

HOUSE BILL No. 2675

AN ACT concerning children and minors; enacting the uniform nonparent visitation act; removing provisions related to grandparent and stepparent visitation rights; repealing K.S.A. 23-3301, 23-3302, 23-3303 and 23-3304.

Be it enacted by the Legislature of the State of Kansas:

Section 1. Sections 1 through 20, and amendments thereto, shall be known and may be cited as the uniform nonparent visitation act.

Sec. 2. As used in this act:

(a) "Child" means an unemancipated individual who is less than 18 years of age.

(b) "Compensation" means wages or other remuneration paid in exchange for care of a child. "Compensation" does not include reimbursement of expenses for care of the child, including payment for food, clothing and medical expenses.

(c) "Consistent caretaker" means a nonparent who meets the requirements of section 4(b), and amendments thereto.

(d) "Custody" means physical custody, legal custody or both.

(e) "Harm to a child" means significant adverse effect on a child's physical, emotional or psychological well-being.

(f) "Legal custody" means the right to make significant decisions regarding a child, including decisions regarding a child's education, healthcare and scheduled activity.

(g) "Nonparent" means an individual, other than a parent or person acting as a parent of a child. "Nonparent" includes a grandparent, sibling or stepparent of a child.

(h) "Parent" means an individual recognized as a parent under the laws of Kansas.

(i) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, instrumentality or other legal entity.

(j) "Person acting as a parent" means a person, other than a parent, who:

(1) Has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately preceding the commencement of a child custody proceeding; and

(2) has been awarded legal custody by a court or claims a right to legal custody under the laws of Kansas.

(k) "Physical custody" means living with a child and exercising day-to-day care of the child.

(l) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(m) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. "State" includes a federally recognized Indian tribe.

(n) "Substantial relationship with the child" means a relationship between a nonparent and child that meets the requirements of section 4(c), and amendments thereto.

(o) "Visitation" means the right to spend time with a child who is living with another person and may include an overnight stay.

Sec. 3. (a) Except as provided in subsection (b), this act applies to a proceeding in which a nonparent seeks visitation, including proceedings in which the child has a guardian pursuant to article 30 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, or a permanent custodian pursuant to article 22 of chapter 38 of the Kansas Statutes Annotated, and amendments thereto.

(b) This act does not apply to a proceeding:

(1) Between nonparents, unless a parent or person acting as a parent is a party to the proceeding;

(2) pertaining to visitation with an Indian child as defined in the Indian child welfare act of 1978, 25 U.S.C. § 1903(4), to the extent the proceeding is governed by the Indian child welfare act of 1978, 25

U.S.C. §§ 1901 through 1963; and

(3) pertaining to a child who is the subject of an ongoing proceeding under article 22 of chapter 38 of the Kansas Statutes Annotated, and amendments thereto, or a substantially similar proceeding in another state.

(c) A nonparent shall not maintain a proceeding under this act for visitation with a child solely because the nonparent served as a foster parent of the child.

(d) An individual whose parental rights concerning a child have been terminated shall not maintain a proceeding under this act concerning such child.

(e) Relief under this act is not available during the period of a visitation order entered under K.S.A. 23-3217, and amendments thereto, or other order related to visitation with a child of a deployed parent or person acting as a parent. A visitation order entered before a parent or person acting as a parent was deployed remains in effect unless modified by the court.

Sec. 4. (a) A court may order visitation to a nonparent only if the nonparent proves that:

- (1) The denial of visitation would result in harm to the child;
- (2) the nonparent:
 - (A) Is or has been a consistent caretaker as described in subsection (b) within one year of the initiation of the action; or
 - (B) has a substantial relationship with the child as described in subsection (c); and

(3) an order of visitation to the nonparent is in the best interest of the child applying the factors in section 11, and amendments thereto.

(b) A nonparent is a consistent caretaker if the nonparent, without expectation of compensation:

- (1) Lived with the child for not less than 12 months, unless the court finds good cause to accept a shorter period;
- (2) regularly exercised care of the child;
- (3) made day-to-day decisions regarding the child solely or in cooperation with an individual having physical custody of the child; and

(4) established a bonded and dependent relationship with the child with the express or implied consent of a parent or person acting as a parent of the child or without the consent of a parent or person acting as a parent if no parent or person acting as a parent has been able or willing to perform parenting functions.

(c) A nonparent has a substantial relationship with the child if:

- (1) The nonparent:
 - (A) Is an individual with a familiar relationship with the child by blood or law; or

(B) formed a relationship with the child without expectation of compensation;

(2) a significant emotional bond exists between the nonparent and the child from the child's point of view; and

(3) the nonparent:

- (A) Regularly exercised care of the child; and

(B) established a bonded and dependent relationship with the child with the express or implied consent of a parent or person acting as a parent of the child or without the consent of a parent or person acting as a parent if no parent or person acting as a parent has been able or willing to perform parenting functions.

Sec. 5. (a) In an initial proceeding under this act, there is a rebuttable presumption that a decision by a parent or person acting as a parent regarding a request for visitation by a nonparent is in the best interest of the child.

(b) Subject to section 13, and amendments thereto, a nonparent has the burden to rebut the presumption described in subsection (a) by clear and convincing evidence of the facts required by section 4(a), and amendments thereto. Proof of unfitness of a parent or person acting as a parent is not required to rebut the presumption described in subsection (a).

Sec. 6. A nonparent may commence a proceeding by filing a petition under section 7, and amendments thereto, in the court having jurisdiction to determine visitation under the uniform child custody jurisdiction and enforcement act, K.S.A. 23-37,101 through 23-37,405, and amendments thereto.

Sec. 7. (a) A nonparent shall verify a petition for visitation under penalty of perjury and allege facts showing that the nonparent:

(1) Meets the requirements of a consistent caretaker of the child as described in section 4(b), and amendments thereto; or

(2) has a substantial relationship with the child as described in section 4(c), and amendments thereto, and denial of visitation would result in harm to the child.

(b) A petition under subsection (a) shall state the relief sought and allege specific facts showing:

(1) The duration and nature of the relationship between the nonparent and the child, including the period, if any, the nonparent lived with the child and the care provided;

(2) the content of any agreement between the parties to the proceeding regarding care of the child and custody of or visitation or other contact with the child;

(3) a description of any previous attempt by the nonparent to obtain visitation or other contact with the child;

(4) the extent to which the parent or person acting as a parent is willing to permit the nonparent to have visitation or other contact with the child;

(5) information about compensation or expectation of compensation provided to the nonparent in exchange for care of the child;

(6) information required to establish the jurisdiction of the court under the uniform child custody jurisdiction and enforcement act, K.S.A. 23-37,101 through 23-37,405, and amendments thereto;

(7) the reason the requested visitation is in the best interest of the child, applying the factors in section 11, and amendments thereto; and

(8) if the nonparent alleges a substantial relationship with the child, the reason denial of visitation to the nonparent would result in harm to the child.

(c) If an agreement described in subsection (b)(2) is in a record, the nonparent shall attach a copy of the agreement to the petition.

Sec. 8. (a) Based on the petition described in section 7, and amendments thereto, the court shall determine whether the nonparent has pleaded a prima facie case that:

(1) A denial of visitation would result in harm to the child;

(2) the nonparent:

(A) Is or has been a consistent caretaker, as described in section 4(b), and amendments thereto, during the year immediately preceding filing of the action; or

(B) has a substantial relationship with the child, as described in section 4(c), and amendments thereto; and

(3) an order of visitation to the nonparent is in the best interest of the child applying the factors in section 11, and amendments thereto.

(b) If the court determines that the nonparent has not pleaded a prima facie case, the court shall dismiss the petition.

Sec. 9. On commencement of a proceeding under the act, the

nonparent shall give notice as described in article 3 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, to each:

- (a) Parent or person acting as a parent of the child who is the subject of the proceeding;
- (b) person having legal custody, residency or parenting time with the child;
- (c) individual having court-ordered visitation with the child; and
- (d) attorney, guardian ad litem or similar representative appointed for the child.

Sec. 10. In the manner and to the extent authorized by chapter 23 of the Kansas Statutes Annotated, and amendments thereto, the court may do one or more of the following:

- (a) Appoint a guardian ad litem for the child;
- (b) interview the child if such child is of sufficient age and maturity;
- (c) require the parties to participate in mediation or another form of alternative dispute resolution, except that a party who has been the victim of a domestic violence offense, as defined in K.S.A. 21-5111, and amendments thereto, a sex offense described in article 55 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, stalking as described in K.S.A. 21-5427, and amendments thereto, or other offense committed by another party to the proceeding shall not be required to participate unless reasonable procedures are in place to protect the party from a risk of harm, harassment or intimidation; or
- (d) order an evaluation, investigation or other assessment of the child's circumstances and the effect on the child of ordering or denying the requested visitation or modifying a visitation order.

Sec. 11. (a) When determining whether an order of visitation to a nonparent is in the best interest of a child, the court shall consider:

- (1) The nature and extent of the relationship between the child and the parent or person acting as a parent;
- (2) the nature and extent of the relationship between the child and the nonparent;
- (3) past or present conduct by a party or individual living with a party that poses a risk to the physical, emotional or psychological well-being of the child;
- (4) the likely impact of the requested order on the relationship between the child and the parent or person acting as a parent;
- (5) the applicable factors in K.S.A. 23-3203, and amendments thereto; and
- (6) any other factor affecting the best interest of the child.

(b) The court may consider the views of the child, taking into account the age and maturity of the child.

Sec. 12. (a) The court shall presume that ordering visitation to a nonparent is not in the best interest of the child if the court finds that the nonparent or an individual living with the nonparent has:

- (1) Committed abuse of a child as described in K.S.A. 21-5602, and amendments thereto;
- (2) committed abandonment of a child or aggravated abandonment of a child as described in K.S.A. 21-5605, and amendments thereto;
- (3) committed a domestic violence offense as defined in K.S.A. 21-5111, and amendments thereto;
- (4) committed a sex offense described in article 55 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto;
- (5) committed stalking as described in K.S.A. 21-5427, and amendments thereto;
- (6) been subject to registration requirements under the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto; or

(7) committed an offense or been subjected to a registration requirement in another state that is comparable to those described in paragraphs (1) through (6).

(b) A finding that conduct described in subsection (a) occurred shall be based on:

(1) Evidence of a conviction in a criminal proceeding or final judgment in a civil proceeding; or

(2) proof by a preponderance of the evidence.

(c) A nonparent may rebut the presumption described in subsection (a) by proving by clear and convincing evidence that ordering visitation to the nonparent will not endanger the health, safety or welfare of the child and is in the best interest of the child.

Sec. 13. (a) On verified motion subject to subsection (c), the court may modify a final visitation order on a showing by a preponderance of the evidence that:

(1) A material change in circumstance has occurred relevant to the visitation with the child; and

(2) modification is in the best interest of the child.

(b) Except as provided in subsection (c), if a nonparent has rebutted the presumption described in section 5, and amendments thereto, in an initial proceeding, the presumption remains rebutted.

(c) On agreement of the parties, the court may modify a visitation order unless the court finds that the agreement is not in the best interest of the child.

Sec. 14. When issuing a final order of visitation, the court shall make findings of fact and conclusions of law as required by K.S.A. 60-252, and amendments thereto, in support of its decision or, if the petition is dismissed pursuant to section 8, and amendments thereto, or a motion for modification is denied pursuant to section 13, and amendments thereto, state the reasons for the dismissal or denial.

Sec. 15. (a) (1) A nonparent who is entitled to visitation with a child under this act shall give written notice to the parent or person acting as a parent if the nonparent:

(A) Is subject to the registration requirements of the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, or any comparable registration requirements of another jurisdiction;

(B) has been convicted of abuse of a child as described in K.S.A. 21-5602, and amendments thereto; or

(C) is residing with an individual who is known by the nonparent to be subject to the registration requirements or convicted as described in subparagraphs (A) or (B).

(2) The notice described in this subsection shall be sent by restricted mail, return receipt requested, to the last known address of the parent or person acting as a parent within 14 days following knowledge of an event described in paragraph (1).

(b) Failure to give notice as required in this section is an indirect civil contempt punishable as provided by law. The court may order the nonparent required to give notice to pay reasonable attorney fees and any other expenses incurred by the parent or person acting as a parent as a result of the failure to give notice.

(c) An event described in subsection (a)(1) may be considered a material change of circumstances that justifies modification of a prior order of visitation.

Sec. 16. (a) The expense of facilitating visitation, including the expense of transportation, shall be paid by the nonparent unless the court determines justice and equity require otherwise.

(b) The nonparent shall pay for services ordered under section 10, and amendments thereto, unless the court determines that justice and

equity require otherwise.

(c) Costs and reasonable attorney fees shall be awarded to the parent or person acting as a parent unless the court determines that justice and equity require otherwise.

Sec. 17. In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Sec. 18. This act modifies, limits or supersedes the electronic signatures in global and national commerce act, 15 U.S.C. § 7001 et seq., but does not modify, limit or supersede section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. § 7003(b).

Sec. 19. This act applies to a proceeding:

(a) Commenced before July 1, 2024, in which a final order has not been entered; and

(b) commenced on or after July 1, 2024.

Sec. 20. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions of applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

Sec. 21. K.S.A. 23-3301, 23-3302, 23-3303 and 23-3304 are hereby repealed.

Sec. 22. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the House, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.