

1 HOUSE BILL NO. 347

2 INTRODUCED BY S. GREEF, D. BEDEY, D. DUNN, P. WEBB, J. WINDY BOY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT TITLE 40, CHAPTER 9, MCA, IS NOT AN
5 EXCLUSIVE REMEDY AND A GRANDPARENT IS NOT PRECLUDED FROM SEEKING RELIEF UNDER
6 OTHER STATUTES RELATING TO CHILD CUSTODY AND WELFARE; AND PROVIDING AN IMMEDIATE
7 EFFECTIVE DATE."

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

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

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

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

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

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

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

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

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

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

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20 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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