

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 113, As Amended in the Senate

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO PARENT AND CHILD; AMENDING CHAPTER 10, TITLE 32, IDAHO CODE, BY
2 THE ADDITION OF A NEW SECTION 32-1010, IDAHO CODE, TO PROVIDE LEGISLA-
3 TIVE INTENT; AMENDING CHAPTER 10, TITLE 32, IDAHO CODE, BY THE ADDITION
4 OF A NEW SECTION 32-1011, IDAHO CODE, TO PROVIDE THE PARENTAL RIGHT TO
5 DIRECT THE CARE, CUSTODY AND CONTROL OF CHILDREN; AMENDING CHAPTER 10,
6 TITLE 32, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 32-1012, IDAHO
7 CODE, TO PROVIDE THE PARENTAL RIGHT TO DIRECT THE EDUCATION OF CHILDREN;
8 AMENDING CHAPTER 10, TITLE 32, IDAHO CODE, BY THE ADDITION OF A NEW SEC-
9 TION 32-1013, IDAHO CODE, TO RESTRICT INTERFERENCE WITH FUNDAMENTAL
10 PARENTAL RIGHTS, TO PROVIDE THAT THIS ACT SHALL NOT INVALIDATE THE CHILD
11 PROTECTIVE ACT, TO AUTHORIZE A CLAIM, DEFENSE AND APPROPRIATE RELIEF
12 AND TO PROVIDE FOR ATTORNEY'S FEES; AND PROVIDING SEVERABILITY.
13

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

15 SECTION 1. That Chapter 10, Title 32, Idaho Code, be, and the same is
16 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
17 ignated as Section 32-1010, Idaho Code, and to read as follows:

18 32-1010. INTENT OF THE LEGISLATURE -- PARENTAL RIGHTS. (1) The inter-
19 ests and role of parents in the care, custody and control of their children
20 are both implicit in the concept of ordered liberty and deeply rooted in our
21 nation's history and tradition. They are also among the unalienable rights
22 retained by the people under the ninth amendment to the constitution of the
23 United States.

24 (2) The interests of the parents includes the high duty and right to
25 nurture and direct their children's destiny, including their upbringing and
26 education.

27 (3) The state of Idaho has independent authority to protect its par-
28 ents' fundamental right to nurture and direct their children's destiny, up-
29 bringing and education.

30 (4) The protections and rights recognized in sections 32-1011 through
31 32-1013, Idaho Code, are rooted in the due process of law guaranteed pursuant
32 to section 13, article I, of the constitution of the state of Idaho.

33 (5) Governmental efforts that restrict or interfere with these funda-
34 mental rights are only permitted if that restriction or interference satis-
35 fies the strict scrutiny standard provided in section 32-1013, Idaho Code.

36 (6) Nothing in this act shall be construed as altering the established
37 presumption in favor of the constitutionality of statutes and regulations.

38 SECTION 2. That Chapter 10, Title 32, Idaho Code, be, and the same is
39 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
40 ignated as Section 32-1011, Idaho Code, and to read as follows:

1 32-1011. PARENTAL RIGHT TO THE CARE, CUSTODY AND CONTROL OF CHIL-
2 DREN. Parents who have legal custody of any minor child or children have
3 the fundamental right to make decisions concerning their care, custody and
4 control.

5 SECTION 3. That Chapter 10, Title 32, Idaho Code, be, and the same is
6 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
7 ignated as Section 32-1012, Idaho Code, and to read as follows:

8 32-1012. PARENTAL RIGHT TO DIRECT THE EDUCATION OF CHILDREN. Parents
9 who have legal custody of any minor child or children have the fundamental
10 right and duty to make decisions concerning their education, including the
11 right to cause the child to be educated in any manner authorized under sec-
12 tion 33-202, Idaho Code, and section 9, article IX, of the constitution of
13 the state of Idaho.

14 SECTION 4. That Chapter 10, Title 32, Idaho Code, be, and the same is
15 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
16 ignated as Section 32-1013, Idaho Code, and to read as follows:

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

23 (a) Essential to further a compelling governmental interest; and
24 (b) The least restrictive means available for the furthering of that
25 compelling governmental interest.

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

28 (3) Nothing in this act shall be construed as invalidating the provi-
29 sions of the child protective act in chapter 16, title 16, Idaho Code, or mod-
30 ify the burden of proof at any stage of proceedings under the child protec-
31 tive act.

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

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

39 SECTION 5. SEVERABILITY. The provisions of this act are hereby declared
40 to be severable and if any provision of this act or the application of such
41 provision to any person or circumstance is declared invalid for any reason,
42 such declaration shall not affect the validity of the remaining portions of
43 this act.