AN ACT PROVIDING THAT TITLE 40, CHAPTER 9, MCA, IS NOT AN EXCLUSIVE REMEDY AND A GRANDPARENT IS NOT PRECLUDED FROM SEEKING RELIEF UNDER OTHER STATUTES RELATING TO CHILD CUSTODY AND WELFARE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature recognizes that the rights of parents to the custody and control of a child are based on liberties secured by the United States and Montana constitutions and that a parent's rights to custody and control of a child are therefore normally superior to the interests of other persons; and

WHEREAS, the Legislature also recognizes the Montana Constitution affords a child the same fundamental rights as a parent, including, at a minimum, the inalienable right to a clean and healthful environment, the right to pursue life's basic necessities, the right to enjoy a safe, healthy, and happy life, and the right to basic human dignity as provided in Article II, sections 3, 4, and 15, of the Montana Constitution, and that in appropriate circumstances, a parent's rights should yield to the child's; and

WHEREAS, the Legislature recognized in 1997 the importance of a child's contact with grandparents and subsequently in 2007 with the passage of section 40-6-501, MCA, a growing phenomenon in which absent or otherwise unavailable parents have temporarily surrendered the custody and care of their children to a grandparent or other relative for lengthy periods of time; and

WHEREAS, the Legislature acknowledges that the federal Supporting Grandparents Raising Grandchildren Act (Public Law 115-196, adopted July 7, 2018) establishes an advisory council to support grandparents raising grandchildren, and the legislation further establishes a number of federal agencies having responsibilities or administering programs related to grandparents or other older relatives raising children, with particular emphasis on those impacted by the opioid epidemic; and

WHEREAS, most importantly, the Legislature acknowledges the Montana Supreme Court's recent decision in In re Parenting of L.R.S., 2018 MT 48, in which the court held that a grandparent seeking contact with a child could do so only through an action brought under Title 40, chapter 9, MCA, precluding a grandparent who met the necessary prerequisites from seeking visitation under section 40-4-228, MCA.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Purpose -- legislative intent. The legislature finds and declares that a grandparent is not precluded from seeking relief in lieu of or in addition to relief available under this chapter, including relief under Title 40, chapter 4 or 6, Title 41, chapter 3, Title 42, or Title 72, chapter 5, if the grandparent otherwise meets the necessary prerequisites of these statutes.

Section 2. Nonexclusive remedy. In addition to or in lieu of seeking reasonable rights to contact with a child under this chapter, a grandparent retains the following rights:

(1) to seek a parental interest, visitation, or parenting plan under Title 40, chapter 4;
(2) to seek authority as a caretaker relative, including authority to consent to medical care, for a child under Title 40, chapter 6;
(3) to seek custody of a child as an extended family member under Title 41, chapter 3;
(4) to seek adoption of a child under Title 42; and
(5) to seek guardianship of a child under Title 72, chapter 5.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 40, chapter 9, and the provisions of Title 40, chapter 9, apply to [sections 1 and 2].

Section 4. Effective date. [This act] is effective on passage and approval.

- END -
I hereby certify that the within bill, HB 0347, originated in the House.

________________________________________
Speaker of the House

Signed this ______________________________ day
of ________________________________, 2019.

________________________________________
Chief Clerk of the House

________________________________________
President of the Senate

Signed this ______________________________ day
of ________________________________, 2019.
AN ACT PROVIDING THAT TITLE 40, CHAPTER 9, MCA, IS NOT AN EXCLUSIVE REMEDY AND A GRANDPARENT IS NOT PRECLUDED FROM SEEKING RELIEF UNDER OTHER STATUTES RELATING TO CHILD CUSTODY AND WELFARE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.