court also finds that the substantial harm
22 may not be averted by any means less intrusive than the court-
23 ordered granting of visitation.

24 c. It is in the child's best interest to grant such
25 visitation.

26 2. If a fit parent of the child objects to the granting of
27 visitation to a grandparent or great-grandparent, a rebuttable
28 presumption affecting the burden of proof arises that the
29 granting of visitation to a grandparent or great-grandparent
30 is not in the best interest of a minor child.

31 3. The court shall issue specific findings of fact
32 detailing the clear and convincing evidence presented as to
33 any harm specified and as to the reason why the visitation is
34 necessary to avert the harm.

35 4. Visitation granted to a grandparent or a great-

1 grandparent prior to July 1, 2005, shall not be affected by
2 this section.

3 EXPLANATION

4 This bill replaces the current Code section providing for
5 grandparent and great-grandparent visitation. The current
6 section allows a grandparent or great-grandparent to petition
7 the court for visitation rights if certain circumstances
8 involving a parent are met. If one of the circumstances is
9 met, the petition is to be granted if the court finds that the
10 visitation is in the best interest of the child and that the
11 grandparent or great-grandparent had established a substantial
12 relationship with the child prior to the filing of the
13 petition.

14 The bill allows a grandparent or great-grandparent of a
15 minor child to petition the district court for grandchild or
16 great-grandchild visitation rights, and the court is
17 authorized to grant limited visitation if it finds all of the
18 following by clear and convincing evidence:

19 1. The grandparent or great-grandparent has established a
20 substantial relationship with the child prior to the filing of
21 the petition.

22 2. The parent of the child is unfit to make the decision
23 regarding the visitation, or the parent's decision to deny
24 visitation poses substantial harm to the child's emotional,
25 mental, or physical well-being beyond the harm derived from
26 the beneficial influence of the visitation. If the court
27 finds that substantial harm is posed to the child, the court
28 also finds that the harm may not be averted by any means less
29 intrusive than the court-ordered granting of visitation.

30 3. It is in the child's best interest to grant such
31 visitation.

32 The bill establishes a rebuttable presumption that the
33 granting of visitation to a grandparent or great-grandparent
34 is not in the best interest of a minor child if a fit parent
35 of the child objects to the granting of visitation to a

1 grandparent or great-grandparent.

2 The bill directs the court to issue specific findings of
3 fact detailing the clear and convincing evidence presented as
4 to any harm specified and as to the reason why the visitation
5 is necessary to avert the harm.

6 Finally, the bill provides that visitation granted to a
7 grandparent or a great-grandparent prior to July 1, 2005, is
8 not affected by the bill.

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