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## DOMESTIC RELATIONS Parent and Child: Expand Scope of Grandparents' Visitation Rights

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## DOMESTIC RELATIONS

### *Parent and Child: Expand Scope of Grandparents' Visitation Rights*

CODE SECTIONS:	O.C.G.A. §§ 19-7-3 (amended), 19-8-10 (amended)
BILL NUMBER:	HB 1434
ACT NUMBER:	1274
SUMMARY:	The Act amends the Code to give grandparents the right to file an original action for visitation rights to a minor grandchild and provides for visitation rights in the event that the minor grandchild is adopted by blood relatives. The Act also defines the term "grandparent."
EFFECTIVE DATE:	July 1, 1988

#### *History*

In 1976, the Georgia General Assembly enacted Georgia's grandparents' visitation rights statute.<sup>1</sup> Subsequently, two amendments expanded and clarified the scope of grandparents' rights.<sup>2</sup> Grandparents were given the right to intervene in any action concerning the guardianship of a minor child,<sup>3</sup> the custody of a minor child, or in any divorce action.<sup>4</sup> Grandparents were permitted to file an original pleading if the minor child's parents were dead,<sup>5</sup> if the parental rights of the minor child's parents had been terminated,<sup>6</sup> if the parents of the minor child had been divorced,<sup>7</sup> or if custody had been granted in any action other than an adoption.<sup>8</sup> Grandparents with visitation rights were entitled to receive notice of a petition for adoption by a blood relative or another grandparent<sup>9</sup> and

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1. 1976 Ga. Laws 247.

2. 1980 Ga. Laws 936; 1986 Ga. Laws 1516. For a history and discussion of the 1980 and 1986 amendments see *Selected 1986 Georgia Legislation, Grandparents' Visitation Rights*, 2 GA. ST. U.L. REV. 189 (1986).

3. 1986 Ga. Laws 1516.

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.* The 1986 amendment to O.C.G.A. § 19-7-3 explicitly provided that the right to visitation did not exist after an adoption had occurred.

9. *Id.*

could file an objection to such a petition.<sup>10</sup>

### *HB 1434*

The Act amends existing law by defining the term "grandparent."<sup>11</sup> The Act also gives grandparents the right to file an original action for visitation rights, in addition to the right to intervene in any action concerning the custody of the minor child, a divorce of the parents, a termination of the parental rights of either parent, or an adoption by a blood relative.<sup>12</sup> The right to bring an original action is limited only by timing rather than situational restrictions.<sup>13</sup> This expanded right allows grandparents to seek visitation rights to minor children of intact families, when the parents have separated but have not yet instituted formal divorce proceedings, and when the minor child's parents have never married.<sup>14</sup>

Under prior law, grandparents of minor children had no legal remedy when denied visiting privileges by the child's parents or guardians.<sup>15</sup> The Act provides this legal remedy by permitting all grandparents to seek visitation rights to their minor grandchildren.<sup>16</sup> The granting of visitation rights by the court is discretionary upon proof of special circumstances which make visitation rights necessary to the best interests of the child.<sup>17</sup> Once granted, these rights may be revoked or amended when good cause is shown.<sup>18</sup>

The Act places all grandparents on equal footing to seek visitation rights to their grandchildren regardless of the status of the minor child's relationship with his own parents or the relationship between the child's parents.<sup>19</sup> Opponents of this provision are concerned with the potential for judicial intrusion into harmonious, intact families when there are disharmonious relationships between the minor child's parents and grandparents.<sup>20</sup> However, by providing grandparents who are denied access to their grandchildren with a legal remedy, the Act may induce families to

10. *Id.*

11. O.C.G.A. § 19-7-3(a) (Supp. 1988). "Grandparent" is defined in the Act as "the parent of a parent of a minor child, the parent of a minor child's parent who has died, and the parent of a minor child's parent whose parental rights have been terminated." *Id.*

12. O.C.G.A. § 19-7-3(b) (Supp. 1988).

13. An original action cannot be filed more than once in a two-year period or in any year in which another custody action concerning the child has been filed. O.C.G.A. § 19-7-3(c) (Supp. 1988).

14. Telephone interview with Representative Suzi Johnson-Herbert, House District No. 76 (Apr. 6, 1988) [hereinafter Johnson-Herbert Interview].

15. *Id.*

16. *Id.*

17. O.C.G.A. § 19-7-3(c) (Supp. 1988).

18. *Id.*

19. See O.C.G.A. § 19-7-3 (Supp. 1988).

20. Telephone interview with Representative Charles Thomas, House District No. 69 (Apr. 8, 1988).

reach agreements without resort to court interference.<sup>21</sup> Because each family situation is unique, the court is given broad discretion to award grandparents visitation rights. There is no presumption in favor of grandparent visitation,<sup>22</sup> nor is there a requirement of an established grandparent-grandchild relationship.<sup>23</sup>

Although several legislators were concerned that the bill would lead to a proliferation of intrafamily courtroom battles, it passed the House and the Senate by wide margins.<sup>24</sup> The bill was amended on the House floor<sup>25</sup> to provide for the granting or continuation of grandparent visitation rights when a minor child is adopted by a blood relative.<sup>26</sup> Originally intended as a separate bill,<sup>27</sup> the floor amendment preserves the grandparents' rights to visitation when the minor child is adopted by a blood relative, thus extending the grandparents' rights beyond receipt of notice and the right to file an objection.<sup>28</sup>

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21. Johnson-Herbert Interview, *supra* note 14.

22. See O.C.G.A. § 19-7-3(c) (Supp. 1988).

23. Telephone interview with Senator Arthur B. Edge, IV, Senate District No. 28 (Apr. 8, 1988).

24. See *Bill on Grandparents' Rights to Visit Grandchildren Passes*, Atlanta J., Feb. 23, 1988, at 3B, col. 3; *House Passes Bill to Ensure Grandparents' Visiting Rights*, Atlanta J., Feb. 24, 1988, at 5B, col. 4; *Assembly OKs Bill to Extend Visit Rights for Grandparents*, Atlanta J., Mar. 2, 1988, at 3C, col. 1. The bill passed the House by a vote of 141—23 and the Senate by 38—13.

25. HB 1434 (HFA), 1988 Ga. Gen. Assem.

26. O.C.G.A. § 19-8-10 (Supp. 1988).

27. Telephone interview with Representative Marvin Adams, House District No. 79 (Apr. 8, 1988) [hereinafter Adams Interview].

28. See *supra* text accompanying notes 9—10. If, for example, the minor child whose parents' rights are terminated is adopted by his maternal grandparents, his paternal grandparents may seek visitation rights or enforce existing visitation rights. Adams Interview, *supra* note 27.