

Senate File 2306 - Reprinted

SENATE FILE 2306
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 2171)

(As Amended and Passed by the Senate February 25, 2010)

A BILL FOR

1 An Act relating to grandparent and great-grandparent
2 visitation.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 600C.1, Code 2009, is amended by striking
2 the section and inserting in lieu thereof the following:

3 **600C.1 Grandparent and great-grandparent visitation.**

4 1. The grandparent or great-grandparent of a minor child
5 may petition the court for grandchild or great-grandchild
6 visitation when the parent of the minor child, who is the child
7 of the grandparent or the grandchild of the great-grandparent,
8 is deceased.

9 2. The court shall consider a fit parent's objections
10 to granting visitation under this section. A rebuttable
11 presumption arises that a fit parent's decision to deny
12 visitation to a grandparent or great-grandparent is in the best
13 interest of a minor child.

14 3. The court may grant visitation to the grandparent or
15 great-grandparent under this section if the court finds all of
16 the following by clear and convincing evidence:

17 a. It is in the best interest of the child to grant such
18 visitation.

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

22 c. That the presumption that the parent who is being
23 asked to temporarily relinquish care, custody, and control of
24 the child to provide visitation is fit to make the decision
25 regarding visitation is overcome by demonstrating one of the
26 following:

27 (1) The parent is unfit to make such decision.

28 (2) The parent's judgment has been impaired and the relative
29 benefit to the child of granting visitation greatly outweighs
30 any effect on the parent-child relationship. Impaired judgment
31 of a parent may be evidenced by any of, but not limited to, the
32 following:

33 (a) Neglect of the child.

34 (b) Abuse of the child.

35 (c) Violence toward the child.

1 (d) Indifference or absence of feeling toward the child.

2 (e) Demonstrated unwillingness and inability to promote the
3 emotional and physical well-being of the child.

4 (f) Drug abuse.

5 (g) A diagnosis of mental illness.

6 4. In determining the best interest of the child, the court
7 shall consider all of the following:

8 a. The prior interaction and interrelationships of the
9 child with the child's parents, siblings, and other persons
10 related by consanguinity or affinity, compared to the child's
11 relationship with the grandparent or great-grandparent.

12 b. The geographical location of the grandparent's or
13 great-grandparent's residence and the distance between the
14 grandparent's or great-grandparent's residence and the child's
15 residence.

16 c. The child's and parent's available time, including but
17 not limited to the parent's employment schedule, the child's
18 school schedule, the amount of time that will be available
19 for the child to spend with siblings, and the child's and the
20 parent's holiday and vacation schedules.

21 d. The age of the child.

22 e. If the court has interviewed the child in chambers
23 as provided in this section regarding the wishes and
24 concerns of the child as to visitation by the grandparent or
25 great-grandparent or as to a specific visitation schedule, the
26 wishes and concerns of the child, as expressed to the court.

27 f. The health and safety of the child.

28 g. The mental and physical health of all parties.

29 h. Whether the grandparent or great-grandparent previously
30 has been convicted of or pleaded guilty to any criminal
31 offense involving any act that resulted in a child being an
32 abused child or a neglected child; whether the grandparent
33 or great-grandparent previously has been convicted of or
34 pleaded guilty to a crime involving a victim who at the time
35 of the commission of the offense was a member of the family

1 or household that is the subject of the current proceeding;
2 and whether there is reason to believe that the grandparent or
3 great-grandparent has acted in a manner resulting in a child
4 having ever been found to be an abused child or a neglected
5 child.

6 *i.* The wishes and concerns of the child's parent, as
7 expressed by the parent to the court.

8 *j.* Any other factor in the best interest of the child.

9 5. For the purposes of this subsection "substantial
10 relationship" includes but is not limited to any of the
11 following:

12 *a.* The child has lived with the grandparent or
13 great-grandparent for at least six months.

14 *b.* The grandparent or great-grandparent has voluntarily and
15 in good faith supported the child financially in whole or in
16 part for a period of not less than six months.

17 *c.* The grandparent or great-grandparent has had frequent
18 visitation including occasional overnight visitation with the
19 child for a period of not less than one year.

20 6. If the court interviews any child concerning the child's
21 wishes and concerns regarding parenting time or visitation, the
22 interview shall be conducted in chambers, and only the child,
23 the child's attorney, the judge, any necessary court personnel,
24 and, in the judge's discretion, the attorney of the parent
25 shall be permitted to be present in the chambers during the
26 interview. A person shall not obtain or attempt to obtain from
27 a child a written or recorded statement or affidavit setting
28 forth the wishes and concerns of the child regarding parenting
29 time or visitation.

30 7. For the purposes of this section, "court" means the
31 district court or the juvenile court if that court currently
32 has jurisdiction over the child in a pending action. If an
33 action is not pending, the district court has jurisdiction.

34 8. Notwithstanding any provision of this chapter to the
35 contrary, venue for any action to establish, enforce, or modify

1 visitation under this section shall be in the county where the
2 child resides if no final custody order determination relating
3 to the grandchild or great-grandchild has been entered by any
4 other court. If a final custody order has been entered by any
5 other court, venue shall be located exclusively in the county
6 where the most recent final custody order was entered. If
7 any other custodial proceeding is pending when an action to
8 establish, enforce, or modify visitation under this section is
9 filed, venue shall be located exclusively in the county where
10 the pending custodial proceeding was filed.

11 9. Notice of any proceeding to establish, enforce, or
12 modify visitation under this section shall be personally served
13 upon the parent of the child whose interests are affected
14 by a proceeding brought pursuant to this section and all
15 grandparents or great-grandparents who have previously obtained
16 a final order or commenced a proceeding under this section.

17 10. The court shall not enter any temporary order to
18 establish, enforce, or modify visitation under this section.

19 11. An action brought under this section is subject to
20 chapter 598B, and in an action brought to establish, enforce,
21 or modify visitation under this section, each party shall
22 submit in its first pleading or in an attached affidavit all
23 information required by section 598B.209.

24 12. A grandparent or great-grandparent shall not petition
25 for visitation under this section more than once every two
26 years absent a showing of good cause.

27 13. The court shall not issue an order restricting the
28 movement of the child if such restriction is solely for the
29 purpose of allowing the grandparent or great-grandparent
30 the opportunity to exercise the grandparent's or
31 great-grandparent's visitation under this section.