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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 661 Session of  
2005

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INTRODUCED BY ORIE, BOSCOLA, TARTAGLIONE, ERICKSON, LEMMOND AND  
KITCHEN, APRIL 29, 2005

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REFERRED TO JUDICIARY, APRIL 29, 2005

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AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania  
2 Consolidated Statutes, further providing for declaration of  
3 policy and for when parent deceased; providing for notice to  
4 grandparent; further providing for exception for adopted  
5 children; and making repeals.

6 The General Assembly of the Commonwealth of Pennsylvania  
7 hereby enacts as follows:

8 Section 1. Sections 5301 and 5311 of Title 23 of the  
9 Pennsylvania Consolidated Statutes are amended to read:

10 § 5301. Declaration of policy.

11 The General Assembly declares that it is the public policy of  
12 this Commonwealth, when in the best interest of the child, to  
13 assure a reasonable and continuing contact of the child with  
14 both parents after a separation or dissolution of the marriage  
15 and the sharing of the rights and responsibilities of child  
16 rearing by both parents and continuing contact of the child or  
17 children with grandparents when [a parent is deceased, divorced  
18 or separated] continuing contact is in the best interest of the  
19 child and it does not adversely affect the parent-child

1 relationship.

2 § 5311. [When parent deceased] Grandparent.

3 [If a parent of an unmarried child is deceased, the parents  
4 or grandparents of the deceased parent]

5 (a) General rule.--A grandparent may be granted reasonable  
6 partial custody or visitation rights, or both, to [the] an  
7 unmarried minor child by the court upon a finding that partial  
8 custody or visitation rights, or both, would be in the best  
9 interest of the child and would not interfere with the parent-  
10 child relationship. The court shall consider [the amount of  
11 personal contact between the parents or grandparents of the  
12 deceased parent and the child prior to the application.] all of  
13 the following special factors in making an order concerning a  
14 grandparent's partial custody or visitation rights, or both, to  
15 the unmarried minor child:

16 (1) Whether the grandparent is a fit and proper person  
17 to have partial custody or visitation rights, or both.

18 (2) Whether the grandparent has established ongoing  
19 personal contact with the unmarried minor child or has  
20 repeatedly made attempts to establish ongoing personal  
21 contact with the unmarried minor child for at least 90 days  
22 immediately prior to the application and was not permitted to  
23 establish ongoing personal contact with the child as a result  
24 of the direct action of one or both of the parents.

25 (3) Whether the partial custody or visitation rights, or  
26 both, would interfere with any parent-child relationship or  
27 with a parent's authority over the unmarried minor child.

28 (4) Whether there is reasonable cause to believe that  
29 the unmarried minor child's physical and emotional health  
30 would be endangered by partial custody or visitation rights,

1 or both, or the lack of these rights.

2 (5) The nature of the relationship between the  
3 grandparent and the parent of the unmarried minor child  
4 including any friction between the grandparent and the parent  
5 and the effect any friction would have on the unmarried minor  
6 child.

7 (6) The recommendation regarding partial custody or  
8 visitation rights, or both, by any guardian ad litem  
9 appointed for the unmarried minor child.

10 (7) Whether there is an alternative to allow the  
11 grandparent to visit the unmarried minor child on an ongoing  
12 basis.

13 (8) Whether the grandparent by clear and convincing  
14 evidence has successfully rebutted the presumption that the  
15 parent's decision to refuse the partial custody or visitation  
16 rights, or both, was reasonable.

17 (9) Any preferences or wishes expressed by the unmarried  
18 minor child.

19 (10) Whether the grandparent has made substantial  
20 efforts at repairing any breach in the relations between the  
21 parent and the grandparent.

22 (11) Whether the parent has denied partial custody or  
23 visitation rights, or both, with finality.

24 (12) Any other factors the court may find appropriate or  
25 relevant to the petition for partial custody or visitation  
26 rights, or both.

27 (b) Expedited resolution of petition.--The court shall  
28 establish a procedure for early, expedited and meaningful  
29 resolution of petitions for visitation rights or partial custody  
30 filed by a grandparent.

1     (c) Interference prohibited.--A parent shall not interfere  
2 with partial custody or visitation rights, or both, granted by  
3 the court to the grandparent.

4     (d) Modification of order.--Whenever it is in the best  
5 interest of the unmarried minor child, the court may modify an  
6 order granting or denying partial custody or visitation rights,  
7 or both, to the grandparent.

8     (e) Burden of proof.--Grandparents shall have the burden of  
9 proving by clear and convincing evidence that partial custody or  
10 visitation rights, or both, are in the best interest of the  
11 unmarried minor child under the special factors set forth in  
12 subsection (a).

13     Section 2. Title 23 is amended by adding a section to read:  
14 § 5311.1. Notice to grandparent.

15     (a) General rule.--Upon presentation of a petition prepared  
16 pursuant to section 2701 (relating to contents of petition for  
17 adoption), the court shall provide notice to the grandparent  
18 having partial custody or visitation rights, or both, under  
19 section 5311 (relating to grandparent).

20     (b) Contents of notice.--The notice to the grandparent shall  
21 be in the following form:

22         To: (insert grandparent's name)

23         A petition has been filed with the court requesting the  
24 adoption of your grandchild (insert grandchild's name) by  
25 (insert petitioner's name). The court has set a hearing  
26 to consider the adoption. The hearing will be held  
27 (insert place, giving reference to exact room and  
28 building number or designation) on (insert date) at  
29 (insert time). If the court should decide to allow this  
30 adoption, any partial custody or visitation rights you

1        might have pursuant to 23 Pa.C.S. § 5311 (relating to  
2        grandparent) may be terminated.

3        Section 3. Section 5314 of Title 23 is amended to read:

4        § 5314. [Exception for adopted children.

5        Sections 5311 (relating to when parent deceased), 5312  
6        (relating to when parents' marriage is dissolved or parents are  
7        separated) and 5313 (relating to when child has resided with  
8        grandparents) shall not apply if the child has been adopted by a  
9        person other than a stepparent or grandparent. Any visitation  
10       rights granted pursuant to this section prior to the adoption of  
11       the child shall be automatically terminated upon such adoption.]

12       Exceptions.

13       (a) Circumstances enumerated.--Section 5311 (relating to  
14       grandparent) shall not apply in any one or more of the following  
15       circumstances:

16                (1) The paternity of the putative father has not been  
17                legally established and the putative father's parents are the  
18                petitioners.

19                (2) Legal custody has been voluntarily surrendered by  
20                the parent except for a surrender to a county children and  
21                youth agency or child protective services agency.

22                (3) The unmarried minor child who is the subject of the  
23                grandparent's application has been previously adopted by an  
24                individual not related to the biological grandparent of the  
25                unmarried minor child.

26        (b) Termination of rights upon adoption.--Any partial  
27        custody or visitation rights, or both, granted under section  
28        5311 prior to adoption of the unmarried minor child shall be  
29        automatically terminated upon the adoption.

30        Section 4. Sections 5312 and 5313 of Title 23 are repealed.

1       Section 5.   This act shall take effect in 60 days.