

By the Committee on Children, Families, and Elder Affairs; and
Senator Joyner

586-02701-09

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1 A bill to be entitled
2 An act relating to grandparental visitation; creating
3 s. 752.011, F.S.; authorizing the grandparent of a
4 minor child to petition a court for visitation under
5 certain circumstances; providing a rebuttable
6 presumption in favor of the minor's parent; requiring
7 a preliminary hearing on harm to the minor resulting
8 from denial of visitation; providing for the payment
9 of fees and costs by a petitioner who fails to make a
10 prima facie showing of harm; authorizing appointment
11 of a guardian ad litem and mediation following a prima
12 facie showing of harm; providing for a home-study
13 investigation or professional evaluation of the minor
14 if mediation fails; authorizing grandparental
15 visitation if the court makes specified findings;
16 requiring clear and convincing evidence that the
17 denial of visitation has caused or is likely to cause
18 demonstrable harm to the child's health, safety, or
19 welfare; providing factors for court consideration in
20 determining whether there is harm to the minor;
21 providing for application of the Uniform Child Custody
22 Jurisdiction and Enforcement Act; encouraging the
23 consolidation of certain concurrent actions; providing
24 for modification of an order awarding grandparental
25 visitation; limiting the frequency of actions seeking
26 visitation; providing relief to the grandparent if the
27 parent unreasonably denies or interferes with court-
28 ordered visitation; prohibiting visitation subsequent
29 to adoption except under certain circumstances;

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30 providing for application of sanctions for unsupported
31 claims or defenses; providing for venue; amending s.
32 752.015, F.S.; conforming a cross-reference; creating
33 s. 752.071, F.S.; providing conditions under which a
34 court may terminate a grandparent visitation order
35 upon adoption of a minor child by a stepparent or
36 close relative; repealing s. 752.01, F.S., relating to
37 actions for grandparental visitation; repealing s.
38 752.07, F.S., relating to the effect of adoption of a
39 child by a stepparent on grandparent visitation;
40 providing an effective date.

41
42 Be It Enacted by the Legislature of the State of Florida:

43
44 Section 1. Section 752.011, Florida Statutes, is created to
45 read:

46 752.011 Petition for grandparental visitation.-

47 (1) A grandparent of an unmarried minor child may petition
48 the court for reasonable visitation with the minor if the parent
49 of the minor has denied visitation to the grandparent. There is
50 a rebuttable presumption that a fit parent's decision to deny a
51 grandparent reasonable visitation with the minor is in the
52 child's best interest

53 (2) The petitioner must file a verified petition alleging
54 that the denial of visitation has caused, or is likely to cause,
55 demonstrable harm to the minor's health, safety, or welfare. The
56 verified petition must include the specific facts and
57 circumstances upon the basis of which visitation is sought.

58 (3) Upon the filing of a verified petition by a grandparent

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59 for visitation, the court shall hold a preliminary hearing to
60 determine whether the petitioner has made a prima facie showing
61 that the denial of visitation has caused, or is likely to cause,
62 demonstrable harm to the minor's health, safety, or welfare.
63 Absent such showing, the court shall dismiss the petition and
64 shall award reasonable attorney's fees and costs to be paid by
65 the petitioner to the respondent.

66 (4) If the court finds that there is prima facie evidence
67 that the denial of visitation has caused, or is likely to cause,
68 demonstrable harm to the minor's health, safety, or welfare, the
69 court may appoint a guardian ad litem pursuant to s. 61.401 and
70 shall order the matter to family mediation as provided in s.
71 752.015.

72 (5) If mediation fails to yield a resolution, the court may
73 order a home-study investigation or a professional evaluation of
74 the minor pursuant to the Florida Family Law Rules of Procedure,
75 absent the availability of comparable evidence of the findings
76 expected from such investigation or evaluation.

77 (6) After conducting a hearing on the issue of visitation,
78 the court may award reasonable visitation to the grandparent
79 with respect to the minor if the court finds by clear and
80 convincing evidence that the denial of visitation has caused, or
81 is likely to cause, demonstrable harm to the minor's health,
82 safety, or welfare, and that visitation with the grandparent
83 will alleviate or mitigate such harm.

84 (7) In assessing demonstrable harm under subsection (6),
85 the court shall consider the totality of the circumstances
86 affecting the physical, mental, and emotional well-being of the
87 minor, including:

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88 (a) The love, affection, and other emotional ties existing
89 between the minor and the grandparent, including those resulting
90 from the relationship that had been previously allowed by the
91 minor's parent.

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

96 (c) Whether the grandparent established, or attempted to
97 establish, ongoing personal contact with the minor.

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

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

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

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

111 (h) The present mental, physical, and emotional health of
112 the grandparent.

113 (i) The recommendations of the minor's guardian ad litem,
114 if one is appointed.

115 (j) The results of the home study investigation or
116 professional evaluation of the minor, if one is ordered pursuant

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117 to subsection (5).

118 (k) The preference of the minor, if the minor is determined
119 to be of sufficient maturity to express a preference.

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

128 (m) Whether the parents of the minor disagree on whether to
129 allow, or the extent of, grandparent visitation.

130 (n) Whether the visitation will materially harm the parent-
131 child relationship.

132 (o) Such other factors as the court considers necessary in
133 making its determination.

134 (8) Part II of chapter 61, the Uniform Child Custody
135 Jurisdiction and Enforcement Act, applies to actions brought
136 under this chapter.

137 (9) If separate actions under this section and s. 61.13 are
138 pending concurrently, courts are strongly encouraged to
139 consolidate the actions in order to minimize the burden of
140 litigation of grandparent visitation on the minor and the
141 parties.

142 (10) An order for grandparent visitation may be modified
143 upon a showing by the person petitioning for modification of a
144 substantial change in circumstances and that modifying
145 visitation is in the best interest of the minor.

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146 (11) An original action requesting visitation under this
147 section may be filed by a grandparent only once during any 2-
148 year period, except on good cause shown that the denial of
149 visitation has caused, or is likely to cause, demonstrable harm
150 to the minor's health, safety, or welfare, which was not known
151 to the grandparent at the time of filing an earlier action.

152 (12) If a grandparent has been granted visitation pursuant
153 to this section and such visitation has been unreasonably denied
154 or otherwise unreasonably interfered with by the minor's parent,
155 the grandparent may file a motion with the court for enforcement
156 of visitation.

157 (a) Upon filing the motion, the court shall direct the
158 parties to family mediation as provided in s. 752.015 and set a
159 hearing on the merits of the motion.

160 (b) After completion of any mediation ordered pursuant to
161 paragraph (a), the mediator shall submit the record of mediation
162 termination and a summary of the parties' agreement, if any, to
163 the court. Upon receipt of the record and summary, the court
164 shall enter an order in accordance with the parties' agreement,
165 if any.

166 (c) If, after conducting a hearing, the court finds that
167 the visitation has been unreasonably denied or otherwise
168 unreasonably interfered with by the parent, the court shall
169 enter an order providing for one or more of the following:

170 1. A specific visitation schedule.

171 2. Visitation that compensates for the visitation denied or
172 otherwise interfered with, which may be of the same type as the
173 visitation denied or otherwise interfered with, including
174 holidays, weekdays, weekends, summers, and at the convenience of

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175 the grandparent.

176 3. Assessment of reasonable attorney's fees, mediation
177 costs, and court costs against the parent.

178 (d) If the court finds that the motion for enforcement of
179 visitation has been unreasonably filed or pursued by the
180 grandparent, the court may assess reasonable attorney's fees,
181 mediation costs, and court costs against the grandparent.

182 (13) The court may not grant grandparent visitation to a
183 minor child subsequent to a final order of adoption of that
184 child except as provided in s. 752.071.

185 (14) Section 57.105 applies to actions brought under this
186 chapter.

187 (15) Venue is in the county where the grandchild primarily
188 resides, unless venue is otherwise governed by chapter 39,
189 chapter 61, or chapter 63.

190 Section 2. Section 752.015, Florida Statutes, is amended to
191 read:

192 752.015 Mediation of visitation disputes.—It is ~~shall be~~
193 the public policy of this state that families resolve
194 differences over grandparent visitation within the family. It is
195 ~~shall be~~ the further public policy of this state that when
196 families are unable to resolve differences relating to
197 grandparent visitation that the family participate in any formal
198 or informal mediation services that may be available. If ~~When~~
199 families are unable to resolve differences relating to
200 grandparent visitation and a petition is filed pursuant to s.
201 752.011 ~~s. 752.01~~, the court shall, if such services are
202 available in the circuit, refer the case to family mediation in
203 accordance with the Florida Family Law Rules of Procedure ~~rules~~

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204 ~~promulgated by the Supreme Court.~~

205 Section 3. Section 752.071, Florida Statutes, is created to
206 read:

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

215 Section 4. Sections 752.01 and 752.07, Florida Statutes,
216 are repealed.

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