

STORAGE NAME: h0007a.flc
DATE: April 6, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FAMILY LAW AND CHILDREN
ANALYSIS**

BILL #: HB 7
RELATING TO: Great Grandparents' Rights
SPONSOR(S): Representative Harrington
COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FAMILY LAW AND CHILDREN 5 YEARS 0 DAYS
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill expands the circle of interested family members to great grandparents as those who may be awarded visitation rights, adoption rights (such as priority in adoption), and standing for evaluating custody arrangements, in situations involving dependent children. HB 7 seeks to give great-grandparents the same rights and preferences as grandparents in these areas.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Department of Elder Affairs estimates that the population of great-grandparents in the state of Florida is approaching 1.4 million. This is obviously a significant population and their needs and rights are not clearly addressed in all areas of the statute. There is little case law in which a great grandparent petitioned for either visitation rights or the right to adopt their great grandchild. However, as the population of grandparents grows younger, as will the population of great-grandparents, and they become more willing and able to accept the responsibility of raising or having visitation with a young child, the issue of the role of great-grandparents in the lives of their great-grandchildren may be raised more frequently. The case law which mentions great grandparents assumes their rights are on par with grandparents. See Meeks v. Garner, 598 So.2d 261 (1st DCA 1992). See also Schilling v. Wood, 532 So.2d 12 (4th DCA 1988).

Chapter 752.001, F.S. states, "For purposes of this chapter, the term 'grandparent' shall include great-grandparent." The Florida Supreme Court in Footnote 2 of Von Eiff v. Azicri stated, "Section 752.001, Florida Statutes (1993), broadly defines grandparent to include a great-grandparent." See Von Eiff v. Azicri, 23 FLW S583 (11/13/98). This is an easy and judicially acknowledged way to include great-grandparents in with grandparents.

New Mexico has similarly stated in the definition section of the chapter which includes grandparent visitation "grandparent' means:

- A. the biological grandparent or great-grandparent of a minor child; or
- B. a person who becomes a grandparent or great-grandparent due to the adoption of a minor child by a member of that person's family."

Arizona, Idaho, Iowa, Wisconsin, Minnesota, Arkansas and Illinois have added great-grandparents into the statutes which concern grandparents and great grandparents as the bill suggests. However, a broad definition as we already have in 752.001 indicates the similarity in rights between the grandparents and great-grandparents with an economy of space and language.

Currently, grandparents:

Pursuant to § 39.01:

- (1) are considered "next of kin";
- (2) are considered "participants" for purposes of shelter proceedings, dependency proceedings, or termination of parental rights proceedings, meaning they are not a party but receive notice of hearings involving the child.

Pursuant to § 39.509:

- (3) may petition for visitation rights where there has been an adjudication of dependency or removal of the child from the physical custody of the parent or legal guardian pursuant to 39.509.

Pursuant to § 39.801:

- (4) are entitled to notice of a hearing on the petition for termination of parental rights, as they have priority in adoption of the minor.

Pursuant to § 61.13:

- (5) may petition for visitation rights in the event of a dissolution of marriage.

Pursuant to § 63.0425:

- (6) gives priority in adoption to grandparents who have lived with the minor child for at least 6 months and who have petitioned the court to adopt the child.

Pursuant to § 63.172:

- (7) allows continuation of grandparental rights delineated under § 752 (Grandparent Visitation Rights).

Pursuant to § 984.03:

- (8)are considered “next of kin”
- (9)are considered “participants” for purposes of receiving notice of hearings involving the child in children and families in need of services proceedings.

Pursuant to § 985.03:

- (10)are considered “next of kin.”

B. EFFECT OF PROPOSED CHANGES:

The proposed changes would include the word “great-grandparent” in statutes where grandparents have certain rights and extend those rights to great-grandparents.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

- b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

It may affect legal relationships between generations within families.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 39.01, 39.509, 39.801, 61.13, 63.0425, 63.172, 984.03, and 985.03, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1:

Under § 39.01, changes the definition of "next of kin" to include great-grandparents; also changes the definition of "participants" to include great-grandparents as persons who are not a party but receive notice of hearings involving the child when there are shelter, dependency, or termination of parental rights proceedings.

Section 2:

Includes great-grandparents among those who may petition for visitation rights where there has been an adjudication of dependency or removal of the child from the physical custody of the parent or legal guardian pursuant to § 39.509.

Section 3:

Includes great-grandparents among those who are entitled to notice of a hearing on the petition for termination of parental rights, as they have priority in adoption of the minor, pursuant to § 39.801.

Section 4:

Includes great-grandparents as those who may petition for visitation rights in the event of a dissolution of marriage pursuant to § 61.13.

Section 5:

Gives priority in adoption to grandparents and great-grandparents who have lived with the minor child for at least 6 months and who have petitioned the court to adopt the child pursuant to § 63.0425.

Section 6:

Allows continuation of grandparental and great-grandparental rights delineated under 752 (Grandparent Visitation Rights [which incidentally includes great-grandparents in its definition]) pursuant to § 63.172.

Section 7:

Considers great-grandparents “next of kin” and considers them “participants” for purposes of receiving notice of hearings involving the child in children and families in need of services proceedings under § 984.03.

Section 8:

Considers great-grandparents “next of kin” in under § 985.03.

Section 9:

Provides for an enactment date of October 1 of the year enacted.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties to have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state sales tax shared with municipalities.

V. COMMENTS:

The changes made in HB 7 basically embrace what has been the de facto rights of great-grandparents, who have been treated under the law as grandparents implicitly in most circumstances and explicitly in 752.001. The only suggestion is that the change be encompassed in the definitions sections of the relevant chapters for economy of language and space.

The changes incorporated in this bill could be effectuated by including a definition of grandparent similar to the one in Chap. 752.001 in Chapters 39, 61, 63, 984 and 985.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

An amendment adopted in committee removed the following two sections:

Section 7:

Which would have Considered great-grandparents "next of kin" and would have considered them "participants" for purposes of receiving notice of hearings involving the child in children and families in need of services proceedings under § 984.03.

Section 8:

Would have considered great-grandparents "next of kin" in under § 985.03.

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VII. SIGNATURES:

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