

By the Committee on Judiciary and Senators Campbell and Grant

308-1885A-99

1                                   A bill to be entitled  
2           An act relating to legal actions by  
3           grandparents seeking the right of visitation;  
4           amending s. 752.01, F.S.; providing factors  
5           that the court must consider in deciding  
6           whether to grant visitation rights to  
7           grandparents; limiting frequency of grandparent  
8           visitation rights action; applying attorney's  
9           fees provision to actions under chapter 752,  
10          F.S.; amending s. 61.13, F.S.; applying  
11          criteria in chapter 752, F.S., for determining  
12          visitation rights of grandparents in pending  
13          actions; encouraging courts to address  
14          grandparent visitation rights in dissolution of  
15          marriage actions; providing an effective date.

16  
17 Be It Enacted by the Legislature of the State of Florida:

18  
19           Section 1. Section 752.01, Florida Statutes, is  
20 amended to read:

21           752.01 Action by grandparent for right of visitation;  
22 when petition shall be granted.--

23           (1) The court shall, upon petition filed by a  
24 grandparent of a minor child, award reasonable rights of  
25 visitation to the grandparent with respect to the child when  
26 the court finds that the health or welfare of the child would  
27 be materially harmed unless the visitation is granted, that it  
28 is in the best interest of the minor child, and that the  
29 granting of such visitation will not materially harm the  
30 parent-child relationship, and if:

31           (a) One or both parents of the child are deceased;

1           (b) The marriage of the parents of the child has been  
2 dissolved;

3           (c) A parent of the child has deserted the child;

4           (d) The minor child was born out of wedlock and not  
5 later determined to be a child born within wedlock as provided  
6 in s. 742.091; ~~or~~

7           (e) The minor is living with both natural parents who  
8 are still married to each other whether or not there is a  
9 broken relationship between either or both parents of the  
10 minor child and the grandparents, and either or both parents  
11 have used their parental authority to prohibit a relationship  
12 between the minor child and the grandparents; or-

13           (f) A deceased parent has made a written testamentary  
14 statement requesting that there be visitation between a  
15 surviving child and the grandparent or grandparents.

16           (2) In determining the best interest of the minor  
17 child and in assessing whether material harm to the child will  
18 result if visitation is not granted, the court shall consider:

19           (a) The willingness of the grandparent or grandparents  
20 to encourage a close relationship between the child and the  
21 parent or parents.

22           (b) The length and quality of the prior relationship  
23 between the child and the grandparent or grandparents.

24           (c) The preference of the child if the child is  
25 determined to be of sufficient maturity to express a  
26 preference.

27           (d) The mental and physical health of the child.

28           (e) The mental and physical health of the grandparent  
29 or grandparents.

30  
31

1           (f) The extent to which the grandparent or  
2 grandparents have been involved in providing care and support  
3 of the child.

4           (g) Whether the grandparent or grandparents have  
5 established or attempted to establish ongoing personal contact  
6 with the child.

7           (h) The manner in which and the degree to which  
8 visitation is expected to improve, facilitate, or promote the  
9 mental health and development of the child. This paragraph  
10 does not require a finding of existing mental illness or the  
11 potential for mental illness in order for visitation to be  
12 granted.

13           (i) When one parent is deceased, whether grandparent  
14 visitation is desirable in order to maintain or facilitate  
15 contact between the child and the deceased parent's extended  
16 family of origin.

17           (j) When there has been disruption in the family unit,  
18 such as by death, divorce, or disability of a parent, whether  
19 grandparent visitation will provide support and stability for  
20 the child.

21           (k) Whether grandparent visitation will enhance the  
22 parent-child relationship.

23           (l) When a parent is deceased, any written  
24 testamentary statement by the deceased parent requesting that  
25 visitation with the petitioning grandparent be granted or  
26 stating a belief that such visitation would be in the child's  
27 best interest. The absence of such a testamentary statement  
28 must not be construed as evidence that the deceased parent  
29 would have objected to the requested visitation.

30           (m)(f) Such other factors as are necessary in the  
31 particular circumstances.

1           (3) In determining whether granting visitation will  
2 materially harm the parent-child relationship, the court shall  
3 consider:

4           (a) Whether there have been previous disputes between  
5 the grandparents and the parents over childrearing or other  
6 matters related to the care and upbringing of the child.

7           (b) Whether visitation will in a material manner  
8 interfere with or compromise parental authority.

9           (c) Whether visitation can be arranged in such a  
10 manner as not to materially detract from the parent-child  
11 relationship, including the quantity of time available for  
12 enjoyment of the parent-child relationship and any other  
13 consideration related to disruption of the schedule and  
14 routines of the parents' and child's home lives.

15           (d) Whether visitation is being sought for the primary  
16 purpose of continuing or establishing a relationship with the  
17 child with the intent that the child benefit from the  
18 relationship.

19           (e) Whether the requested visitation will expose the  
20 child to undesirable conduct, moral standards, experiences, or  
21 other factors that are inconsistent with positive influences  
22 provided by the parents.

23           (f) The willingness and ability of the grandparent or  
24 grandparents to facilitate and encourage a close and  
25 continuing relationship between the child and the parents.

26           (g) The nature of the relationship between the parents  
27 and grandparents.

28           (h) The psychological toll of visitation disputes on  
29 the child.

30           (i) Such other factors as are necessary in the  
31 particular circumstances.

1           (4) An original action requesting visitation rights  
2 under this chapter may be filed by any grandparent only once  
3 during any 2-year period. During any year in which another  
4 custody action has been filed concerning the child, an action  
5 requesting visitation rights may not be filed independently of  
6 the custody action.

7           (5) Section 57.105 applies to actions brought under  
8 this chapter.

9           (6)(3) This act does not provide for grandparental  
10 visitation rights for children placed for adoption under  
11 chapter 63 except as provided in s. 752.07 with respect to  
12 adoption by a stepparent.

13           Section 2. Subsection (2) of section 61.13, Florida  
14 Statutes, 1998 Supplement, is amended to read:

15           61.13 Custody and support of children; visitation  
16 rights; power of court in making orders.--

17           (2)(a) The court shall have jurisdiction to determine  
18 custody, notwithstanding that the child is not physically  
19 present in this state at the time of filing any proceeding  
20 under this chapter, if it appears to the court that the child  
21 was removed from this state for the primary purpose of  
22 removing the child from the jurisdiction of the court in an  
23 attempt to avoid a determination or modification of custody.

24           (b)1. The court shall determine all matters relating  
25 to custody of each minor child of the parties in accordance  
26 with the best interests of the child and in accordance with  
27 the Uniform Child Custody Jurisdiction Act. It is the public  
28 policy of this state to assure that each minor child has  
29 frequent and continuing contact with both parents after the  
30 parents separate or the marriage of the parties is dissolved  
31 and to encourage parents to share the rights and

1 responsibilities, and joys, of childrearing. After considering  
2 all relevant facts, the father of the child shall be given the  
3 same consideration as the mother in determining the primary  
4 residence of a child irrespective of the age or sex of the  
5 child.

6           2. The court shall order that the parental  
7 responsibility for a minor child be shared by both parents  
8 unless the court finds that shared parental responsibility  
9 would be detrimental to the child. Evidence that a parent has  
10 been convicted of a felony of the third degree or higher  
11 involving domestic violence, as defined in s. 741.28 and  
12 chapter 775, or meets the criteria of s. 39.806(1)(d), creates  
13 a rebuttable presumption of detriment to the child. If the  
14 presumption is not rebutted, shared parental responsibility,  
15 including visitation, residence of the child, and decisions  
16 made regarding the child, may not be granted to the convicted  
17 parent. However, the convicted parent is not relieved of any  
18 obligation to provide financial support. If the court  
19 determines that shared parental responsibility would be  
20 detrimental to the child, it may order sole parental  
21 responsibility and make such arrangements for visitation as  
22 will best protect the child or abused spouse from further  
23 harm. Whether or not there is a conviction of any offense of  
24 domestic violence or child abuse or the existence of an  
25 injunction for protection against domestic violence, the court  
26 shall consider evidence of domestic violence or child abuse as  
27 evidence of detriment to the child.

28           a. In ordering shared parental responsibility, the  
29 court may consider the expressed desires of the parents and  
30 may grant to one party the ultimate responsibility over  
31 specific aspects of the child's welfare or may divide those

1 responsibilities between the parties based on the best  
2 interests of the child. Areas of responsibility may include  
3 primary residence, education, medical and dental care, and any  
4 other responsibilities that the court finds unique to a  
5 particular family.

6           b. The court shall order "sole parental  
7 responsibility, with or without visitation rights, to the  
8 other parent when it is in the best interests of" the minor  
9 child.

10           c. The court may award the grandparents visitation  
11 rights with a minor child pursuant to the criteria set forth  
12 in s. 752.01 ~~if it is in the child's best interest.~~  
13 Grandparents have legal standing to seek judicial enforcement  
14 of such an award. This section does not require that  
15 grandparents be made parties or given notice of dissolution  
16 pleadings or proceedings, nor do grandparents have legal  
17 standing as "contestants" as defined in s. 61.1306. However,  
18 courts are strongly encouraged to address grandparents' rights  
19 in the decree on an original action on a dissolution of  
20 marriage in order to minimize the burden of litigation of  
21 visitation rights on the child. A court may not order that a  
22 child be kept within the state or jurisdiction of the court  
23 solely for the purpose of permitting visitation by the  
24 grandparents.

25           3. Access to records and information pertaining to a  
26 minor child, including, but not limited to, medical, dental,  
27 and school records, may not be denied to a parent because the  
28 parent is not the child's primary residential parent.

29           (c) The circuit court in the county in which either  
30 parent and the child reside or the circuit court in which the  
31 original award of custody was entered have jurisdiction to

1 modify an award of child custody. The court may change the  
2 venue in accordance with s. 47.122.

3 (d) No presumption shall arise in favor of or against  
4 a request to relocate when a primary residential parent seeks  
5 to move the child and the move will materially affect the  
6 current schedule of contact and access with the secondary  
7 residential parent. In making a determination as to whether  
8 the primary residential parent may relocate with a child, the  
9 court must consider the following factors:

10 1. Whether the move would be likely to improve the  
11 general quality of life for both the residential parent and  
12 the child.

13 2. The extent to which visitation rights have been  
14 allowed and exercised.

15 3. Whether the primary residential parent, once out of  
16 the jurisdiction, will be likely to comply with any substitute  
17 visitation arrangements.

18 4. Whether the substitute visitation will be adequate  
19 to foster a continuing meaningful relationship between the  
20 child and the secondary residential parent.

21 5. Whether the cost of transportation is financially  
22 affordable by one or both parties.

23 6. Whether the move is in the best interests of the  
24 child.

25 Section 3. This act shall take effect July 1, 1999.

26  
27  
28  
29  
30  
31



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
SB 696

Makes technical and stylistic changes to s. 752.01, F.S.  
Limits the frequency of actions for grandparent visitation rights under chapter 752, F.S.  
Applies attorney fees provision in s. 57.105, to actions for grandparent visitation rights.  
Amends s. 61.13, F.S., to incorporate by reference criteria established in s. 752.01, F.S., when determining grandparent visitation rights pursuant to custody and support proceedings under chapter 61, F.S., and to encourage determination of grandparent visitation rights in dissolution of marriage proceedings.