

**Unofficial Draft Copy**

As of: August 10, 2006 (2:01pm)

LCCF06

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the Children, Families, Health, and Human Services  
Interim Committee

A Bill for an Act entitled: "An Act clarifying the right of a grandparent to have contact with a grandchild in light of decisions by the U.S. Supreme Court and the Montana Supreme Court; requiring that a custodial parent who objects to grandparent-grandchild contact must be shown to be an unfit parent before a petition for grandparent-grandchild contact may be granted by a district court; and providing an applicability date."

WHEREAS, both the U.S. Supreme Court and the Montana Supreme Court have held that a parent's right to the custody, care, and control of a child is founded upon a parents right to liberty protected by the due process clauses of the federal or state constitution and also held that it is the constitutionally-protected right of a fit parent to determine who a child may or may not associate with, including a grandparent of the child; and

WHEREAS, the Montana grandparent-grandchild contact statute, 40-9-102, MCA, is misleading to grandparents in that the statute implies that a grandparent may petition a district court to award, and the court may grant, grandparent-grandchild contact without consideration of the wishes of a custodial parent and without consideration of the fitness of the parent; and

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WHEREAS, the Legislature believes that a grandparent must have a clear understanding of the grandparent's right to contact with a grandchild pursuant to an order of the district court in light of federal and state Supreme Court decisions and that that right should be clearly reflected in state statutes; and

WHEREAS, it is therefore the purpose of the legislature to make the Montana grandparent-grandchild contact statute reflect the constitutionally-protected right of a parent to determine who a child may or may not have contact with by providing, as reflected in the U.S. Supreme Court opinion in *Troxel v. Granville* and Montana Supreme Court opinion in *Polasek v. Omura*, that before a court may grant grandparent-grandchild contact over the objection of a custodial parent, the court must inquire into the fitness of the parent and approve the petition for contact only if the parent is unfit and the contact is in the best interest of the child.

Be it enacted by the Legislature of the State of Montana:

**Section 1.** Section 40-9-102, MCA, is amended to read:

**"40-9-102. Grandparent-grandchild contact.** (1) Except as provided in subsection (5), and as provided in this section, the district court may grant to a grandparent of a child reasonable rights to contact with the child, including but not limited to rights regarding a child who is the subject of, or as to whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title. The department of public

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health and human services must be given notice of a petition for grandparent-grandchild contact regarding a child who is the subject of, or as to whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title.

(2) (a) Grandparent-grandchild contact granted under this section over the objections of a custodial parent may be granted only upon a finding by the court, after a hearing and based upon clear and convincing evidence, that the objecting parent is an unfit parent and that the contact would be in the best interest of the child.

(b) An unfit parent, as used in subsection (2) (a), is a parent who has committed child abuse or neglect, as defined in 41-3-102.

(3) A person may not petition the court under this section more often than once every 2 years unless there has been a significant change in the circumstances of:

- (a) the child;
- (b) the child's parent, guardian, or custodian; or
- (c) the child's grandparent.

(4) The court may appoint an attorney to represent the interests of a child with respect to grandparent-grandchild contact when the interests are not adequately represented by the parties to the proceeding.

(5) This section does not apply if the child has been adopted by a person other than a stepparent or a grandparent. Grandparent-grandchild contact granted under this section terminates upon the adoption of the child by a person other than

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a stepparent or a grandparent."

{*Internal References to 40-9-102:*

x40-9-101            x40-9-101            x40-9-101 }

NEW SECTION.    **Section 2. Applicability.** [This act] applies to a petition for grandparent-grandchild contact filed in accordance with 40-9-101 after October 1, 2007.

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