

# MAINE STATE LEGISLATURE

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# 124th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2010

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Legislative Document

No. 1624

H.P. 1152

House of Representatives, December 23, 2009

### **An Act To Ensure Rights to Children for Caretaker Relatives**

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 21, 2009. Referred to the Committee on Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative PERRY of Calais.

Cosponsored by Representatives: HASKELL of Portland, SIROIS of Turner.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 18-A MRSA §9-308, sub-§(e)**, as amended by PL 2001, c. 696, §9, is  
3 further amended to read:

4 (e). The department shall notify the ~~grandparents~~ relative of a child when the child  
5 is placed for adoption if the department has received notice that the ~~grandparents were~~  
6 relative was granted reasonable rights of visitation or access under Title 19-A, chapter 59  
7 or Title 22, section 4005-E.

8 **Sec. 2. 19-A MRSA §1801**, as enacted by PL 1995, c. 694, Pt. B, §2 and affected  
9 by Pt. E, §2, is amended to read:

10 **§1801. Short title**

11 This chapter is known and may be cited as the "~~Grandparents~~ Relatives Visitation  
12 Act."

13 **Sec. 3. 19-A MRSA §1802**, is enacted by PL 1995, c. 694, Pt. B, §2 and affected  
14 by Pt. E, §2, is amended to read:

15 **§1802. Definitions**

16 As used in this chapter, unless the context otherwise indicates, the following terms  
17 have the following meanings.

18 **1. Grandparent.** "~~Grandparent~~ is means a biological or adoptive parent of a child's  
19 biological or adoptive parent or the spouse of a biological or adoptive parent of a child's  
20 biological or adoptive parent. "~~Grandparent~~ includes a biological or adoptive parent of a  
21 child's biological or adoptive parent whose parental rights have been terminated pursuant  
22 to Title 18-A, section 9-204 or Title 22, chapter 1071, subchapter VI, but only until the  
23 child's adoption.

24 **2. Aunt.** "Aunt" means a biological or adoptive sister of a child's biological or  
25 adoptive parent or the spouse of a biological or adoptive brother of a child's biological or  
26 adoptive parent.

27 **3. Relative.** "Relative" means a grandparent, an aunt, an uncle or a sibling.  
28 "Relative" includes a grandparent, aunt, uncle or sibling who is related to a child's  
29 biological or adoptive parent whose parental rights have been terminated pursuant to Title  
30 18-A, section 9-204 or Title 22, chapter 1071, subchapter 6, but only until the child's  
31 adoption.

32 **4. Sibling.** "Sibling" means a biological or adoptive brother or sister of a child.

33 **5. Uncle.** "Uncle" means a biological or adoptive brother of a child's biological or  
34 adoptive parent or the spouse of a biological or adoptive sister of a child's biological or  
35 adoptive parent.

1           **Sec. 4. 19-A MRSA §1803**, as amended by PL 2007, c. 513, §4, is further  
2 amended to read:

3           **§1803. Petition**

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

- 6           A. At least one of the child's parents or legal guardians has died;  
7           B. There is a sufficient existing relationship between the grandparent relative and  
8 the child; or  
9           C. When a sufficient existing relationship between the grandparent relative and the  
10 child does not exist, a sufficient effort to establish one has been made.

11           **1-A. Sufficient existing relationship; presumption.** For purposes of this section, a  
12 sufficient existing relationship is presumed to exist between a child and a relative if the  
13 child has been intentionally left, without good cause, in the sole financial care and  
14 physical custody of that relative for 18 months or longer. The active military service of a  
15 parent constitutes good cause under this subsection.

16           **2. Procedure.** The following procedures apply to petitions for rights of visitation or  
17 access under subsection 1, paragraph B or C.

18           A. The grandparent relative must file with the petition for rights of visitation or  
19 access an affidavit alleging a sufficient existing relationship with the child, or that  
20 sufficient efforts have been made to establish a relationship with the child. When the  
21 petition and accompanying affidavit are filed with the court, the grandparent relative  
22 shall serve a copy of both on at least one of the parents or legal guardians of the child.

23           B. The parent or legal guardian of the child may file an affidavit in response to the  
24 grandparent's relative's petition and accompanying affidavit. When the affidavit in  
25 response is filed with the court, the parent or legal guardian shall deliver a copy to the  
26 grandparent relative.

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

30           D. If the court's determination under paragraph C is in the affirmative, the court  
31 may appoint a guardian ad litem as provided in section 1507. The court shall hold a  
32 hearing on the grandparent's relative's petition for reasonable rights of visitation or  
33 access and shall consider any objections the parents or legal guardians may have  
34 concerning the award of rights of visitation or access to the grandparent relative. If  
35 the court has appointed a guardian ad litem, the court shall also consider the report of  
36 the guardian ad litem. The standard for the award of reasonable rights of visitation or  
37 access is provided in subsection 3.

38           **3. Best interest of the child.** The court may grant a grandparent relative reasonable  
39 rights of visitation or access to a minor child upon finding that rights of visitation or  
40 access are in the best interest of the child and would not significantly interfere with any

1 parent-child relationship or with the parent's rightful authority over the child. In applying  
2 this standard, the court shall consider the following factors:

- 3 A. The age of the child;
- 4 B. The relationship of the child with the child's grandparents relative, including the  
5 amount of previous contact;
- 6 C. The preference of the child, if old enough to express a meaningful preference;
- 7 D. The duration and adequacy of the child's current living arrangements and the  
8 desirability of maintaining continuity;
- 9 E. The stability of any proposed living arrangements for the child;
- 10 F. The motivation of the parties involved and their capacities to give the child love,  
11 affection and guidance;
- 12 G. The child's adjustment to the child's present home, school and community;
- 13 H. The capacity of the parent and grandparent relative to cooperate or to learn to  
14 cooperate in child care;
- 15 I. Methods of assisting cooperation and resolving disputes and each person's  
16 willingness to use those methods;
- 17 J. Any other factor having a reasonable bearing on the physical and psychological  
18 well-being of the child; and
- 19 K. The existence of a grandparent's relative's conviction for a sex offense or a  
20 sexually violent offense as those terms are defined in Title 34-A, section 11203.

21 **4. Modification or termination.** The court may modify or terminate any rights  
22 granted under this section as circumstances require. Modification or termination of rights  
23 must be consistent with this section.

24 **5. Enforcement.** The court may issue any orders necessary to enforce orders issued  
25 under this section or to protect the rights of parties.

26 **7. Supervision required; convictions for sexual offenses.** Notwithstanding any  
27 other provision of this chapter, the court may award a grandparent relative who is  
28 convicted of a child-related sexual offense visitation with a minor grandchild child only if  
29 the court finds that contact between the grandparent relative and the child is in the best  
30 interest of the child and that adequate provision for the safety of the child can be made.  
31 For purposes of this section, "child-related sexual offense" has the same meaning as in  
32 section 1653, subsection 6-A.

33 The court may require that visitation may occur only if there is another person or agency  
34 present to supervise visitation. If the court allows a family or household member to  
35 supervise grandparent-child relative-child contact, the court shall establish conditions to  
36 be followed during that contact. Conditions include, but are not limited to, those that:

- 37 A. Minimize circumstances when the family of the grandparent relative who is a  
38 sex offender or sexually violent predator would be supervising visits;

1 B. Ensure the safety and well-being of the child; and

2 C. Require that supervision be provided by a person who is physically and mentally  
3 capable of supervising a visit and who does not have a criminal history or history of  
4 abuse or neglect.

5 **8. Conviction or adjudication for certain sex offenses; presumption.** There is a  
6 rebuttable presumption that the grandparent relative would create a situation of jeopardy  
7 for the child if any contact were to be permitted and that contact is not in the best interest  
8 of the child if the court finds that the grandparent relative:

9 A. Has been convicted of an offense listed in section 1653, subsection 6-A,  
10 paragraph A in which the victim was a minor at the time of the offense and the  
11 grandparent relative was at least 5 years older than the minor at the time of the  
12 offense except that, if the offense was gross sexual assault under Title 17-A, section  
13 253, subsection 1, paragraph B or C, or an offense in another jurisdiction that  
14 involves conduct that is substantially similar to that contained in Title 17-A, section  
15 253, subsection 1, paragraph B or C, and the minor victim submitted as a result of  
16 compulsion, the presumption applies regardless of the ages of the grandparent  
17 relative and the minor victim at the time of the offense; or

18 B. Has been adjudicated in an action under Title 22, chapter 1071 of sexually  
19 abusing a person who was a minor at the time of the abuse.

20 The grandparent relative seeking contact with the child may present evidence to rebut the  
21 presumption.

22 **Sec. 5. Maine Revised Statutes headnote amended; revision clause.** In the  
23 Maine Revised Statutes, Title 19-A, chapter 59, in the chapter headnote, the words  
24 "visitation rights of grandparents" are amended to read "visitation rights of relatives" and  
25 the Revisor of Statutes shall implement this revision when updating, publishing or  
26 republishing the statutes.

27 **SUMMARY**

28 Current law authorizes grandparents to petition for visitation rights to their  
29 grandchildren under certain specified conditions. This bill extends the laws governing  
30 grandparent visitation to apply to aunts, uncles, spouses of aunts and uncles, siblings and  
31 spouses of grandparents. This bill also establishes a presumption that a sufficient existing  
32 relationship exists between a child and a relative if the child has been left in the care and  
33 custody of the relative for 18 months or more.