

By Senator Joyner

18-03521A-08

20082536__

1 A bill to be entitled

2 An act relating to grandparent visitation; creating s.
3 752.011, F.S.; authorizing the grandparent of a minor
4 child to petition a court for visitation under certain
5 circumstances; providing a presumption in favor the
6 minor's parent; requiring a preliminary hearing on harm to
7 the minor resulting from denial of visitation; providing
8 for the payment of fees and costs by a petitioner who
9 fails to make a prima facie showing of harm; authorizing
10 appointment of a guardian ad litem and mediation following
11 a prima facie showing of harm; providing for a
12 psychological evaluation of the minor if mediation fails;
13 authorizing grandparental visitation if the court makes
14 specified findings; requiring clear and convincing
15 evidence of demonstrable significant mental or emotional
16 harm to the minor resulting from a denial of visitation;
17 prohibiting grandparental visitation that materially harms
18 parent-child relationship; providing factors for court
19 consideration in determining whether there is harm to the
20 minor or to the parent-child relationship; providing for
21 application of the Uniform Child Custody Jurisdiction and
22 Enforcement Act; encouraging the consolidation of certain
23 concurrent actions; providing for modification of an order
24 awarding grandparental visitation; limiting the frequency
25 of actions seeking visitation; limiting application to
26 minors placed for adoption; providing for application
27 sanctions for unsupported claims or defenses; providing
28 for venue; amending s. 752.015, F.S.; conforming a cross-
29 reference; creating s. 752.071, F.S.; providing conditions

18-03521A-08

20082536__

30 under which a court may terminate a grandparent visitation
31 order upon adoption of a minor child by a stepparent or
32 close relative; repealing s. 752.01, F.S., relating to
33 actions for grandparental visitation; repealing s. 752.07,
34 F.S., relating to the effect of adoption of a child by a
35 stepparent on grandparent visitation; providing an
36 effective date.

37
38 Be It Enacted by the Legislature of the State of Florida:

39
40 Section 1. Section 752.011, Florida Statutes, is created to
41 read:

42 752.011 Petition for grandparental visitation.--

43 (1) A grandparent of a minor child may petition the court
44 for visitation with the minor if the parent of the minor has
45 denied visitation to the grandparent.

46 (2) In evaluating the petition for visitation, a court
47 shall presume that a parent acts in the best interests of his or
48 her child and shall accord special weight to the parent's
49 decision.

50 (3) Upon the filing of a petition by a grandparent for
51 visitation, the court shall hold a preliminary hearing to
52 determine whether the petitioner has made a prima facie showing
53 that the minor is suffering or is threatened with suffering
54 demonstrable significant mental or emotional harm due to the
55 parental decision not to allow visitation with the grandparent.
56 Absent such a showing, the court shall dismiss the petition and
57 shall award reasonable attorney's fees and costs to be paid by
58 the petitioner to the respondent.

18-03521A-08

20082536__

59 (4) If the court finds that there is prima facie evidence
60 that the minor is suffering or is threatened with suffering
61 demonstrable significant mental or emotional harm due to the
62 parental decision not to allow visitation with the grandparent,
63 the court may appoint a guardian ad litem and shall order the
64 matter to family mediation as provided in s. 752.015.

65 (5) If mediation fails to yield a resolution, the court
66 shall order a psychological evaluation of the minor pursuant to
67 the Florida Family Law Rules of Procedure, absent the
68 availability of comparable evidence of the findings expected from
69 such an evaluation.

70 (6) After conducting a hearing on the issue of visitation,
71 the court may award reasonable visitation to the grandparent with
72 respect to the minor if the court finds that:

73 (a) There is clear and convincing evidence that the minor
74 is suffering or is threatened with suffering demonstrable
75 significant mental or emotional harm as a result of a parental
76 decision not to allow visitation with the grandparent and that
77 visitation with the grandparent will alleviate or mitigate the
78 harm; and

79 (b) That the visitation will not materially harm the
80 parent-child relationship.

81 (7) In assessing demonstrable significant mental or
82 emotional harm under paragraph (6)(a), the court shall consider
83 the totality of the circumstances affecting the mental and
84 emotional well-being of the minor, including:

85 (a) The love, affection, and other emotional ties existing
86 between the minor and the grandparent, including those resulting

18-03521A-08

20082536__

87 from the relationship that had been previously allowed by the
88 minor's parent.

89 (b) The length and quality of the prior relationship
90 between the minor and the grandparent, including the extent to
91 which the grandparent was involved in providing regular care and
92 support to the minor.

93 (c) Whether the grandparent established or attempted to
94 establish ongoing personal contact with the minor.

95 (d) The reasons the parent made the decision to end contact
96 or visitation between the minor and the grandparent which had
97 been previously allowed by the parent.

98 (e) Whether there has been demonstrable significant mental
99 or emotional harm to the minor as the result of disruption in the
100 family unit, for which the minor derived support and stability
101 from the grandparental relationship, and whether the continuation
102 of that support and stability is likely to prevent further harm.

103 (f) The existence or threat of mental injury to the minor
104 as defined in s. 39.01.

105 (g) The present mental, physical, and emotional needs and
106 health of the minor.

107 (h) The present mental, physical, and emotional health of
108 the grandparent.

109 (i) The recommendations of the minor's guardian ad litem if
110 one is appointed.

111 (j) The results of the psychological evaluation of the
112 minor ordered pursuant to subsection (5).

113 (k) The preference of the minor if the minor is determined
114 to be of sufficient maturity to express a preference.

18-03521A-08

20082536__

115 (l) If a parent is deceased, any written testamentary
116 statement by the deceased parent requesting that visitation with
117 the grandparent be granted or stating a belief that such
118 visitation would reduce or mitigate demonstrable significant
119 mental or emotional harm to the minor resulting from the parent's
120 death. The absence of such a testamentary statement does not
121 provide evidence that the deceased parent would have objected to
122 the requested visitation.

123 (m) Whether the parents of the minor disagree on whether to
124 allow or the extent of grandparent visitation.

125 (n) Such other factors as the court considers necessary in
126 making its determination.

127 (8) In assessing material harm to the parent-child
128 relationship under paragraph (6) (b), the court shall consider the
129 totality of the circumstances affecting the parent-child
130 relationship, including:

131 (a) Whether there have been previous disputes between the
132 grandparent and the parent or parents over childrearing or other
133 matters related to the care and upbringing of the minor.

134 (b) Whether visitation would materially interfere with or
135 compromise parental authority.

136 (c) Whether visitation can be arranged in a manner that
137 does not materially detract from the parent-child relationship,
138 including the quantity of time available for enjoyment of the
139 parent-child relationship, and any other consideration related to
140 disruption of the schedule and routines of the home lives of the
141 parent and the minor.

142 (d) Whether visitation is being sought for the primary
143 purpose of continuing or establishing a relationship with the

18-03521A-08

20082536__

144 minor with the intent that the minor benefit from the
145 relationship.

146 (e) Whether the requested visitation would expose the minor
147 to conduct, moral standards, experiences, or other factors that
148 are inconsistent with influences provided by the parent.

149 (f) The nature of the relationship between the parent and
150 the grandparent.

151 (g) The reasons the parent made the decision to end contact
152 or visitation between the minor and the grandparent which was
153 previously allowed by that parent.

154 (h) The psychological toll of visitation disputes on the
155 minor.

156 (i) Such other factors as the court considers necessary in
157 making its determination.

158 (9) Part II of chapter 61, the Uniform Child Custody
159 Jurisdiction and Enforcement Act, applies to actions brought
160 under this chapter.

161 (10) If separate actions under this section and s. 61.13
162 are pending concurrently, courts are strongly encouraged to
163 consolidate the actions in order to minimize the burden of
164 litigation of grandparent visitation on the minor and the
165 parties.

166 (11) An order for grandparent visitation may be modified
167 upon a showing by the person petitioning for modification of a
168 substantial change in circumstances and that modifying visitation
169 is in the best interest of the minor.

170 (12) An original action requesting visitation under this
171 section may be filed by a grandparent only once during any 2-year
172 period, except on good cause shown that the minor is suffering or

18-03521A-08

20082536__

173 threatened with suffering demonstrable significant mental or
174 emotional harm caused by a parental decision to deny visitation
175 between a minor and grandparent, which was not known to the
176 grandparent at the time of filing an earlier action.

177 (13) This section does not provide for grandparental
178 visitation for minors placed for adoption under chapter 63 except
179 as provided in s. 752.071 with respect to adoption by a
180 stepparent or close relative.

181 (14) Section 57.105 applies to actions brought under this
182 chapter.

183 (15) Venue shall be in the county where the grandchild
184 primarily resides, unless venue is otherwise governed by chapter
185 39, chapter 61, or chapter 63.

186 Section 2. Section 752.015, Florida Statutes, is amended to
187 read:

188 752.015 Mediation of visitation disputes.--It shall be the
189 public policy of this state that families resolve differences
190 over grandparent visitation within the family. It shall be the
191 further public policy of this state that when families are unable
192 to resolve differences relating to grandparent visitation that
193 the family participate in any formal or informal mediation
194 services that may be available. If ~~When~~ families are unable to
195 resolve differences relating to grandparent visitation and a
196 petition is filed pursuant to s. 752.011 ~~s. 752.01~~, the court
197 shall, if such services are available in the circuit, refer the
198 case to family mediation in accordance with the Florida Family
199 Law Rules of Procedure ~~rules promulgated by the Supreme Court.~~

200 Section 3. Section 752.071, Florida Statutes, is created to
201 read:

18-03521A-08

20082536__

202 752.071 Effect of adoption by stepparent or close
203 relative.--Following the adoption of a minor child by a
204 stepparent or close relative, the stepparent or close relative
205 may petition the court to terminate an order granting grandparent
206 visitation under this chapter which was entered prior to the
207 adoption. The court may terminate the order unless the
208 grandparent is able to show that the criteria of s. 752.011
209 authorizing the visitation continues to be satisfied.

210 Section 4. Sections 752.01 and 752.07, Florida Statutes,
211 are repealed.

212 Section 5. This act shall take effect upon becoming a law.