

2019 Regular Session

HOUSE BILL NO. 192

BY REPRESENTATIVE ARMES

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CHILDREN/PARENTAL RIGHTS: Provides for grandparent visitation rights under certain circumstances

1 AN ACT

2 To amend and reenact Civil Code Article 136 and R.S. 9:344, relative to visitation rights;
3 to provide for grandparent visitation rights; to provide for factors of consideration
4 by the court; to provide for procedures; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. Civil Code Article 136 is hereby amended and reenacted to read as
7 follows:

8 Art. 136. Award of visitation rights

9 A. Subject to R.S. 9:341 and 364, a parent not granted custody or joint
10 custody of a child is entitled to reasonable visitation rights unless the court finds,
11 after a hearing, that visitation would not be in the best interest of the child.

12 B. A grandparent is entitled to reasonable visitation rights if the court finds
13 by clear and convincing evidence that the health or welfare of the child would be
14 harmed unless such visitation is granted and if the best interest of the child would be
15 served by such visitation. In determining whether the health or welfare of the child
16 would be harmed without such visitation, the court shall consider the following
17 factors, and if any of the following factors are present, the court may decide it is
18 reasonably likely the child will suffer emotional harm from failure to provide
19 grandparent contact:

1 (1) Whether the minor child resided with the grandparent for six months or
2 more prior to the request for visitation.

3 (2) Whether there was an established pattern of regular visitation or child
4 care provided by the grandparent.

5 (3) Any other circumstances that indicate emotional or physical harm would
6 be reasonably likely if visitation is denied.

7 ~~B.C.~~ In addition to the parents and grandparents referred to in ~~Paragraph A~~
8 Paragraphs A and B of this Article, under extraordinary circumstances, any other
9 relative, by blood or affinity, or a former stepparent or stepgrandparent ~~the following~~
10 ~~persons~~ may be granted visitation if the parents of the child are not married or
11 cohabitating with a person in the manner of married persons or if the parents of the
12 child have filed a petition for divorce: if the court finds that it is in the best interest
13 of the child. Extraordinary circumstances shall include a determination by a court
14 that a parent is abusing a controlled dangerous substance.

15 ~~(1) A grandparent if the court finds that it is in the best interest of the child.~~

16 ~~(2) Under extraordinary circumstances, any other relative, by blood or~~
17 ~~affinity, or a former stepparent or stepgrandparent if the court finds that it is in the~~
18 ~~best interest of the child. Extraordinary circumstances shall include a determination~~
19 ~~by a court that a parent is abusing a controlled dangerous substance.~~

20 ~~E.D.~~ Before making any determination under ~~Subparagraph (B)(1) or (2)~~
21 Paragraph B or C of this Article, the court shall hold a contradictory hearing as
22 provided by R.S. 9:345 in order to determine whether the court should appoint an
23 attorney to represent the child.

24 ~~D.E.~~ In determining the best interest of the child under ~~Subparagraph (B)(1)~~
25 ~~or (2)~~ Paragraph B or C of this Article, the court shall consider only the following
26 factors:

27 (1) A parent's fundamental constitutional right to make decisions concerning
28 the care, custody, and control of their own children and the traditional presumption
29 that a fit parent will act in the best interest of their children.

1 (2) The length and quality of the prior relationship between the child and the
2 relative.

3 (3) Whether the child is in need of guidance, enlightenment, or tutelage
4 which can best be provided by the relative.

5 (4) The preference of the child if he is determined to be of sufficient maturity
6 to express a preference.

7 (5) The mental and physical health of the child and the relative.

8 E.F. If the parents of a child are married and have not filed for divorce or
9 they are living in concubinage, the provisions of R.S. 9:344 shall apply.

10 Section 2. R.S. 9:344 is hereby amended and reenacted to read as follows:

11 §344. Visitation rights of ~~grandparents and siblings~~

12 ~~A. If one of the parties to a marriage dies, is interdicted, or incarcerated, and~~
13 ~~there is a minor child or children of such marriage, the parents of the deceased,~~
14 ~~interdicted, or incarcerated party without custody of such minor child or children~~
15 ~~may have reasonable visitation rights to the child or children of the marriage during~~
16 ~~their minority, if the court in its discretion finds that such visitation rights would be~~
17 ~~in the best interest of the child or children.~~

18 ~~B. When the parents of a minor child or children live in concubinage and one~~
19 ~~of the parents dies, or is incarcerated, the parents of the deceased or incarcerated~~
20 ~~party may have reasonable visitation rights to the child or children during their~~
21 ~~minority, if the court in its discretion finds that such visitation rights would be in the~~
22 ~~best interest of the child or children.~~

23 C.A. If one of the parties to a marriage dies or is incarcerated, the siblings
24 of a minor child or children of the marriage may have reasonable visitation rights to
25 such child or children during their minority if the court in its discretion finds that
26 such visitation rights would be in the best interest of the child or children.

27 D.B. If the parents of a minor child of the marriage have lived apart for a
28 period of at least six months, in extraordinary circumstances, the ~~grandparents or~~
29 siblings of the child may have reasonable visitation rights to the child during his

1 minority, if the court in its discretion finds that such visitation rights would be in the
 2 best interest of the child. In determining the best interest of the child the court shall
 3 consider the same factors contained in Civil Code Article ~~136(D)~~ 136(E).
 4 Extraordinary circumstances shall include a determination by a court that a parent
 5 is abusing a controlled dangerous substance.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 192 Original

2019 Regular Session

Armes

Abstract: Provides grandparents with visitation rights if the court finds by clear and convincing evidence that the health or welfare of the child would be harmed unless such visitation is granted and if the best interest of the child would be served by such visitation.

Present law provides for visitation rights of grandparents and siblings under certain limited circumstances.

Proposed law retains present law with respect to the visitation rights of siblings.

Present law provides that if the parents are married or are living in concubinage and one of the parents dies, is interdicted, or incarcerated, and there is a minor child or children of such marriage or relationship, the parents of the deceased, interdicted, or incarcerated party without custody of such minor child may have reasonable visitation rights to the child of the marriage during their minority, if the court in its discretion finds that such visitation rights would be in the best interest of the child.

Proposed law deletes present law and provides that a grandparent is entitled to reasonable visitation rights if the court finds by clear and convincing evidence that the health or welfare of the child would be harmed unless such visitation is granted and if the best interest of the child would be served by such visitation.

Proposed law provides the following factors in determining the effect on the health or welfare of the child:

- (1) Whether the minor child resided with the grandparent for six months or more prior to the request for visitation.
- (2) Whether there was an established pattern of regular visitation or child care provided by the grandparent.
- (3) Any other circumstances that indicate emotional or physical harm would be reasonably likely if visitation is denied.

(Amends C.C. Art. 136 and R.S. 9:344)