

HOUSE BILL NO. 376
INTRODUCED BY MCBRIDE, WALDRON

IN THE HOUSE

January 19, 1983 Introduced and referred to Committee on Judiciary.

February 3, 1983 Committee recommend bill do pass as amended. Report adopted.

February 4, 1983 Bill printed and placed on members' desks.

February 7, 1983 Second reading, do pass as amended.

February 8, 1983 Correctly engrossed.

February 10, 1983 Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 11, 1983 Introduced and referred to Committee on Judiciary.

March 21, 1983 Committee recommend bill be concurred in as amended. Report adopted.

March 23, 1983 Second reading, concurred in.

March 25, 1983 Third reading, concurred in. Ayes, 45; Noes, 4.

IN THE HOUSE

March 25, 1983 Returned to House with amendments.

March 31, 1983 Second reading, amendments not concurred in.

March 31, 1983

On motion, Conference Committee requested and appointed.

April 8, 1983

Conference Committee dissolved.

April 12, 1983

On motion, Free Conference Committee requested and appointed.

April 13, 1983

**Free Conference Committee
reported.**

April 13, 1983

Second reading, Free Conference Committee report adopted.

April 14, 1983

Third reading, Free Conference Committee report adopted.

April 16, 1983

**Free Conference Committee
report adopted by Senate.**

Sent to enrolling.

Reported correctly enrolled.

House BILL NO. 376

INTRODUCED BY McBrattee, Walborn

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
5 LAW ON GRANDPARENT VISITATION RIGHTS; AMENDING SECTION
6 40-9-102, MCA."*

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Section 40-9-102, MCA, is amended to read:
10 "40-9-102. Grandparent visitation rights. (1) If the
11 father or mother of an unmarried child is deceased, the
12 district court may grant to the parents of the deceased
13 person reasonable visitation rights with the child. A
14 grandparent may petition the court for reasonable rights of
15 visitation with an unmarried minor grandchild.

16 (2) Visitation rights granted under this section may
17 be granted only upon a finding by the court, after a
18 hearing, that: the visitation would be in the best interest
19 of the child.

20 that such visitation would not interfere significantly
21 with any parent-child relationship or with a parent's
22 rightful authority over the child and

(b) such visitation would be in the best interests of the child. In making the determination concerning the child's best interests, the court shall consider all

1 relevant factors, including but not limited to the
2 following:

3 (i) the child's expressed wishes; and
4 (ii) the extent of personal contact between the child
5 and the petitioner prior to the proceeding for visitation
6 rights.

7 (3) This section does not apply if the child has been
8 adopted by a person other than a stepparent or a
9 grandparents visitation rights granted under this section
10 terminate upon the adoption of the child by a person other
11 than a stepparent or a grandparent unless compelling
12 circumstances exists the visitation granted under this
13 section may not exceed 48 hours a month divided among a
14 maximum of 3 calendar days.

141 The court may modify an order granting or denying
142 visitation rights whenever such modification is consistent
143 with subsections (2) and (3). However, no person may
144 petition the court under this section more often than once
145 every 2 years unless there has been a significant change in
146 the circumstances of the child; the child's parent,
147 guardian, or custodian or the child's grandparent.

151. The court may award costs, including reasonable attorney fees, to the prevailing party.

24 (e) The court may appoint an attorney to represent the
25 interests of a child with respect to visitation when such

1 interests are not adequately represented by the parties to
2 the proceeding. The court shall enter an order for costs
3 and fees in favor of the child's attorney. The order must
4 be made against any or all of the parties to the proceeding,
5 except that if any responsible party is indigent the costs
6 and fees must be waived."

-End-

Approved by Committee
on Judiciary

HOUSE BILL NO. 376

INTRODUCED BY MCBRIDE, WALDRON

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW ON GRANDPARENT VISITATION RIGHTS; AMENDING SECTION 40-9-102, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-9-102, MCA, is amended to read:
"40-9-102. Grandparent visitation rights. (1) If the father or mother of an unmarried child is deceased, the district court may grant to the parents of the deceased person reasonable visitation rights with the child. A grandparent may petition the court for reasonable rights of visitation with an unmarried minor grandchild.

(2) Visitation rights granted under this section may be granted only upon a finding by the court, after a hearing, that: the visitation would be in the best interest of the child;

if such visitation would not interfere significantly with any parent-child relationship or with a parent's rightful authority over the child; and

if such visitation would be in the best interests of the child. In making the determination concerning the child's best interests, the court shall consider all

relevant factors, including but not limited to the following:

(i) the child's expressed wishes; and
(ii) the extent of personal contact between the child and the petitioner prior to the proceeding for visitation rights.

(3) This section does not apply if the child has been adopted by a person other than a stepparent or a grandparent. Visitation rights granted under this section terminate upon the adoption of the child by a person other than a stepparent or a grandparent. Unless compelling circumstances exist, the visitation granted under this section may not exceed 98 hours a month divided among a maximum of 3 calendar days.

(4) The court may modify an order granting or denying visitation rights whenever such modification is consistent with subsections (1) and (3). However, no person may petition the court under this section more often than once every 2 years unless there has been a significant change in the circumstances of the child, the child's parent, guardian or custodian or the child's grandparent.

(5) The court may award costs, including reasonable attorney fees, to the prevailing party.

(6) The court may appoint an attorney to represent the interests of a child with respect to visitation when

1 such interests are not adequately represented by the parties
2 to the proceedings. The court shall enter an order for costs
3 and fees in favor of the child's attorney. The order must
4 be made against any or all of the parties to the proceeding,
5 except that if any responsible party is indigent, the costs
6 and fees must be waived."

-End-

HOUSE BILL NO. 376

INTRODUCED BY MCBRIDE, WALDRON

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
5 LAW ON GRANDPARENT VISITATION RIGHTS; AMENDING SECTION
6 40-9-102, MCA."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8 Section 1. Section 40-9-102, MCA, is amended to read:
9 40-9-102. Grandparent visitation rights. (1) If the
10 father or mother of an unmarried child is deceased, the
11 district court may grant to the parents of the deceased
12 person reasonable visitation rights with the child. A
13 grandparent may petition the court for reasonable rights of
14 visitation with an unmarried minor grandchild.

15 (2) Visitation rights granted under this section may
16 be granted only upon a finding by the court, after a
17 hearing, that the visitation would be in the best interest
18 of the child.
19 (a) such visitation would not interfere significantly
20 with any parent-child relationship or with a parent's
21 rightful authority over the child; and
22 (b) such visitation would be in the best interests of
23 the child. In making the determination concerning the
24 child's best interests, the court shall consider all

1 relevant factors, including but not limited to the
2 following:

3 (i) the child's expressed wishes; and
4 (ii) the extent of personal contact between the child
5 and the petitioner prior to the proceeding for visitation
6 rights.

7 (3) This section does not apply if the child has been
8 adopted by a person other than a stepparent or a
9 grandparent. Visitation rights granted under this section
10 terminate upon the adoption of the child by a person other
11 than a stepparent or a grandparent. Unless compelling
12 circumstances exist, the visitation granted under this
13 section may not exceed 48 hours a month divided among a
14 maximum of 3 calendar days.

15 (4) The court may modify an order granting or denying
16 visitation rights whenever such modification is consistent
17 with subsections (2) and (3). However, no person may
18 petition the court under this section more often than once
19 every 2 years unless there has been a significant change in
20 the circumstances of the child; the child's parent,
21 guardian, or custodian; or the child's grandparent.

22 (f) the court may award costs including reasonable
23 attorney fees to the prevailing party.
24 (fifsi) The court may appoint an attorney to represent
25 the interests of a child with respect to visitation when

1 such interests are not adequately represented by the parties
2 to the proceeding. The court shall enter an order for costs
3 and fees in favor of the child's attorney. The order must
4 be made against any or all of the parties to the proceeding,
5 except that if any responsible party is indigent, the costs
6 and fees must be waived.

7 (6) THIS SECTION DOES NOT APPLY IF THE CHILD HAS BEEN
8 ADOPTED BY A PERSON OTHER THAN A STEPPARENT OR A
9 GRANDPARENT. VISITATION RIGHTS GRANTED UNDER THIS SECTION
10 TERMINATE UPON THE ADOPTION OF THE CHILD BY A PERSON OTHER
11 THAN A STEPPARENT OR A GRANDPARENT."

-End-

March 21, 1983

SENATE STANDING COMMITTEE REPORT
(Judiciary)

That House Bill No. 376 be amended as follows:

1. Title, lines 4 and 5.

Strike: "GENERALLY REVISING THE LAW ON GRANDPARENT VISITATION RIGHTS"
Insert: "TO ALLOW ALL GRANDPARENTS THE OPPORTUNITY TO SEEK VISITATION
RIGHTS WITH THEIR GRANDCHILDREN"

2. Page 1, line 13.

Strike: "A"

Insert: "The district court may grant to a"

3. Page 1, lines 14 and 15.

Following: "grandparent"

Strike: the remainder of line 14 through "grandchild" on line 15.

Insert: "of a child reasonable visitation rights"

4. Page 1, line 18.

Strike: ":"

Insert: "the visitation would be in the best interest of the child."

5. Page 1, lines 20 through line 2 on page 3.

Strike: line 20 on page 1 through "proceeding." on line 2, on
page 3.

Renumber: subsequent section

HOUSE BILL NO. 376

INTRODUCED BY MCBRIDE, WALDRON

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING--THE LAW---IN---GRANDPARENT---VISITATION---RIGHTS TO ALLOW ALL GRANDPARENTS THE OPPORTUNITY TO SEEK VISITATION RIGHTS WITH THEIR GRANDCHILDREN; AMENDING SECTION 40-9-102, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-9-102, MCA, is amended to read:
"40-9-102. Grandparent visitation rights. (1) If--the father--or--mother--of--an--unmarried-child-is-deceased--the district court may grant to--the--parents--of--the--deceased person--reasonable--visitation--rights--with--the--child & THE DISTRICT COURT MAY GRANT TO A grandparent ~~any~~--petition--the court--for--reasonable--rights--of--visitation--with--an--unmarried minor--grandchild ~~OR~~ A CHILD--REASONABLE--VISITATION--RIGHTS.

(2) Visitation rights granted under this section may be granted only upon a finding by the court, after a hearing, that the visitation would be in the best interest of--the--child, THE VISITATION SHOULD BE IN THE BEST INTEREST OF THE CHILD.

~~that~~--such--visitation--would--not--interfere--significantly with--any--parent--child--relationship--or--with--any--parent's right--to--authority--over--the--child--and

~~that~~--such--visitation--would--be--in--the--best--interests--of the--child--in--making--the--determination--concerning--the child's--best--interests--the--court--shall--consider--all relevant--factors--including--but--not--limited--to--the following:

~~that~~--the--child--has--expressed--wishes--and ~~that~~--the--extent--of--personal--contact--between--the--child and--the--petitioner--prior--to--the--proceeding--for--visitation rights;

~~(3)~~--~~this~~--section--does--not--apply--if--the--child--has--been adopted--by--a--person--other--than--a--stepparent--or--a grandparent--Visitation--rights--granted--under--this--section terminate--upon--the--adoption--of--the--child--by--a--person--other than--a--stepparent--or--a--grandparent. ~~However~~--~~in~~--certain circumstances--exist--the--visitation--granted--under--this section--may--not--exceed--48--hours--a--month--divided--among--a maximum--of--2--calendar--days.

~~If~~--~~the~~--court--may--modify--an--order--granting--or--denying visitation--rights--whenever--such--modification--is--consistent with--subsection--(2)--and--(3). ~~However~~--~~a~~--person--may petition--the--court--under--this--section--more--often--than--once every--2--years--unless--there--has--been--a--significant--change--in the--circumstances--of--the--child--the--child's--parents--or--the--guardian--of--the--child's--grandparents.

~~If~~--~~the~~--court--may--award--costs--including--reasonable

1 attorney fees to the prevailing party
2 if it is the court may appoint an attorney to represent
3 the interests of a child with respect to visitation when
4 such interests are not adequately represented by the parties
5 to the proceedings. The court shall enter an order for costs
6 and fees in favor of the child's attorney. The order must
7 be made against each of the parties to the proceeding
8 except that if any responsible party is indigent the costs
9 and fees must be waived.
10 THIS SECTION DOES NOT APPLY IF THE CHILD HAS
11 BEEN ADOPTED BY A PERSON OTHER THAN A STEPPARENT OR A
12 GRANDPARENT. VISITATION RIGHTS GRANTED UNDER THIS SECTION
13 TERMINATE UPON THE ADOPTION OF THE CHILD BY A PERSON OTHER
14 THAN A STEPPARENT OR A GRANDPARENT."

-End-

HOUSE BILL 376

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FREE CONFERENCE COMMITTEE
ON HOUSE BILL NO. 376

(Report No. 1, April 11, 1983)

MR. SPEAKER:

We, your Free Conference Committee on House Bill No. 376, met April 11, 1983 and considered;

Senate Committee on Judiciary Amendments to the third reading copy, dated March 21, 1983, and recommend as follows:

That the House accede to Committee amendments, nos 2 through 5;

That the Senate recede from Committee amendment 1;

That House Bill No. 376 be further amended as indicated in CLERICAL INSTRUCTIONS 2 and 3.

That the reference copy of House Bill No. 376 read as specified in the CLERICAL INSTRUCTIONS;

And, that the Free Conference Committee Report to House Bill No. 376 be adopted.

CLERICAL INSTRUCTIONS FOR REFERENCE COPY (SALMON)

1. Strike Senate Judiciary Committee amendment 1

2. Page 1, line 14.

Strike: "THE"

Insert: "Except as provided in (5), the"

3. Page 3, following line 9.

Insert: "(3) No person may petition the court under this section more often than once every 2 years unless there has been a significant change in the circumstances of the child; the child's parent, guardian, or custodian; or the child's grandparent.

(4) The court may appoint an attorney to represent the interests of a child with respect to visitation when such interests are not adequately represented by the parties to the proceeding."

Renumber subsequent subsections.

HOUSE BILL 376
Page 2 of 2

April 11, 1983

19.....

FOR THE HOUSE:

Kathleen McBride
REP. McBRIDE, CHAIRMAN

Dan Harrington
REP. HARRINGTON

Cal Winslow
REP. WINSLOW

FOR THE SENATE:

Tom Hager
SENATOR HAGER

Joseph J. Mazurek
SENATOR MAZUREK

Bob Brown
SENATOR BROWN

HOUSE BILL NO. 376

INTRODUCED BY MCBRIDE, WALDRON

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING--THE LAW--ON GRANDPARENT VISITATION RIGHTS GENERALLY REVISING THE LAW ON GRANDPARENT VISITATION RIGHTS TO ALLOW ALL GRANDPARENTS THE OPPORTUNITY TO SEEK VISITATION RIGHTS WITH THEIR GRANDCHILDREN; AMENDING SECTION 40-9-102, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-9-102, MCA, is amended to read:
"40-9-102. Grandparent visitation rights. (1) If the father or mother of an unmarried child is deceased, the district court may grant to the parents of the deceased person reasonable visitation rights with the child. EXCEPT AS PROVIDED IN SUBSECTION (5), THE DISTRICT COURT MAY GRANT TO A grandparent may petition the court for reasonable rights of visitation with an unmarried minor grandchild of a CHILD REASONABLE VISITATION RIGHTS.

(2) Visitation rights granted under this section may be granted only upon a finding by the court, after a hearing, that the visitation would be in the best interest of the child. THE VISITATION WOULD BE IN THE BEST INTEREST OF THE CHILD.

that such visitation would not interfere significantly

with any parent-child relationship or with the parent's rightful authority over the child; and
that such visitation would be in the best interests of the child; in making the determination concerning the child's best interests, the court shall consider all relevant factors, including but not limited to the following:
if the child has expressed his best and if the extent of personal contact between the child and the petitioner prior to the proceeding for visitation rights;
if this section does not apply if the child has been adopted by a person other than a stepparent or a grandparent. Visitation rights granted under this section terminate upon the adoption of the child by a person other than a stepparent or a grandparent. However, in committing circumstances exist where visitation granted under this section may not exceed twelve months divided among a maximum of 3 calendar days;
if the court may modify an order granting or denying visitation rights when such modification is consistent with subsection (2); and if the court may petition the court under this section more often than once every year unless there has been a significant change in the circumstances of the child or the child's parent(s).

1 guardian or custodian or the child's grandparents
2 if the court may award costs including reasonable
3 attorney fees to the prevailing party
4 if it is the court may appoint an attorney to represent
5 the interests of a child with respect to visitation when
6 such interests are not adequately represented by the parties
7 to the proceedings the court shall enter an order for costs
8 and fees in favor of the child's attorney the order must
9 be made against any or all of the parties to the proceedings
10 except that if no responsible party is indigent the costs
11 and fees must be waived

12 (3) NO PERSON MAY PETITION THE COURT UNDER THIS
13 SECTION MORE OFTEN THAN ONCE EVERY 2 YEARS UNLESS THERE HAS
14 BEEN A SIGNIFICANT CHANGE IN THE CIRCUMSTANCES OF THE CHILD:
15 THE CHILD'S PARENT, GUARDIAN, OR CUSTODIAN, OR THE CHILD'S
16 GRANDPARENT.

17 (4) THE COURT MAY APPOINT AN ATTORNEY TO REPRESENT THE
18 INTERESTS OF A CHILD WITH RESPECT TO VISITATION WHEN SUCH
19 INTERESTS ARE NOT ADEQUATELY REPRESENTED BY THE PARTIES TO
20 THE PROCEEDINGS

21 THIS SECTION DOES NOT APPLY IF THE CHILD HAS
22 BEEN ADOPTED BY A PERSON OTHER THAN A STEPPARENT OR A
23 GRANDPARENT. VISITATION RIGHTS GRANTED UNDER THIS SECTION
24 TERMINATE UPON THE ADOPTION OF THE CHILD BY A PERSON OTHER
25 THAN A STEPPARENT OR A GRANDPARENT."