

IN THE SENATE

SENATE BILL NO. 1322

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15 repealed.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) "Child" shall have the same meaning as provided in section 16-1602,
32 Idaho Code.

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

37 (3) "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 the dis-
39 trict court finds by clear and convincing evidence that the person:

- 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 (4) "Parent" means a child's parent or parents by birth or adoption, or
6 by a court order establishing parentage.
7 (5) "Petition" means a petition for visitation rights filed pursuant to
8 section 32-1803, Idaho Code.
9 (6) "Petitioner" means a grandparent or great-grandparent who files a
10 petition pursuant to section 32-1803, Idaho Code.
11 (7) "Visitation" means contact between a child and the child's grand-
12 parent or great-grandparent, whether in-person contact, phone contact,
13 electronic mail contact, social media contact, or other means of in-person
14 or virtual contact. "Visitation" does not include legal or physical custody
15 rights over the child and does not include decision-making authority over
16 the health, safety, education, or general welfare of the child. Visitation
17 rights under this chapter may not be used as the sole basis to further a peti-
18 tion for custody or de facto custody or guardianship over a child.

19 32-1803. PETITION FOR VISITATION RIGHTS. (1) A child's grandparent or
20 great-grandparent may file with the district court a petition for visitation
21 rights with the child.

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

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

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

33 (5) In cases of separation where both parents have custodial time with
34 the child, the district court shall award visitation only during the sched-
35 uled custody time of the parent to whom the petitioner is a parent or grand-
36 parent, as defined in this chapter.

37 (6) The district court may award reasonable attorney's fees to the par-
38 ent when the court finds that the petition was brought or pursued unreason-
39 ably, frivolously, or without foundation.

40 (7) The district court shall make findings of fact and conclusions of
41 law in support of visitation awards made under this chapter.

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

45 (1) The love, affection, and other emotional ties between the peti-
46 tioner and the child;

47 (2) The length, nature, and quality of the relationship between the pe-
48 tioner and the child;

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

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