

1 A bill to be entitled
2 An act relating to temporary and concurrent custody of a
3 child; revising ch. 751, F.S., relating to petitions and
4 court orders awarding the temporary custody of a child to
5 an extended family member, to also provide for concurrent
6 custody with the parents of the child; amending s. 751.01,
7 F.S.; conforming provisions to changes made by the act;
8 amending s. 751.011, F.S.; revising definitions; defining
9 the term "concurrent custody"; amending s. 751.02, F.S.;
10 providing requirements for concurrent custody; amending s.
11 751.03, F.S.; revising the petition for concurrent custody
12 to require additional information; amending s. 751.04,
13 F.S.; conforming provisions to changes made by the act;
14 amending s. 751.05, F.S.; providing that if a parent
15 objects to a petition for concurrent custody, the court
16 may not grant the petition and must give the petitioner
17 the option of converting the petition to one for temporary
18 custody; providing for dismissal of the petition;
19 providing that an order granting concurrent custody does
20 not affect the ability of the parents to obtain the
21 physical custody of the child at any time; providing for
22 the court to terminate an order for concurrent custody if
23 a parent withdraws his or her consent to the order;
24 amending s. 49.011, F.S.; conforming provisions to changes
25 made by the act; providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:
28

29 Section 1. Section 751.01, Florida Statutes, is amended to
 30 read:

31 751.01 Purpose of act.--The purposes of this chapter ~~ss.~~
 32 ~~751.01-751.05~~ are to:

33 (1) Recognize that many minor children in this state live
 34 with and are well cared for by members of their extended
 35 families. The parents of these children have often provided for
 36 their care by placing them temporarily with another family
 37 member who is better able to care for them. Because of the care
 38 being provided the children by their extended families, they are
 39 not dependent children.

40 (2) Provide for the welfare of a minor child who is living
 41 with extended family members. At present, such family members
 42 are unable to give complete care to the child in their custody
 43 because they lack a legal document that explains and defines
 44 their relationship to the child, and they are unable effectively
 45 to consent to the care of the child by third parties.

46 (3) Provide temporary or concurrent custody of a minor
 47 child to a family member having physical custody of the minor
 48 child to enable the custodian to:

49 (a) Consent to all necessary and reasonable medical and
 50 dental care for the child, including nonemergency surgery and
 51 psychiatric care. ~~†~~

52 (b) Secure copies of the child's records, held by third
 53 parties, that are necessary for ~~to~~ the care of the child,
 54 including, but not limited to:

- 55 1. Medical, dental, and psychiatric records. ~~†~~
- 56 2. Birth certificates and other records. ~~†~~ ~~and~~

57 | 3. Educational records.~~†~~

58 | (c) Enroll the child in school and grant or withhold
59 | consent for a child to be tested or placed in special school
60 | programs, including exceptional education.~~†~~ ~~and~~

61 | (d) Do all other things necessary for the care of the
62 | child.

63 | Section 2. Section 751.011, Florida Statutes, is amended
64 | to read:

65 | 751.011 Definitions.--As used in this chapter ~~ss. 751.01-~~
66 | ~~751.05~~, the term:

67 | (1) "Concurrent custody" means that an eligible individual
68 | is awarded custodial rights to care for a child concurrently
69 | with the child's parent or parents.

70 | (2) "Extended family member" means a ~~is any~~ person who is:
71 | (a) ~~(1)~~ A relative of a minor child within the third degree
72 | by blood or marriage to the parent; or

73 | (b) ~~(2)~~ The stepparent of a minor child if the stepparent
74 | is currently married to the parent of the child and is not a
75 | party in a pending dissolution, separate maintenance, domestic
76 | violence, or other civil or criminal proceeding in any court of
77 | competent jurisdiction involving one or both of the child's
78 | parents as an adverse party.

79 | Section 3. Section 751.02, Florida Statutes, is amended to
80 | read:

81 | 751.02 ~~Determination of~~ Temporary or concurrent custody
82 | proceedings; jurisdiction.--

83 | (1) The following individuals may bring proceedings in the
84 | circuit court to determine the temporary or concurrent custody

85 of a minor child:

86 (a)~~(1)~~ Any extended family member who has the signed,
87 notarized consent of the child's legal parents; or

88 (b)~~(2)~~ Any extended family member who is caring full time
89 for the child in the role of a substitute parent and with whom
90 the child is presently living.

91 (2) In addition to the requirements of subsection (1), an
92 individual seeking concurrent custody must:

93 (a) Currently have physical custody of the child and have
94 had physical custody of the child for at least 10 days in any
95 30-day period within the last 12 months; and

96 (b) Not have signed, written documentation from a parent
97 which is sufficient to enable the custodian to do all of the
98 things necessary to care for the child which are available to
99 custodians who have an order issued under s. 751.05.

100 Section 4. Section 751.03, Florida Statutes, is amended to
101 read:

102 751.03 Petition for temporary or concurrent custody;
103 contents.--Each petition for temporary or concurrent custody of
104 a minor child must be verified by the petitioner, who must be an
105 extended family member, and must contain statements, to the best
106 of the petitioner's knowledge and belief, providing ~~showing~~:

107 (1) The name, date of birth, and current address of the
108 child.~~†~~

109 (2) The names and current addresses of the child's
110 parents.~~†~~

111 (3) The names and current addresses of the persons with
112 whom the child has lived during the past 5 years.~~†~~

113 (4) The places where the child has lived during the past 5
 114 years.~~†~~

115 (5) Information concerning any custody proceeding in this
 116 or any other state with respect to the child.~~†~~

117 (6) The residence and post office address of the
 118 petitioner.~~†~~

119 (7) The petitioner's relationship to the child.~~†~~

120 (8) If concurrent custody is being requested:

121 (a) The time periods during the last 12 months that the
 122 child resided with the petitioner;

123 (b) The type of document, if any, provided by the parent
 124 or parents to enable the petitioner to act on behalf of the
 125 child;

126 (c) The services or actions that the petitioner is unable
 127 to obtain or undertake without an order of custody; and

128 (d) Whether each parent has consented in writing to the
 129 entry of an order of concurrent custody.

130
 131 A copy of the written consent and any documents provided by the
 132 parent to assist the petitioner in obtaining services must be
 133 attached to the petition.

134 (9)~~(8)~~ If temporary custody is being requested, the
 135 consent of the child's parents, or the specific acts or
 136 omissions of the parents which demonstrate that the parents have
 137 abused, abandoned, or neglected the child as defined in chapter
 138 39.~~†~~

139 (10)~~(9)~~ Any temporary or permanent orders for child
 140 support, the court entering the order, and the case number.~~†~~

141 ~~(11)-(10)~~ Any temporary or permanent order for protection
 142 entered on behalf of or against either parent, the petitioner,
 143 or the child; the court entering the order; and the case
 144 number. ~~.~~

145 ~~(12)-(11)~~ That it is in the best interest of the child for
 146 the petitioner to have custody of the child. ~~;~~ ~~and~~

147 ~~(13)-(12)~~ A statement of the period of time the petitioner
 148 is requesting temporary custody, including a statement of the
 149 reasons supporting that request.

150

151 ~~Only an extended family member may file a petition under this~~
 152 ~~chapter.~~

153 Section 5. Section 751.04, Florida Statutes, is amended to
 154 read:

155 751.04 Notice and opportunity to be heard.--Before a
 156 decree is made under this chapter ss. 751.01-751.05, reasonable
 157 notice and opportunity to be heard must be given to the parents
 158 of the minor child by service of process, either personal or
 159 constructive.

160 Section 6. Section 751.05, Florida Statutes, is amended to
 161 read:

162 751.05 Order granting temporary or concurrent custody.--

163 (1) At the hearing on the petition for temporary or
 164 concurrent custody, the court must hear the evidence concerning
 165 a minor child's need for care by the petitioner, all other
 166 matters required to be set forth in the petition, and the
 167 objections or other testimony of the child's parents, if
 168 present.

169 (2) Unless the minor child's parents object, the court
 170 shall award ~~the~~ temporary or concurrent custody of the child to
 171 the petitioner if ~~when~~ it is in the best interest of the child
 172 ~~to do so.~~

173 (3) If one of the minor child's parents objects to:

174 (a) The petition for concurrent custody, in writing, the
 175 court may not grant the petition even if the other parent
 176 consents, in writing, to the entry of the order. The court shall
 177 give the petitioner the option of converting the petition to a
 178 petition for temporary custody. If the petitioner so elects, the
 179 court shall set the matter for further hearing, provide notice
 180 to the parent or parents, and proceed pursuant to paragraph (b).
 181 If the petition is not converted into a petition for temporary
 182 custody, it shall be dismissed without prejudice.

183 (b) The petition for temporary custody ~~granting of~~
 184 ~~temporary custody to the petitioner,~~ the court shall grant the
 185 petition only upon a finding, by clear and convincing evidence,
 186 that the child's parent or parents are unfit to provide for the
 187 care and control of the child. In determining that a parent is
 188 unfit, the court must find that the parent has abused,
 189 abandoned, or neglected the child, as defined in chapter 39.

190 (4) The order granting:

191 (a) Concurrent custody of the minor child may not
 192 eliminate or diminish the custodial rights of the child's parent
 193 or parents. The order must expressly state that the grant of
 194 custody does not affect the ability of the child's parent or
 195 parents to obtain physical custody of the child at any time.

196 (b) Temporary custody of the minor child to the petitioner

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197 may also grant visitation rights to the child's parent or
198 parents, if it is in the best interest of the child ~~to do so~~.

199 (5) ~~(a)~~ The order granting temporary or concurrent custody
200 of the minor child to the petitioner:

201 (a) May not include an order for the support of the child
202 unless the parent has received personal or substituted service
203 of process, the petition requests an order for the support of
204 the child, and there is evidence of the parent's ability to pay
205 the support ordered.

206 (b) ~~The order granting temporary custody~~ May redirect all
207 or part of an existing child support obligation to be paid to
208 the extended family member who is granted temporary or
209 concurrent custody of the child. If the court redirects an
210 existing child support obligation, the order granting temporary
211 or concurrent custody must include, if possible, the
212 determination of arrearages owed to the obligee and the person
213 awarded temporary or concurrent custody and must order payment
214 of the arrearages. The clerk of the circuit court in which the
215 ~~temporary custody~~ order is entered shall transmit a certified
216 copy ~~thereof~~ to the court originally entering the child support
217 order. The temporary or concurrent custody order shall be
218 recorded and filed in the original action in which child support
219 was determined and become a part thereof. A copy of the
220 temporary or concurrent custody order shall also be filed with
221 the depository that serves as the official recordkeeper for
222 support payments due under the support order. The depository
223 must ~~shall~~ maintain separate accounts and separate account
224 numbers for individual obligees.

225 (6) At any time, either or both of the child's parents may
 226 petition the court to modify or terminate the order granting
 227 temporary custody. The court shall terminate the order upon a
 228 finding that the parent is a fit parent, or by consent of the
 229 parties. The court may modify an order granting temporary
 230 custody if the parties consent or if modification is in the best
 231 interest of the child.

232 (7) At any time, the petitioner or either or both of the
 233 child's parents may move the court to modify the child support
 234 provision or terminate the order granting concurrent custody.
 235 The court shall terminate the order upon a finding that either
 236 or both of the child's parents object to the order. The fact
 237 that an order for concurrent custody has been terminated does
 238 not preclude any person who is otherwise eligible to petition
 239 for temporary custody from filing such petition. The court may
 240 modify an order granting child support if the parties consent
 241 and if modification is in the best interest of the child.

242 Section 7. Subsection (14) of section 49.011, Florida
 243 Statutes, is amended to read:

244 49.011 Service of process by publication; cases in which
 245 allowed.--Service of process by publication may be made in any
 246 court on any party identified in s. 49.021 in any action or
 247 proceeding:

248 (14) For temporary custody of a minor child, under chapter
 249 751 ~~ss. 751.01-751.05~~.

250 Section 8. This act shall take effect July 1, 2010.