

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 246

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO DOMESTIC RELATIONS; AMENDING SECTION 32-1013, IDAHO CODE, TO
2 PROVIDE THAT A COURT MAY NOT VIOLATE PARENTAL RIGHTS OR RESTRICT OR
3 INTERFERE WITH PARENTAL RIGHTS EXCEPT UNDER CERTAIN CIRCUMSTANCES,
4 TO PROVIDE THAT AN EMERGENCY, EXTREME EMERGENCY, EXTREME PERIL, OR
5 DISASTER DECLARATION OR ORDER SHALL NOT BE CONSIDERED A COMPELLING GOV-
6 ERNMENTAL INTEREST SUFFICIENT TO RESTRICT PARENTAL RIGHTS, TO PROVIDE
7 FOR STATUTORY CONSTRUCTION, AND TO MAKE A TECHNICAL CORRECTION; AND
8 DECLARING AN EMERGENCY.
9

10 Be It Enacted by the Legislature of the State of Idaho:

11 SECTION 1. That Section 32-1013, Idaho Code, be, and the same is hereby
12 amended to read as follows:

13 32-1013. INTERFERENCE WITH FUNDAMENTAL PARENTAL RIGHTS RE-
14 STRICTED. (1) Neither the state of Idaho, nor any political subdivision or
15 court thereof, may violate a parent's fundamental and established rights
16 protected by this act, and any restriction of or interference with such
17 rights shall not be upheld unless it demonstrates by clear and convincing
18 evidence that the restriction or interference is both:

19 (a) Essential to further a compelling governmental interest, provided
20 that at no time shall an emergency, extreme emergency, extreme peril, or
21 disaster declaration or order be considered a compelling governmental
22 interest sufficient to justify forced medical action, forced removal of
23 a child from the home, or any other action that could abridge parental
24 rights as described in this chapter; and

25 (b) The least restrictive means available for the furthering of that
26 compelling governmental interest.

27 (2) The foregoing principles apply to any interference whether now ex-
28 isting or hereafter enacted.

29 (3) Nothing in this act shall be construed as invalidating the provi-
30 sions of the child protective act in chapter 16, title 16, Idaho Code, or
31 shall modify the burden of proof at any stage of proceedings under the child
32 protective act. Nothing in this section shall be construed to modify any ex-
33 isting, or create any new, compelling governmental interest.

34 (4) When a parent's fundamental rights protected by this act are vio-
35 lated, a parent may assert that violation as a claim or defense in a judicial
36 proceeding and may obtain appropriate relief against the governmental en-
37 tity.

38 (5) If a parent prevails in a civil action against the state, or a polit-
39 ical subdivision thereof, as provided in subsection (4) of this section, the
40 parent is entitled to reasonable attorney's fees and costs.

1 SECTION 2. An emergency existing therefor, which emergency is hereby
2 declared to exist, this act shall be in full force and effect on and after its
3 passage and approval.