

FIRST REGULAR SESSION

HOUSE BILL NO. 728

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES DAVIS (19), PHILLIPS,
RUESTMAN AND STEVENSON (Co-sponsors).

Read 1st time April 3, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

2155L.011

AN ACT

To repeal section 452.402, RSMo, and to enact in lieu thereof one new section relating to grandparent visitation.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 452.402, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.402, to read as follows:

452.402. 1. The court may grant reasonable visitation rights to the grandparents of [the child and issue any necessary orders to enforce the decree] **a child; except that it shall be a rebuttable presumption that fit parents know what is in the best interests of their child.**

The court may grant grandparent visitation when:

(1) The parents of the child have filed for a dissolution of their marriage. A grandparent shall have the right to intervene in any dissolution action solely on the issue of visitation rights. Grandparents shall also have the right to file a motion to modify the original decree of dissolution to seek visitation rights when [such rights have] **visitation has** been denied to them;

or

(2) One parent of the child is deceased and the surviving parent denies reasonable visitation [rights] to a parent of the deceased parent of the child; **or**

(3) The child has resided in the grandparent's home **and the grandparent has been the primary custodian and caregiver** for at least six months within the twenty-four month period immediately preceding the filing of the petition; **and**

(4) A grandparent is unreasonably denied visitation with the child for a period exceeding

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.

16 ninety days. However, if the natural parents are legally married to each other and are living
17 together with the child, a grandparent may not file for visitation pursuant to this subdivision];
18 or

19 (5) The child is adopted by a stepparent, another grandparent or other blood relative].

20 2. [The court shall determine if the visitation by the grandparent would be in the child's
21 best interest or if it would endanger the child's physical health or impair the child's emotional
22 development. Visitation may only be ordered when the court finds such visitation to be in the
23 best interests of the child. However, when the parents of the child are legally married to each
24 other and are living together with the child, it shall be a rebuttable presumption that such parents
25 know what is in the best interest of the child. The court may order reasonable conditions or
26 restrictions on grandparent visitation.

27 3.] **Before ordering visitation rights to grandparents pursuant to this section over**
28 **the objection of the parent, the court shall find that the child would suffer harm or the**
29 **serious likelihood of harm if visitation rights are not granted to the grandparents of the**
30 **child. "Harm or the serious likelihood of harm" means showing by clear and convincing**
31 **evidence that without court-ordered visitation by the grandparents, the child's emotional**
32 **or physical well-being would be jeopardized.**

33 3. **If the petitioner makes particular allegations under oath or under penalty of**
34 **perjury which call into serious question the fitness of the custodial parent, a home study,**
35 **as described in section 452.390, may be ordered by the court to assist in determining the**
36 **best interests of the child.**

37 4. If the court finds it to be in the best interests of the child, the court may appoint a
38 guardian ad litem for the child. The guardian ad litem shall be an attorney licensed to practice
39 law in Missouri. The guardian ad litem may, for the purpose of determining the question of
40 grandparent visitation rights, participate in the proceedings as if such guardian ad litem were a
41 party. The [court shall enter judgment allowing a reasonable fee to the] **petitioner shall be**
42 **responsible for all guardian ad litem fees.**

43 [4. A home study, as described by section 452.390, may be ordered by the court to assist
44 in determining the best interests of the child.]

45 5. The court may, in its discretion, consult with the child regarding the child's wishes in
46 determining [the best interest of the child] **whether the child would be harmed by failure to**
47 **order the visitation in question.**

48 6. The right of a grandparent to [seek or] maintain visitation rights pursuant to this
49 section may terminate upon the adoption of the child.

50 7. **The court may issue any necessary orders to enforce the visitation order.**

51 8. The court may award reasonable attorneys fees and expenses to the prevailing party.