SENATE BILL No. 134

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-9-2-48.3; IC 31-14-14-3; IC 31-17.

Synopsis: Grandparent and great-grandparent visitation. Allows great-grandparents to seek visitation rights with their great-grandchildren in certain circumstances. Allows a grandparent or great-grandparent to seek visitation if the grandparent or great-grandparent has had meaningful contact with the child but, as a result of an estrangement between the parent of the child and the grandparent or great-grandparent, the parent of the child terminated the child's visits with the grandparent or great-grandparent. Establishes factors for the court to consider in determining whether granting a grandparent or great-grandparent visitation rights is in the best interests of the child. Provides that a court may order a party to an action for grandparent or great-grandparent visitation to pay a reasonable amount for the cost to the other party of maintaining or defending the action, including costs for attorney's fees and mediation. Specifies that certain agencies are not required to pay costs. Makes conforming changes.

Effective: Upon passage.

Randolph

January 5, 2011, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

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SENATE BILL No. 134

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 31-9-2-48.3, AS ADDED BY P.L.50-2006, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 48.3. "Grandparent **or great-grandparent** visitation", for purposes of IC 31-17-2.2, means visitation rights granted to a grandparent **or great-grandparent** under IC 31-17-5.

SECTION 2. IC 31-14-14-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. An order granting or denying visitation rights to a noncustodial parent does not affect visitation rights granted to a grandparent **or great-grandparent** under IC 31-17-5-1 or IC 31-17-5-10 (or IC 31-1-11.7-2 before its repeal).

SECTION 3. IC 31-17-2.2-1, AS ADDED BY P.L.50-2006, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) A relocating individual must file a notice of the intent to move with the clerk of the court that:

(1) issued the custody order or parenting time order; or

(2) if subdivision (1) does not apply, has jurisdiction over the

legal proceedings concerning the custody of or parenting time with a child;

and send a copy of the notice to any nonrelocating individual.

(b) Upon motion of a party, the court shall set the matter for a hearing to review and modify, if appropriate, a custody order, parenting time order, grandparent **or great-grandparent** visitation order, or child support order. The court shall take into account the following in determining whether to modify a custody order, parenting time order, grandparent **or great-grandparent** visitation order, or child support order:

(1) The distance involved in the proposed change of residence.

(2) The hardship and expense involved for the nonrelocating individual to exercise parenting time or grandparent **or great-grandparent** visitation.

(3) The feasibility of preserving the relationship between the nonrelocating individual and the child through suitable parenting time and grandparent **or great-grandparent** visitation arrangements, including consideration of the financial circumstances of the parties.

(4) Whether there is an established pattern of conduct by the relocating individual, including actions by the relocating individual to either promote or thwart a nonrelocating individual's contact with the child.

(5) The reasons provided by the:

(A) relocating individual for seeking relocation; and

(B) nonrelocating parent for opposing the relocation of the child.

(6) Other factors affecting the best interest of the child.

(c) The court may award reasonable attorney's fees for a motion filed under this section in accordance with IC 31-15-10.

SECTION 4. IC 31-17-2.2-2, AS ADDED BY P.L.50-2006, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) If a party provides notice of relocation at an initial hearing to determine custody, the court may consider the factors set forth in this chapter in the court's initial custody determination.

(b) The court may consider a proposed relocation of a child as a factor in determining whether to modify a custody order, parenting time order, grandparent **or great-grandparent** visitation order, or child support order.

SECTION 5. IC 31-17-2.2-3, AS AMENDED BY P.L.1-2007, SECTION 194, IS AMENDED TO READ AS FOLLOWS

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[EFFECTIVE UPON PASSAGE]: Sec. 3. (a) Except as provided in section 4 of this chapter, an individual required to file a notice under IC 31-14-13-10 or section 1 of this chapter must:

(1) send the notice to each nonrelocating individual:

(A) by registered or certified mail; and

(B) not later than ninety (90) days before the date that the relocating individual intends to move; and

(2) provide the following information in the notice:

(A) The intended new residence, including the:

(i) address; and

(ii) mailing address of the relocating individual, if the mailing address is different than the address under item (i).

(B) The home telephone number of the new residence.

(C) Any other applicable telephone number for the relocating individual.

(D) The date that the relocating individual intends to move.

(E) A brief statement of the specific reasons for the proposed relocation of the child.

(F) A proposal for a revised schedule of parenting time or grandparent **or great-grandparent** visitation with the child.

(G) A statement that a parent must file an objection to the relocation of the child with the court not later than sixty (60) days after receipt of the notice.

(H) A statement that a nonrelocating individual may file a petition to modify a custody order, parenting time order, grandparent **or great-grandparent** visitation order, or child support order.

(b) Except as provided in section 4 of this chapter, if the relocating individual is unable to provide the information required under subsection (a)(2) not later than ninety (90) days before the relocating individual intends to move, the relocating individual shall provide the information in the manner required under subsection (a) not later than ten (10) days after the date that the relocating individual obtains the information required to be provided under subsection (a)(2). However, the relocating individual must provide all the information required under subsection (a)(2) not later than thirty (30) days before the relocating individual intends to move to the new residence.

SECTION 6. IC 31-17-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) A child's grandparent **or great-grandparent** may seek visitation rights if:

(1) the child's parent is deceased;

(2) the marriage of the child's parents has been dissolved in

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Indiana; ~~or~~

(3) subject to subsection (b), the child was born out of wedlock; **or**

(4) subject to subsection (b), the grandparent or great-grandparent has had meaningful contact with the child but, as a result of an estrangement between the parent of the child and the grandparent or great-grandparent, the parent of the child terminated the child's visits with the grandparent or great-grandparent.

(b) A court may not grant visitation rights to a paternal grandparent **or paternal great-grandparent** of a child who is born out of wedlock under subsection (a)(3) **or (a)(4)** if the child's father has not established paternity in relation to the child.

SECTION 7. IC 31-17-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The court may grant visitation rights if the court determines that visitation rights are in the best interests of the child. **In determining the best interests of the child, the court shall consider all relevant factors, including the following:**

(1) The age and sex of the child.

(2) The wishes of the child's parent, parents, grandparent, grandparents, great-grandparent, or great-grandparents.

(3) The wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.

(4) The interaction and interrelationship of the child with:

(A) the child's parent or parents; and

(B) the child's grandparent, grandparents, great-grandparent, or great-grandparents.

(5) The mental and physical health of all individuals involved.

(6) Evidence of a pattern of domestic or family violence by the child's grandparent, grandparents, great-grandparent, or great-grandparents.

(7) Evidence that the child has been cared for by the child's grandparent, grandparents, great-grandparent, or great-grandparents.

(b) In determining the best interests of the child under this section **with regard to a grandparent or great-grandparent seeking visitation under section 1(a)(1) through 1(a)(3) of this chapter,** the court may consider whether a grandparent **or great-grandparent** has had or has attempted to have meaningful contact with the child.

(c) The court may interview the child in chambers to assist the court

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in determining the child's perception of whether visitation by a grandparent **or great-grandparent** is in the best interests of the child.

(d) The court may permit counsel to be present at the interview. If counsel is present:

(1) a record may be made of the interview; and

(2) the interview may be made part of the record for purposes of appeal.

SECTION 8. IC 31-17-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. A proceeding for grandparent's **or great-grandparent's** visitation must be commenced by the filing of a petition entitled, "In Re the visitation of _____". The petition must:

(1) be filed by a grandparent **or great-grandparent** entitled to receive visitation rights under this chapter;

(2) be verified; and

(3) set forth the following:

(A) The names and relationship of:

(i) the petitioning grandparent, ~~or~~ grandparents, **great-grandparent, or great-grandparents;**

(ii) each child with whom visitation is sought; and

(iii) the ~~custodial~~ parent or guardian of each child.

(B) The present address of each person named in clause (A).

(C) The date of birth of each child with whom visitation is sought.

(D) The status under section 1 of this chapter upon which the grandparent **or great-grandparent** seeks visitation.

(E) The relief sought.

SECTION 9. IC 31-17-5-4, AS AMENDED BY P.L.50-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. A grandparent **or great-grandparent** seeking visitation rights shall file a petition requesting reasonable visitation rights:

(1) **except as provided in subdivision (2),** in a circuit, superior, or probate court of the county in which the child resides in a case described in ~~section 1(a)(1), 1(a)(3), or~~ **section 1(a) or** 10 of this chapter; or

(2) in the court having jurisdiction over the dissolution of the parents' marriage ~~in a case described in section 1(a)(2) of this chapter.~~ **if the marriage of the child's parents has been dissolved in Indiana.**

SECTION 10. IC 31-17-5-10, AS AMENDED BY P.L.138-2007, SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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UPON PASSAGE]: Sec. 10. If the marriage of the child's parents has been dissolved in another state, the child's maternal or paternal grandparent **or the child's great-grandparent** may seek visitation rights if:

(1) the custody decree entered in the action for dissolution of marriage does not bind the grandparent **or great-grandparent** under IC 31-21-3-1 (or IC 31-17-3-12 before its repeal); and

(2) an Indiana court would have jurisdiction under IC 31-21-5-1 (or IC 31-17-3-3 before its repeal), IC 31-21-5-2, or IC 31-21-5-3 (or IC 31-17-3-14 before its repeal) to grant visitation rights to the grandparent **or great-grandparent** in a modification decree.

SECTION 11. IC 31-17-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) The court periodically may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under IC 31-17-2, IC 31-17-4, **IC 31-17-5,** IC 31-17-6, or this chapter and for attorney's fees and mediation services, including amounts for legal services provided and costs incurred before the commencement of the proceedings or after entry of judgment.

(b) The court may order the amount to be paid directly to the attorney, who may enforce the order in the attorney's name.

SECTION 12. IC 31-17-7-2, AS AMENDED BY P.L.145-2006, SECTION 241, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. Neither costs nor attorney's fees may be taxed against an agency or its agents that is authorized to maintain proceedings under IC 31-17-2, IC 31-17-4, **IC 31-17-5,** IC 31-17-6, or this chapter by Title IV-D of the federal Social Security Act (42 U.S.C. 651 through 669) and IC 31-25-4-17.

SECTION 13. **An emergency is declared for this act.**

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