

1 A bill to be entitled

2 An act relating to temporary and concurrent custody of a
3 child; revising ch. 751, F.S., relating to petitions and
4 court orders awarding the temporary custody of a child to
5 an extended family member, to also provide for concurrent
6 custody with the parents of the child; amending ss. 751.01
7 and 751.02, F.S.; conforming provisions to changes made by
8 the act; amending s. 751.011, F.S.; revising definitions;
9 defining the term "concurrent custody"; amending s.
10 751.03, F.S.; revising the petition for concurrent custody
11 to also include specified information; amending s. 751.05,
12 F.S.; providing that if a parent objects to a petition for
13 concurrent custody, the court shall give the petitioner
14 the option of converting the petition to one for temporary
15 custody; providing for dismissal of the petition;
16 providing that an order granting concurrent custody does
17 not affect the ability of the parents to obtain the
18 physical custody of the child at any time; providing for
19 the court to terminate an order for concurrent custody if
20 a parent withdraws his or her consent to the order;
21 providing that the fact that an order for concurrent
22 custody has been terminated does not preclude any person
23 who is otherwise eligible to petition for temporary
24 custody from filing such a petition; providing an
25 effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:
28

29 Section 1. Subsection (3) of section 751.01, Florida
 30 Statutes, is amended to read:

31 751.01 Purpose of act.--The purposes of ss. 751.01-751.05
 32 are to:

33 (3) Provide temporary or concurrent custody of a minor
 34 child to a family member having physical custody of the minor
 35 child to enable the custodian to:

36 (a) Consent to all necessary and reasonable medical and
 37 dental care for the child, including nonemergency surgery and
 38 psychiatric care.~~†~~

39 (b) Secure copies of the child's records, held by third
 40 parties, that are necessary for ~~to~~ the care of the child,
 41 including, but not limited to:

- 42 1. Medical, dental, and psychiatric records.~~†~~
- 43 2. Birth certificates and other records.~~†~~~~and~~
- 44 3. Educational records.~~†~~

45 (c) Enroll the child in school and grant or withhold
 46 consent for a child to be tested or placed in special school
 47 programs, including exceptional education.~~†~~~~and~~

48 (d) Do all other things necessary for the care of the
 49 child.

50 Section 2. Section 751.011, Florida Statutes, is amended
 51 to read:

52 751.011 Definitions.--As used in this chapter ~~ss. 751.01-~~
 53 ~~751.05~~, the term:

54 (1) "Concurrent custody" means an eligible person awarded
 55 custodial rights to care for the child concurrently with the
 56 child's parent or parents. An order granting concurrent custody

57 does not eliminate or diminish the custodial rights of the
 58 child's parent or parents. An order of concurrent custody can
 59 only be issued if at least one of the child's parents consents
 60 in writing to the entry of the order. However, such an order
 61 cannot be entered if one of the child's parents objects in
 62 writing to the entry of the order. A person is eligible to
 63 obtain concurrent custody when he or she:

64 (a) Is eligible to obtain temporary custody of a minor
 65 child under this chapter;

66 (b) Currently has physical custody of the child;

67 (c) Has had physical custody of the child for no less than
 68 10 days in any 30-day period within the last 12 months; and

69 (d) Does not have signed, written documentation from a
 70 parent that is sufficient to enable the custodian to do all of
 71 the things necessary to care for the child that are available to
 72 custodians with an order under s. 751.05.

73 (2) "Extended family member" means a ~~is any~~ person who is:

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

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

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

84 751.02 ~~Determination of~~ Temporary or 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 751.03, Florida Statutes, is amended to
 94 | read:

95 | 751.03 Petition for temporary or concurrent custody;
 96 | contents.--Each petition for temporary or concurrent custody of
 97 | a minor child must be verified by the petitioner, who must be an
 98 | extended family member, and must contain statements, to the best
 99 | of petitioner's knowledge and belief, providing ~~showing~~:

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

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

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

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

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

110 | (6) The residence and post office address of the
 111 | petitioner.†

112 | (7) The petitioner's relationship to the child.†

113 (8) If concurrent custody is being requested, a copy of
114 the written consent and any documents provided by the parent to
115 assist the petitioner in obtaining services, which must be
116 attached to the petition. The petition must also contain the
117 following:

118 (a) The time periods within the last 12 months within
119 which the child has resided with the petitioner.

120 (b) The type of document, if any, provided by the parent
121 or parents to enable the petitioner to act on behalf of the
122 child.

123 (c) The services or actions that the petitioner is unable
124 to obtain or undertake without an order of custody.

125 (d) Whether each parent has consented in writing to the
126 entry of an order of concurrent custody.

127 (9)-(8) If temporary custody is being requested, the
128 consent of the child's parents, or the specific acts or
129 omissions of the parents which demonstrate that the parents have
130 abused, abandoned, or neglected the child as defined in chapter
131 39.~~7~~

132 (10)-(9) Any temporary or permanent orders for child
133 support, the court entering the order, and the case number.~~7~~

134 (11)-(10) Any temporary or permanent order for protection
135 entered on behalf of or against either parent, the petitioner,
136 or the child; the court entering the order; and the case
137 number.~~7~~

138 (12)-(11) That it is in the best interest of the child for
139 the petitioner to have custody of the child.~~7~~ ~~and~~

140 (13)-(12) A statement of the period of time the petitioner

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141 is requesting temporary or concurrent custody, including a
142 statement of the reasons supporting that request.

143

144 ~~Only an extended family member may file a petition under this~~
145 ~~chapter.~~

146 Section 5. Section 751.05, Florida Statutes, is amended to
147 read:

148 751.05 Order granting temporary or concurrent custody.--

149 (1) At the hearing on the petition for temporary or
150 concurrent custody, the court must hear the evidence concerning
151 a minor child's need for care by the petitioner, all other
152 matters required to be set forth in the petition, and the
153 objections or other testimony of the child's parents, if
154 present.

155 (2) Unless the minor child's parents object, the court
156 shall award ~~the~~ temporary or concurrent custody of the child to
157 the petitioner if ~~when~~ it is in the best interest of the child
158 ~~to do so.~~

159 (3) If one of the minor child's parents objects to:

160 (a) The petition for concurrent custody, the court shall
161 not grant the petition. The court shall give the petitioner the
162 option of converting the petition to a petition for temporary
163 custody. If the petitioner so elects, the court shall set the
164 matter for further hearing, provide notice to the parent or
165 parents, and proceed pursuant to paragraph (b). If the petition
166 is not converted into a petition for temporary custody, it shall
167 be dismissed without prejudice.

168 (b) The petition for temporary custody ~~granting of~~

169 ~~temporary custody to the petitioner,~~ the court shall grant the
 170 petition only upon a finding, by clear and convincing evidence,
 171 that the child's parent or parents are unfit to provide for the
 172 care and control of the child. In determining that a parent is
 173 unfit, the court must find that the parent has abused,
 174 abandoned, or neglected the child, as defined in chapter 39.

175 (4) The order granting:

176 (a) Concurrent custody of the minor child to the
 177 petitioner does not affect the ability of the child's parent or
 178 parents to obtain physical custody of the child at any time.

179 (b) Temporary custody of the minor child to the petitioner
 180 may also grant visitation rights to the child's parent or
 181 parents, if it is in the best interest of the child ~~to do so.~~

182 (5) ~~(a)~~ The order granting temporary or concurrent custody
 183 of the minor child to the petitioner:

184 (a) May not include an order for the support of the child
 185 unless the parent has received personal or substituted service
 186 of process, the petition requests an order for the support of
 187 the child, and there is evidence of the parent's ability to pay
 188 the support ordered.

189 ~~(b) The order granting temporary custody~~ May redirect all
 190 or part of an existing child support obligation to be paid to
 191 the extended family member who is granted temporary or
 192 concurrent custody of the child. If the court redirects an
 193 existing child support obligation, the order granting temporary
 194 or concurrent custody must include, if possible, the
 195 determination of arrearages owed to the obligee and the person
 196 awarded temporary or concurrent custody and must order payment

197 of the arrearages. The clerk of the circuit court in which the
198 ~~temporary custody~~ order is entered shall transmit a certified
199 copy ~~thereof~~ to the court originally entering the child support
200 order. The temporary or concurrent custody order shall be
201 recorded and filed in the original action in which child support
202 was determined and become a part thereof. A copy of the
203 temporary or concurrent custody order shall also be filed with
204 the depository that serves as the official recordkeeper for
205 support payments due under the support order. The depository
206 must ~~shall~~ maintain separate accounts and separate account
207 numbers for individual obligees.

208 (6) At any time, either or both of the child's parents may
209 petition the court to modify or terminate the order granting
210 temporary custody. The court shall terminate the order upon a
211 finding that the parent is a fit parent, or by consent of the
212 parties. The court may modify an order granting temporary
213 custody if the parties consent or if modification is in the best
214 interest of the child.

215 (7) At any time, the petitioner or either or both of the
216 child's parents may petition the court to modify or terminate
217 the order granting concurrent custody. The court shall terminate
218 the order upon a finding that either or both of the child's
219 parents object to the order. The fact that an order for
220 concurrent custody has been terminated does not preclude any
221 person who is otherwise eligible to petition for temporary
222 custody from filing such a petition. The court may modify an
223 order granting concurrent custody if the parties consent and if
224 modification is in the best interest of the child.

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Section 6. This act shall take effect July 1, 2009.