

HB 907

2008

1 A bill to be entitled
2 An act relating to concurrent custody of a minor child;
3 amending s. 751.01, F.S.; revising purpose of the act;
4 conforming a cross-reference; amending s. 751.011, F.S.;
5 providing a definition; amending s. 751.02, F.S.;
6 authorizing an extended family member to bring a
7 proceeding in court to determine concurrent custody of a
8 minor child; creating s. 751.031, F.S.; specifying
9 information that must be included in a petition for
10 concurrent custody of a minor child by an extended family
11 member; providing that only an extended family member may
12 file a petition for concurrent custody under ch. 751,
13 F.S.; creating s. 751.051, F.S.; setting forth the terms
14 of an order granting concurrent custody; authorizing a
15 court to redirect child support payments to an extended
16 family member; requiring that, if possible, the court
17 order payment of arrearages; providing that either or both
18 of the child's parents may petition the court to modify or
19 terminate the order granting concurrent custody under
20 certain circumstances; amending ss. 49.011 and 751.04,
21 F.S.; conforming cross-references; providing an effective
22 date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Section 751.01, Florida Statutes, is amended to
27 read:

28 751.01 Purpose of act.--The purposes of ss. 751.01-751.051
 29 ~~751.01-751.05~~ are to:

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

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

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

46 (a) Consent to all necessary and reasonable medical and
 47 dental care for the child, including nonemergency surgery and
 48 psychiatric care;

49 (b) Secure copies of the child's records, held by third
 50 parties, that are necessary to the care of the child, including,
 51 but not limited to:

- 52 1. Medical, dental, and psychiatric records;
- 53 2. Birth certificates and other records; and
- 54 3. Educational records;

55 (c) Enroll the child in school and grant or withhold
 56 consent for a child to be tested or placed in special school
 57 programs, including exceptional education; and

58 (d) Do all other things necessary for the care of the
 59 child.

60 Section 2. Section 751.011, Florida Statutes, is amended
 61 to read:

62 751.011 Definitions.--As used in ss. 751.01-751.051:
 63 ~~751.01-751.05,~~

64 (1) The term "concurrent custody" means that a person
 65 eligible to obtain temporary custody under this chapter may
 66 obtain custodial rights to care for the child at the same time
 67 as the child's parent or parents. A finding of abuse,
 68 abandonment, or neglect is not necessary to grant concurrent
 69 custody over the objection of a parent. An order granting
 70 concurrent custody does not eliminate or diminish the custodial
 71 rights of the child's parent or parents.

72 (2) The term "extended family member" is any person who
 73 is:

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

76 (b)~~(2)~~ The stepparent of a child if the stepparent is
 77 currently married to the parent of the child and is not a party
 78 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.

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

84 751.02 Determination of temporary and concurrent custody
85 proceedings; jurisdiction.--The following individuals may bring
86 proceedings in the circuit court to determine the temporary or
87 concurrent custody of a minor child:

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

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

93 Section 4. Section 751.031, Florida Statutes, is created
94 to read:

95 751.031 Petition for concurrent custody; contents.--Each
96 petition for concurrent custody of a minor child must be
97 verified by the petitioner and must contain statements, to the
98 best of petitioner's knowledge and belief, showing:

99 (1) The name, date of birth, and current address of the
100 child.

101 (2) The names and current addresses of the child's
102 parents.

103 (3) The names and current addresses of the persons with
104 whom the child has lived during the past 5 years.

105 (4) The places where the child has lived during the past 5
106 years.

107 (5) Information concerning any custody proceeding in this
108 or any other state with respect to the child.

109 (6) The residence and post office address of the
 110 petitioner.

111 (7) The petitioner's relationship to the child.

112 (8) The consent of the child's parents, or a description
 113 of the efforts made by the petitioner to obtain consent and the
 114 results of those efforts.

115 (9) Any temporary or permanent order for child support,
 116 the court entering the order, and the case number.

117 (10) Any temporary or permanent order for protection
 118 entered on behalf of or against either parent, the petitioner,
 119 or the child; the court entering the order; and the case number.

120 (11) That it is in the best interest of the child for the
 121 petitioner to have concurrent custody of the child.

122 (12) A statement of the period of time the petitioner is
 123 requesting concurrent custody, including a statement of the
 124 reasons supporting that request.

125

126 Only an extended family member may file a petition under this
 127 section.

128 Section 5. Section 751.04, Florida Statutes, is amended to
 129 read:

130 751.04 Notice and opportunity to be heard.--Before a
 131 decree is made under ss. 751.01-751.051 ~~751.01-751.05~~,
 132 reasonable notice and opportunity to be heard must be given to
 133 the parents of the minor child by service of process, either
 134 personal or constructive.

135 Section 6. Section 751.051, Florida Statutes, is created
 136 to read:

137 751.051 Order granting concurrent custody.--

138 (1) At the hearing on the petition for concurrent custody,
 139 the court must hear the evidence concerning a minor child's need
 140 for care by the petitioner, all other matters required to be set
 141 forth in the petition, and the objections or other testimony of
 142 the child's parent or parents, if present.

143 (2) Unless the minor child's parent or parents object, the
 144 court shall award concurrent custody of the child to the
 145 petitioner when it is in the best interest of the child to do
 146 so.

147 (3) If one of the minor child's parents objects to the
 148 granting of concurrent custody to the petitioner, the court
 149 shall grant the petition only upon a finding, by clear and
 150 convincing evidence, that the child's parent or parents are not
 151 routinely available to provide the care and control of the child
 152 and that the petitioner is the primary custodian of the child
 153 and needs legal authority to give complete care to the child.

154 (4) The order granting concurrent custody of the minor
 155 child does not affect the ability of the child's parent or
 156 parents to obtain physical custody of the child at any time.

157 (5) (a) The order granting concurrent custody of the minor
 158 child to the petitioner may not include an order for the support
 159 of the child unless the parent has received personal or
 160 substituted service of process, the petition requests an order
 161 for the support of the child, and there is evidence of the
 162 parent's ability to pay the support ordered.

163 (b) The order granting concurrent custody may redirect all
 164 or part of an existing child support obligation to be paid to

165 the extended family member who is granted concurrent custody of
 166 the child. If the court redirects an existing child support
 167 obligation, the order granting temporary custody must include,
 168 if possible, the determination of arrearages owed to the obligee
 169 and the person awarded temporary custody and must order payment
 170 of the arrearages. The clerk of the circuit court in which the
 171 concurrent custody order is entered shall transmit a certified
 172 copy thereof to the court originally entering the child support
 173 order. The concurrent custody order shall be recorded and filed
 174 in the original action in which child support was determined and
 175 become a part thereof. A copy of the concurrent custody order
 176 shall be filed with the depository that serves as the official
 177 recordkeeper for support payments due under the support order.
 178 The depository shall maintain separate accounts and separate
 179 account numbers for individual obligees.

180 (6) At any time, either or both of the child's parents may
 181 petition the court to modify or terminate the order granting
 182 concurrent custody. The court shall terminate the order upon a
 183 finding that the parent is available to provide care and control
 184 of the child, or by consent of the parties. The court may modify
 185 an order granting concurrent custody if the parties consent or
 186 if modification is in the best interest of the child.

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

189 49.011 Service of process by publication; cases in which
 190 allowed.--Service of process by publication may be made in any
 191 court on any party identified in s. 49.021 in any action or
 192 proceeding:

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193 | (14) For temporary or concurrent custody of a minor child,
194 | under ss. 751.01-751.051 ~~751.01-751.05~~.

195 | Section 8. This act shall take effect July 1, 2008.