

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 either or both parents object to the order; providing for
24 filing for temporary custody if an order for concurrent
25 custody has been terminated; providing for the court to
26 modify an existing child support order; amending s.
27 49.011, F.S.; conforming provisions to changes made by the
28 act; providing an effective date.

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Be It Enacted by the Legislature of the State of Florida:

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

751.01 Purpose of act.—The purposes of this chapter ~~ss. 751.01–751.05~~ are to:

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

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

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

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

(b) Secure copies of the child's records, held by third parties, that are necessary for ~~to~~ the care of the child,

57 including, but not limited to:

- 58 1. Medical, dental, and psychiatric records.~~†~~
- 59 2. Birth certificates and other records.~~†~~~~and~~
- 60 3. Educational records.~~†~~

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

64 (d) Do all other things necessary for the care of the
 65 child.

66 Section 2. Section 751.011, Florida Statutes, is amended
 67 to read:

68 751.011 Definitions.—As used in this chapter ~~ss. 751.01~~
 69 ~~751.05~~, the term:

70 (1) "Concurrent custody" means that an eligible extended
 71 family member is awarded custodial rights to care for a child
 72 concurrently with the child's parent or parents.

73 (2) "Extended family member" means a ~~is any~~ person who is:

74 (a) ~~(1)~~ A relative of a minor child within the third degree
 75 by blood or marriage to the parent; or

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

82 Section 3. Section 751.02, Florida Statutes, is amended to
 83 read:

84 751.02 ~~Determination of~~ Temporary or concurrent custody

85 proceedings; jurisdiction.—

86 (1) The following individuals may bring proceedings in the
 87 circuit court to determine the temporary or concurrent custody
 88 of a minor child:

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

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

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

96 (a) Currently have physical custody of the child and have
 97 had physical custody of the child for at least 10 days in any
 98 30-day period within the last 12 months; and

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

103 Section 4. Section 751.03, Florida Statutes, is amended to
 104 read:

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

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

112 (2) The names and current addresses of the child's

113 | parents.~~†~~

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

116 | (4) The places where the child has lived during the past 5
117 | years.~~†~~

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

120 | (6) The residence and post office address of the
121 | petitioner.~~†~~

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

123 | (8) If concurrent custody is being requested:

124 | (a) The time periods during the last 12 months that the
125 | child resided with the petitioner;

126 | (b) The type of document, if any, provided by the parent
127 | or parents to enable the petitioner to act on behalf of the
128 | child;

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

131 | (d) Whether each parent has consented in writing to the
132 | entry of an order of concurrent custody.

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134 | A copy of the written consent and any documents provided by the
135 | parent to assist the petitioner in obtaining services must be
136 | attached to the petition.

137 | ~~(9)~~ If temporary custody is being requested, the
138 | consent of the child's parents, or the specific acts or
139 | omissions of the parents which demonstrate that the parents have
140 | abused, abandoned, or neglected the child as defined in chapter

141 39.~~7~~

142 ~~(10)-(9)~~ Any temporary or permanent orders for child

143 support, the court entering the order, and the case number.~~7~~

144 ~~(11)-(10)~~ Any temporary or permanent order for protection

145 entered on behalf of or against either parent, the petitioner,

146 or the child; the court entering the order; and the case

147 number.~~7~~

148 ~~(12)-(11)~~ That it is in the best interest of the child for

149 the petitioner to have custody of the child.~~7~~ ~~and~~

150 ~~(13)-(12)~~ A statement of the period of time the petitioner

151 is requesting temporary custody, including a statement of the

152 reasons supporting that request.

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154 ~~Only an extended family member may file a petition under~~

155 ~~this chapter.~~

156 Section 5. Section 751.04, Florida Statutes, is amended to

157 read:

158 751.04 Notice and opportunity to be heard.—Before a decree

159 is made under this chapter ~~ss. 751.01-751.05~~, reasonable notice

160 and opportunity to be heard must be given to the parents of the

161 minor child by service of process, either personal or

162 constructive.

163 Section 6. Section 751.05, Florida Statutes, is amended to

164 read:

165 751.05 Order granting temporary or concurrent custody.—

166 (1) At the hearing on the petition for temporary or

167 concurrent custody, the court must hear the evidence concerning

168 a minor child's need for care by the petitioner, all other

169 matters required to be set forth in the petition, and the
 170 objections or other testimony of the child's parents, if
 171 present.

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

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

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

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

193 (4) The order granting:

194 (a) Concurrent custody of the minor child may not
 195 eliminate or diminish the custodial rights of the child's parent
 196 or parents. The order must expressly state that the grant of

197 custody does not affect the ability of the child's parent or
 198 parents to obtain physical custody of the child at any time.

199 (b) Temporary custody of the minor child to the petitioner
 200 may also grant visitation rights to the child's parent or
 201 parents, if it is in the best interest of the child ~~to do so~~.

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

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

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

225 support payments due under the support order. The depository
 226 must ~~shall~~ maintain separate accounts and separate account
 227 numbers for individual obligees.

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

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

243 (8) At any time, the petitioner or either or both of the
 244 child's parents may move the court to modify the existing child
 245 support order pursuant to chapter 61. The court may modify an
 246 existing order granting child support if the parties consent and
 247 if modification is in the best interest of the child. Any order
 248 modifying child support in a concurrent custody proceeding shall
 249 be copied and placed in the related family court files.

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

CS/HB 25

2010

252 49.011 Service of process by publication; cases in which
253 allowed.—Service of process by publication may be made in any
254 court on any party identified in s. 49.021 in any action or
255 proceeding:

256 (14) For temporary custody of a minor child, under chapter
257 751 ~~ss. 751.01-751.05~~.

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