

# MAINE STATE LEGISLATURE

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of S.

L.D. 40

(Filing No. S-259)

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STATE OF MAINE  
SENATE  
116TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 34, L.D. 40, Bill, "An Act to Amend the Laws Pertaining to the Visitation Rights of Grandparents"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 19 MRSA §1003, sub-§1, as enacted by PL 1991, c. 414, is repealed and the following enacted in its place:

1. Standing to petition for visitation rights. A grandparent of a minor child may petition the court for reasonable rights of visitation or access if:

A. At least one of the child's parents or legal guardians has died;

B. There is a sufficient existing relationship between the grandparent and the child. This paragraph is repealed October 1, 1995; or

C. If a sufficient existing relationship between the grandparent and the child does not exist, a sufficient effort to establish one has been made. This paragraph is repealed October 1, 1995.

Sec. 2. 19 MRSA §1003, sub-§1-A is enacted to read:

1-A. Procedure. The following procedures apply to petitions for rights of visitation or access under subsection 1, paragraph B or C.

2 A. The grandparent must file with the petition for rights  
3 of visitation or access an affidavit alleging a sufficient  
4 existing relationship with the child, or that sufficient  
5 efforts have been made to establish a relationship with the  
6 child. When the petition and accompanying affidavit are  
7 filed with the court, the grandparent shall serve a copy of  
8 both on at least one of the parents or legal guardians of  
9 the child.

10 B. The parent or legal guardian of the child may file an  
11 affidavit in response to the grandparent's petition and  
12 accompanying affidavit. When the affidavit in response is  
13 filed with the court, the parent or legal guardian shall  
14 deliver a copy to the grandparent.

15 C. The court shall determine on the basis of the petition  
16 and the affidavit whether it is more likely than not that  
17 there is a sufficient existing relationship or, if a  
18 sufficient relationship does not exist, that a sufficient  
19 effort to establish one has been made.

20 D. If the court's determination under paragraph C is in the  
21 affirmative, the court shall hold a hearing on the  
22 grandparent's petition for reasonable rights of visitation  
23 or access and shall consider any objections the parents or  
24 legal guardians may have concerning the award of rights of  
25 visitation or access to the grandparent. The standard for  
26 the award of reasonable rights of visitation or access is  
27 provided in subsection 2.

28 This subsection is repealed October 1, 1995.

29 **Sec. 3. 19 MRSA §1003-A is enacted to read:**

30 **§1003-A. Mediation**

31 The court may refer the parties to mediation at any time  
32 after the petition is filed and may require that the parties have  
33 made a good faith effort to mediate the issue before holding a  
34 hearing. If the court finds that either party failed to make a  
35 good faith effort to mediate, the court may order the parties to  
36 submit to mediation, dismiss the action or any part of the  
37 action, render a decision or judgment by default, assess  
38 attorney's fees and costs or impose any other sanction that is  
39 appropriate in the circumstances. The court may also impose an  
40 appropriate sanction upon a party's failure without good cause to  
41 appear for mediation after receiving notice of the scheduled time  
42 for mediation.

An agreement reached by the parties through mediation on an issue must be reduced to writing, signed by the parties and presented to the court for approval as a court order.

Sec. 4. 19 MRSA §1005, as enacted by PL 1991, c. 414, is repealed.

#### FISCAL NOTE

The Judicial Department may require additional General Fund appropriations to handle the increased number of petitions and mediations in the court system related to visitation rights of grandparents. The increase in the workload and the resulting costs can not be estimated at this time.'

#### STATEMENT OF FACT

This amendment replaces the bill. It is modeled on a court decision in New York in which the court required the grandparents seeking visitation rights to show a sufficient existing relationship with the child before the court granted visitation rights regarding a child living in an intact family.

Current law allows a grandparent to seek reasonable rights of visitation or access when one of the child's parents or guardians is deceased. This amendment expands the situations in which a grandparent can seek visitation or access rights. It allows a grandparent to petition the court for a hearing on the award of rights of visitation or access even when a parent or guardian has not died. The grandparent must file with the petition an affidavit alleging either of the following fact situations: that there is a sufficient existing relationship between the grandparent and the child; or if there is not a sufficient existing relationship, that sufficient efforts have been made to establish one. The parents are then given an opportunity to respond by affidavit. On the basis of the petition and the affidavit, the court must then determine whether it is more likely than not that a sufficient existing relationship exists or that a sufficient effort to establish one has been made.

If the court determines that it is more likely than not that such a relationship exists or that such efforts have been made, the hearing on the petition can proceed. The determination of whether rights of visitation or access should be granted must be made using the existing standard: The visitation or access rights must be in the best interest of the child and may not.

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2 significantly interfere with any parent-child relationship or  
with the parent's rightful authority over the child.

4 The expanded circumstances for rights of visitation and  
access are repealed on October 1, 1995.

6 This amendment repeals the sunset on the existing  
8 grandparents visitation rights law, due to take effect July 31,  
1994.

10 The current provision allowing the court to award costs and  
12 attorney's fees in appropriate circumstances remains unchanged.

14 This amendment gives the court the option of referring the  
parties to mediation at any time. The mediation language is  
16 modeled on the mediation requirements in the divorce laws.

18 The amendment also a fiscal note to the bill.

Reported by Senator Conley for the Committee on Judiciary.  
Reproduced and Distributed Pursuant to Senate Rule 12.  
(6/2/93) (Filing No. S-259)