

IN THE SENATE

SENATE BILL NO. 1414

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO GRANDPARENT VISITATION; REPEALING SECTION 32-719, IDAHO CODE,
2 RELATING TO GRANDPARENT VISITATION RIGHTS; AMENDING CHAPTER 7, TITLE
3 32, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 32-719, IDAHO CODE, TO
4 PROVIDE FOR PETITIONS FOR VISITATION WITH GRANDCHILDREN BY GRANDPAR-
5 ENTS AND GREAT-GRANDPARENTS, TO PROVIDE A REBUTTABLE PRESUMPTION RE-
6 LATING TO DECISIONS BY PARENTS REGARDING VISITATION WITH GRANDPARENTS
7 AND GREAT-GRANDPARENTS, TO PROVIDE A STANDARD OF EVIDENCE, TO PROVIDE
8 FOR FINDINGS RELATING TO THE REBUTTABLE PRESUMPTION, TO AUTHORIZE THE
9 COURT TO CONSIDER ADDITIONAL ELEMENTS, TO PROVIDE THAT THE COURT SHALL
10 CONSIDER WHETHER GRANDPARENT VISITATION IS IN THE BEST INTERESTS OF THE
11 CHILD AND TO PROVIDE FOR CONSIDERATION OF ALL RELEVANT FACTORS BY THE
12 COURT.
13

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

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16 repealed.

17 SECTION 2. That Chapter 7, Title 32, Idaho Code, be, and the same is
18 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
19 ignated as Section 32-719, Idaho Code, and to read as follows:

20 32-719. VISITATION RIGHTS OF GRANDPARENTS AND GREAT-GRANDPAR-
21 ENTS. (1) A grandparent or great-grandparent may petition the district court
22 for reasonable visitation rights with respect to his or her grandchild or
23 great-grandchild under the provisions of this section if:

24 (a) The marital relationship between the parents of the child has been
25 severed by death, divorce or legal separation;

26 (b) The grandchild's parents were not married when the child was born
27 and have not subsequently married and the petitioner is a maternal
28 grandparent of the grandchild;

29 (c) The grandchild's parents were not married when the child was born
30 and have not subsequently married; and (i) the petitioner is a paternal
31 grandparent of the grandchild; (ii) paternity has been established by a
32 court of competent jurisdiction or by acknowledgment of paternity pur-
33 suant to section 7-1106, Idaho Code; and (iii) the recision period spec-
34 ified in section 7-1106, Idaho Code, has expired; or

35 (d) A court in another state has ordered grandparent visitation to the
36 petitioner.

37 (2) There is a rebuttable presumption that a parent's decision with re-
38 gard to visitation with the petitioner is in the grandchild's best inter-
39 ests.

1 (a) The court may grant the petitioner reasonable rights of visitation
2 if the court finds that the petitioner has rebutted the presumption by
3 clear and convincing evidence upon the following:

4 (i) There is a preexisting relationship between the grandparent
5 and the grandchild that has engendered a bond such that the grand-
6 child would suffer a serious loss if visitation is not awarded;

7 (ii) The petitioner is a fit and proper person to have visitation
8 with the grandchild;

9 (iii) Visitation by the petitioner with the grandchild has been
10 denied or unreasonably limited.

11 (b) In determining whether the presumption has been rebutted under sub-
12 section (2) (a) of this section, the court may also consider as elements
13 of rebutting the presumption, if applicable, that:

14 (i) The petitioner's child, who is the parent of the grandchild,
15 has died or has lost legal and physical custodial rights by court
16 order;

17 (ii) Visitation arrangements between the petitioner and grand-
18 child were in place prior to filing of the petition;

19 (iii) The petitioner was the caregiver to the grandchild on a regu-
20 lar basis for at least six (6) consecutive months, or otherwise has
21 had a substantial relationship with the grandchild;

22 (iv) The petitioner had frequent or regular contact with the
23 grandchild for at least twelve (12) consecutive months;

24 (v) Any other facts that establish that the loss of the relation-
25 ship between the petitioner and the grandchild is likely to harm
26 the grandchild.

27 (3) If the court finds that a grandparent has met the standard for re-
28 butting the presumption, then the court shall consider whether it is in the
29 "best interests" of the child to enter an order for reasonable grandparent
30 visitation. In determining the best interests of the child the court shall
31 consider all relevant factors including, but not limited to, the following:

32 (a) The love, affection and other emotional ties existing between the
33 grandparent and the child;

34 (b) The length and quality of the prior relationship between the child
35 and the grandparent, the role performed by the petitioner and the exist-
36 ing emotional ties of the child to the petitioner;

37 (c) The mental and physical health of all parties;

38 (d) The wishes and concerns of the grandchild, if age twelve (12) years
39 or older;

40 (e) The willingness of the petitioner to encourage a close relationship
41 between the grandchild and the parent or parents of the grandchild, ex-
42 cept as to a parent found by the court to have abused or neglected the
43 grandchild;

44 (f) Any history of physical or emotional abuse or neglect, or sexual
45 abuse of any child by the parent, parents or petitioner;

46 (g) The wishes of the parent;

47 (h) Any other factor in the best interests of the grandchild.