

IN THE SENATE

SENATE BILL NO. 1124

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO DOMESTIC RELATIONS; REPEALING SECTION 32-719, IDAHO CODE, RE-
2 LATING TO VISITATION RIGHTS OF GRANDPARENTS AND GREAT-GRANDPARENTS;
3 AND AMENDING TITLE 32, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 18,
4 TITLE 32, IDAHO CODE, TO PROVIDE LEGISLATIVE INTENT AND PURPOSE, TO DE-
5 FINE TERMS, TO ESTABLISH PROVISIONS REGARDING A PETITION FOR VISITATION
6 RIGHTS BY A GRANDPARENT OR GREAT-GRANDPARENT, TO ESTABLISH PROVISIONS
7 REGARDING BEST INTERESTS OF A CHILD, TO PROVIDE THAT A PETITION MAY NOT
8 BE FILED AND A CERTAIN ACTION OR ORDER MUST BE SUSPENDED IF A CHILD IS THE
9 SUBJECT OF A PENDING CHILD PROTECTION CASE, AND TO PROVIDE THAT AN AC-
10 TION OR ORDER MAY RESUME AT THE CLOSE OF THE CHILD PROTECTION CASE UNDER
11 CERTAIN CIRCUMSTANCES.
12

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

14 SECTION 1. That Section [32-719](#), Idaho Code, be, and the same is hereby
15 repealed.

16 SECTION 2. That Title 32, Idaho Code, be, and the same is hereby amended
17 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
18 ter 18, Title 32, Idaho Code, and to read as follows:

19 CHAPTER 18

20 VISITATION RIGHTS OF GRANDPARENTS AND GREAT-GRANDPARENTS

21 32-1801. LEGISLATIVE INTENT AND PURPOSE. It is the intent of the leg-
22 islature, in enacting this chapter, to preserve children's relationships
23 with their grandparents or great-grandparents when access to such children
24 is being unreasonably restricted or denied by a parent or both parents. The
25 purpose of this chapter is to:

26 (1) Give constitutionally required deference to the decisions of fit
27 parents in visitation actions by grandparents or great-grandparents; and

28 (2) Subject to this constitutionally required deference, provide a
29 method by which grandparents and great-grandparents may obtain visitation
30 rights when access to a child is being unreasonably restricted or denied by
31 a parent or both parents.

32 32-1802. DEFINITIONS. As used in this chapter:

33 (1) "Grandparent" means the parent or parents of a child's parent and
34 may include a person unrelated by blood to the child if that person, in the
35 opinion of the district court, played a significant parental role in the life
36 of the child's parent.

37 (2) "Great-grandparent" means the parent or parents of a child's grand-
38 parent and may include a person unrelated by blood to the child if that per-
39 son:

- 1 (a) Played a significant parental role in the life of the child's grand-
2 parent; or
3 (b) Played a significant grandparental role in the life of the child's
4 parent.
5 (3) "Parent" means a child's parent or parents by birth or adoption, or
6 by a court order establishing parentage. "Parent" may include a stepparent
7 if the stepparent, in the opinion of the district court, plays or has played a
8 significant parental role in the child's life.
9 (4) "Petition" means a petition for visitation rights filed pursuant to
10 section 32-1803, Idaho Code.
11 (5) "Petitioner" means a grandparent or great-grandparent who files a
12 petition pursuant to section 32-1803, Idaho Code.

13 32-1803. PETITION FOR VISITATION RIGHTS. (1) A child's grandparent or
14 great-grandparent may file with the district court a petition for visitation
15 rights when access to a child is being unreasonably restricted or denied by a
16 parent.

17 (2) The district court may grant a petition and issue an order estab-
18 lishing reasonable visitation rights if the court finds that such visitation
19 rights are in the best interests of the child or if a court in another state
20 has ordered visitation rights to the petitioner.

21 (3) The district court shall apply a rebuttable presumption in favor
22 of a fit parent's decision regarding visitation rights with a grandparent or
23 great-grandparent, which means that the court shall afford a fit parent's
24 decision special weight.

25 (4) A grandparent or great-grandparent can rebut the presumption in fa-
26 vor of a fit parent's decision regarding visitation only by clear and con-
27 vincing evidence that the visitation is in the best interests of the child.

28 (5) The district court may award reasonable attorney's fees to the pre-
29 vailing party or parties when the court finds that the petition was brought,
30 pursued, or defended frivolously, unreasonably, or without foundation.

31 32-1804. BEST INTERESTS OF CHILD. In determining the best interests of
32 a child, the district court shall consider all relevant factors including,
33 but not limited to:

34 (1) The love, affection, and other emotional ties existing between the
35 petitioner and the child;

36 (2) The length and quality of the relationship between the petitioner
37 and the child;

38 (3) The mental and physical health of the petitioner, the parent, and
39 the child;

40 (4) The potential detriments and benefits to the child in granting or
41 denying visitation;

42 (5) The effect that granting or denying visitation would have on the
43 child's relationship with the parent;

44 (6) The wishes and preferences of the child as to visitation, if aged
45 twelve (12) years or older;

46 (7) The motivation of the parent in denying or prohibiting visitation,
47 and the motivation of the grandparent or great-grandparent in petitioning
48 for visitation;

- 1 (8) Any history of abuse or neglect of the child; and
2 (9) Whether there has been a court-ordered termination of parental
3 rights of a parent to whom the petitioner is related.

4 32-1805. CHILD PROTECTION CASE. (1) If a child is the subject of a
5 pending child protection case:

6 (a) No new petition for visitation rights with such child may be filed
7 under this chapter;

8 (b) Any action on an existing petition concerning such child shall be
9 suspended; and

10 (c) Any order establishing visitation rights with such child shall be
11 suspended.

12 (2) If an action or order regarding visitation rights is suspended pur-
13 suant to this section, then such action or order may resume at the close of
14 the child protection case if, in the opinion of the district court, such re-
15 sumption is in the best interests of the child.