

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

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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; providing
33 an exception to mediation of grandparent visitation
34 disputes; creating s. 752.071, F.S.; providing
35 conditions under which a court may terminate a
36 grandparent visitation order upon adoption of a minor
37 child by a stepparent or close relative; repealing s.
38 752.01, F.S., relating to actions for grandparental
39 visitation; repealing s. 752.07, F.S., relating to the
40 effect of adoption of a child by a stepparent on
41 grandparent visitation; providing an effective date.
42

43 Be It Enacted by the Legislature of the State of Florida:
44

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

47 752.011 Petition for grandparental visitation.-

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

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

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

67 (4) If the court finds that there is prima facie evidence
68 that the denial of visitation has caused, or is likely to cause,
69 demonstrable harm to the minor's health, safety, or welfare, the
70 court may appoint a guardian ad litem pursuant to s. 61.401 and
71 shall order the matter to family mediation as provided in s.
72 752.015. Upon motion or request of a party, a court shall not
73 refer any case to mediation if it finds there has been a history
74 of domestic violence that would compromise the mediation
75 process.

76 (5) If mediation fails to yield a resolution, or mediation
77 is not ordered pursuant to subsection (4), the court may order a
78 home-study investigation or a professional evaluation of the
79 minor pursuant to the Florida Family Law Rules of Procedure,
80 absent the availability of comparable evidence of the findings
81 expected from such investigation or evaluation.

82 (6) After conducting a hearing on the issue of visitation,
83 the court may award reasonable visitation to the grandparent
84 with respect to the minor if the court finds by clear and
85 convincing evidence that the denial of visitation has caused, or
86 is likely to cause, demonstrable harm to the minor's health,
87 safety, or welfare, and that visitation with the grandparent

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88 will alleviate or mitigate such harm.

89 (7) In assessing demonstrable harm under subsection (6),
90 the court shall consider the totality of the circumstances
91 affecting the physical, mental, and emotional well-being of the
92 minor, including:

93 (a) The love, affection, and other emotional ties existing
94 between the minor and the grandparent, including those resulting
95 from the relationship that had been previously allowed by the
96 minor's parent.

97 (b) The length and quality of the prior relationship
98 between the minor and the grandparent, including the extent to
99 which the grandparent was involved in providing regular care and
100 support to the minor.

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

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

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

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

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

116 (h) The present mental, physical, and emotional health of

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117 the grandparent.

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

120 (j) The results of the home study investigation or
121 professional evaluation of the minor, if one is ordered pursuant
122 to subsection (5).

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

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

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

135 (n) Whether the visitation will materially harm the parent-
136 child relationship.

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

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

142 (9) If separate actions under this section and s. 61.13 are
143 pending concurrently, courts are strongly encouraged to
144 consolidate the actions in order to minimize the burden of
145 litigation of grandparent visitation on the minor and the

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146 parties.

147 (10) An order for grandparent visitation may be modified
148 upon a showing by the person petitioning for modification that a
149 substantial, material, and unanticipated change in circumstances
150 has occurred and that modifying visitation is in the best
151 interest of the minor.

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

158 (12) If a grandparent has been granted visitation pursuant
159 to this section and such visitation has been unreasonably denied
160 or otherwise unreasonably interfered with by the minor's parent,
161 the grandparent may file a motion with the court for enforcement
162 of visitation.

163 (a) Upon filing of the motion, the court shall direct the
164 parties to family mediation as provided in s. 752.015 and set a
165 hearing on the merits of the motion. Upon motion or request of a
166 party, a court shall not refer any case to mediation if it finds
167 there has been a history of domestic violence that would
168 compromise the mediation process.

169 (b) After completion of any mediation ordered pursuant to
170 paragraph (a), the mediator shall submit the record of mediation
171 termination and a summary of the parties' agreement, if any, to
172 the court. Upon receipt of the record and summary, the court
173 shall enter an order in accordance with the parties' agreement,
174 if any.

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

179 1. A specific visitation schedule.

180 2. Visitation that compensates for the visitation denied or
181 otherwise interfered with, which may be of the same type as the
182 visitation denied or otherwise interfered with, including
183 holidays, weekdays, weekends, summers, and at the convenience of
184 the grandparent.

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

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

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

194 (14) Section 57.105 applies to actions brought under this
195 chapter.

196 (15) Venue is in the county where the minor primarily
197 resides, unless venue is otherwise governed by chapter 39,
198 chapter 61, or chapter 63.

199 Section 2. Section 752.015, Florida Statutes, is amended to
200 read:

201 752.015 Mediation of visitation disputes.—It ~~is shall be~~
202 the public policy of this state that families resolve
203 differences over grandparent visitation within the family. It is

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204 ~~shall be~~ the further public policy of this state that when
205 families are unable to resolve differences relating to
206 grandparent visitation that the family participate in any formal
207 or informal mediation services that may be available. ~~If~~ When
208 families are unable to resolve differences relating to
209 grandparent visitation and a petition is filed pursuant to s.
210 752.011 ~~s. 752.01~~, the court shall, if such services are
211 available in the circuit, refer the case to family mediation in
212 accordance with the Florida Family Law Rules of Procedure ~~rules~~
213 ~~promulgated by the Supreme Court.~~ Upon motion or request of a
214 party, a court shall not refer any case to mediation if it finds
215 there has been a history of domestic violence that would
216 compromise the mediation process.

217 Section 3. Section 752.071, Florida Statutes, is created to
218 read:

219 752.071 Effect of adoption by stepparent or close
220 relative.—Following the adoption of a minor child by a
221 stepparent or close relative, the stepparent or close relative
222 may petition the court to terminate an order granting
223 grandparent visitation under this chapter which was entered
224 prior to the adoption. The court may terminate the order unless
225 the grandparent is able to show that the criteria of s. 752.011
226 authorizing the visitation continues to be satisfied.

227 Section 4. Sections 752.01 and 752.07, Florida Statutes,
228 are repealed.

229 Section 5. This act shall take effect October 1, 2009.