

IN THE SENATE

SENATE BILL NO. 1124, As Amended

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15 repealed.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. The purpose of this chapter
24 is to:

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

27 (2) Subject to this constitutionally required deference, provide a
28 method by which grandparents and great-grandparents may obtain visitation
29 rights with a child.

30 32-1802. DEFINITIONS. For purposes of this chapter:

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

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

38 (a) Played a significant parental role in the life of the child's grand-
39 parent; or

1 (b) Played a significant grandparental role in the life of the child's
2 parent.

3 (3) "Parent" means a child's parent or parents by birth or adoption, or
4 by a court order establishing parentage.

5 (4) "Petition" means a petition for visitation rights filed pursuant to
6 section 32-1803, Idaho Code.

7 (5) "Petitioner" means a grandparent or great-grandparent who files a
8 petition pursuant to section 32-1803, Idaho Code.

9 (6) "Visitation" means contact with a grandchild or great-grandchild,
10 whether in-person contact, phone contact, electronic mail contact, social
11 media contact, or other means of in-person or virtual contact. "Visitation"
12 does not include legal or physical custody rights over the child and does
13 not include decision-making authority over the health, safety, education,
14 or general welfare of the child.

15 32-1803. PETITION FOR VISITATION RIGHTS. (1) A child's grandparent or
16 great-grandparent may file with the district court a petition for visitation
17 rights with the child.

18 (2) The district court shall apply a rebuttable presumption in favor
19 of a fit parent's decision regarding visitation, which presumption can only
20 be overcome by clear and convincing evidence that visitation would be in the
21 best interests of the child, in accordance with the factors set forth in sec-
22 tion 32-1804, Idaho Code.

23 (3) The district court shall give the parent's decision special weight
24 when considering the parent's evidence and the petitioner's rebuttal evi-
25 dence.

26 (4) The district court shall not substitute its opinion on visitation
27 for that of a fit parent.

28 (5) The district court may grant a petition and issue an order estab-
29 lishing reasonable visitation rights if the court finds that such visitation
30 is in the best interests of the child.

31 (6) In cases where both parents have custodial time with the child, the
32 district court shall award visitation only during the scheduled custody time
33 of the parent to whom the petitioner is a parent or grandparent, as defined in
34 this chapter.

35 (7) The district court may award reasonable attorney fees to the parent
36 when the court finds that the petition was brought or pursued unreasonably,
37 frivolously, or without foundation.

38 (8) The district court shall make findings of fact and conclusions of
39 law in support of visitation awards made under this chapter.

40 32-1804. BEST INTERESTS OF CHILD. In determining whether visitation
41 would be in the best interests of a child, the district court shall consider
42 all relevant factors including, but not limited to:

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

45 (2) The length, nature, and quality of the relationship between the pe-
46 titioner and the child;

47 (3) The mental and physical health of the petitioner, the parent, and
48 the child;

- 1 (4) The potential benefits to the child in granting visitation;
2 (5) The effect that granting visitation would have on the child's rela-
3 tionship with the parent;
4 (6) The wishes and preferences of the child as to visitation, if aged
5 twelve (12) years or older;
6 (7) The motivation of the parent in denying or prohibiting visitation,
7 and the motivation of the grandparent or great-grandparent in petitioning
8 for visitation;
9 (8) The character and fitness of the petitioner;
10 (9) The relationship between the parent and the petitioner; and
11 (10) The wishes and preferences of the parent regarding visitation.

- 12 32-1805. CHILD PROTECTION CASE. (1) If a child is the subject of a
13 pending child protection case:
14 (a) No new petition for visitation rights with such child may be filed
15 under this chapter;
16 (b) Any action on an existing petition concerning such child shall be
17 suspended; and
18 (c) Any order establishing visitation rights with such child shall be
19 suspended.
20 (2) If an action or order regarding visitation rights is suspended pur-
21 suant to this section, then such action or order may resume at the close of
22 the child protection case if, in the opinion of the district court, such re-
23 sumption is in the best interests of the child.