

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 require additional information; amending s. 751.05,
12 F.S.; providing that if a parent objects to a petition for
13 concurrent custody, the court may not grant the petition
14 and must give the petitioner the option of converting the
15 petition to one for temporary custody; providing for
16 dismissal of the petition; providing that an order
17 granting concurrent custody does not affect the ability of
18 the parents to obtain the physical custody of the child at
19 any time; providing for the court to terminate an order
20 for concurrent custody if a parent withdraws his or her
21 consent to the order; providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Subsection (3) of section 751.01, Florida
26 Statutes, is amended to read:

27 751.01 Purpose of act.--The purposes of ss. 751.01-751.05
28 are to:

29 (3) Provide temporary or concurrent custody of a minor
 30 child to a family member having physical custody of the minor
 31 child to enable the custodian to:

32 (a) Consent to all necessary and reasonable medical and
 33 dental care for the child, including nonemergency surgery and
 34 psychiatric care.~~†~~

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

- 38 1. Medical, dental, and psychiatric records;
- 39 2. Birth certificates and other records; and
- 40 3. Educational records.~~†~~

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

44 (d) Do all other things necessary for the care of the
 45 child.

46 Section 2. Section 751.011, Florida Statutes, is amended
 47 to read:

48 751.011 Definitions.--As used in this chapter ~~ss. 751.01-~~
 49 ~~751.05~~, the term:

50 (1) "Concurrent custody" means that an eligible individual
 51 is awarded custodial rights to care for a child concurrently
 52 with the child's parent or parents.

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

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

56 (b) ~~(2)~~ The stepparent of a minor child if the stepparent

CS/CS/CS/HB 1519

2009

57 | is currently married to the parent of the child and is not a
58 | party in a pending dissolution, separate maintenance, domestic
59 | violence, or other civil or criminal proceeding in any court of
60 | competent jurisdiction involving one or both of the child's
61 | parents as an adverse party.

62 | Section 3. Section 751.02, Florida Statutes, is amended to
63 | read:

64 | 751.02 ~~Determination of~~ Temporary or concurrent custody
65 | proceedings; jurisdiction.--

66 | (1) The following individuals may bring proceedings in the
67 | circuit court to determine the temporary or concurrent custody
68 | of a minor child:

69 | (a)~~(1)~~ Any extended family member who has the signed,
70 | notarized consent of the child's legal parents; or

71 | (b)~~(2)~~ Any extended family member who is caring full time
72 | for the child in the role of a substitute parent and with whom
73 | the child is presently living.

74 | (2) In addition to the requirements of subsection (1), an
75 | individual seeking concurrent custody must:

76 | (a) Currently have physical custody of the child, and have
77 | had physical custody of the child for at least 10 days in any
78 | 30-day period within the last 12 months; and

79 | (b) Not have signed, written documentation from a parent
80 | which is sufficient to enable the custodian to do all of the
81 | things necessary to care for the child which are available to
82 | custodians who have an order issued under s. 751.05.

83 | Section 4. Section 751.03, Florida Statutes, is amended to
84 | read:

85 751.03 Petition for temporary or concurrent custody;
 86 contents.--Each petition for temporary or concurrent custody of
 87 a minor child must be verified by the petitioner, who must be an
 88 extended family member, and must contain statements, to the best
 89 of the petitioner's knowledge and belief, providing showing:

90 (1) The name, date of birth, and current address of the
 91 child.†

92 (2) The names and current addresses of the child's
 93 parents.†

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

96 (4) The places where the child has lived during the past 5
 97 years.†

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

100 (6) The residence and post office address of the
 101 petitioner.†

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

103 (8) If concurrent custody is being requested:

104 (a) The time periods during the last 12 months that the
 105 child resided with the petitioner;

106 (b) The type of document, if any, provided by the parent
 107 or parents to enable the petitioner to act on behalf of the
 108 child;

109 (c) The services or actions that the petitioner is unable
 110 to obtain or undertake without an order of custody; and

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

113
 114 A copy of the written consent and any documents provided by the
 115 parent to assist the petitioner in obtaining services must be
 116 attached to the petition.

117 (9)-(8) If temporary custody is being requested, the
 118 consent of the child's parents, or the specific acts or
 119 omissions of the parents which demonstrate that the parents have
 120 abused, abandoned, or neglected the child as defined in chapter
 121 39.~~7~~

122 (10)-(9) Any temporary or permanent orders for child
 123 support, the court entering the order, and the case number.~~7~~

124 (11)-(10) Any temporary or permanent order for protection
 125 entered on behalf of or against either parent, the petitioner,
 126 or the child; the court entering the order; and the case
 127 number.~~7~~

128 (12)-(11) That it is in the best interest of the child for
 129 the petitioner to have custody of the child.~~7~~ ~~and~~

130 (13)-(12) A statement of the period of time the petitioner
 131 is requesting temporary custody, including a statement of the
 132 reasons supporting that request.

133
 134 ~~Only an extended family member may file a petition under this~~
 135 ~~chapter.~~

136 Section 5. Section 751.05, Florida Statutes, is amended to
 137 read:

138 751.05 Order granting temporary or concurrent custody.--

139 (1) At the hearing on the petition for temporary or
 140 concurrent custody, the court must hear the evidence concerning

141 a minor child's need for care by the petitioner, all other
 142 matters required to be set forth in the petition, and the
 143 objections or other testimony of the child's parents, if
 144 present.

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

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

150 (a) The petition for concurrent custody, in writing, the
 151 court may not grant the petition even if the other parent
 152 consents, in writing, to the entry of the order. The court shall
 153 give the petitioner the option of converting the petition to a
 154 petition for temporary custody. If the petitioner so elects, the
 155 court shall set the matter for further hearing, provide notice
 156 to the parent or parents, and proceed pursuant to paragraph (b).
 157 If the petition is not converted into a petition for temporary
 158 custody, it shall be dismissed without prejudice.

159 (b) The petition for temporary custody ~~granting of~~
 160 ~~temporary custody to the petitioner,~~ the court shall grant the
 161 petition only upon a finding, by clear and convincing evidence,
 162 that the child's parent or parents are unfit to provide for the
 163 care and control of the child. In determining that a parent is
 164 unfit, the court must find that the parent has abused,
 165 abandoned, or neglected the child, as defined in chapter 39.

166 (4) The order granting:

167 (a) Concurrent custody of the minor child may not
 168 eliminate or diminish the custodial rights of the child's parent

169 or parents. The order must expressly state that the grant of
 170 custody does not affect the ability of the child's parent or
 171 parents to obtain physical custody of the child at any time.

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

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

177 (a) May not include an order for the support of the child
 178 unless the parent has received personal or substituted service
 179 of process, the petition requests an order for the support of
 180 the child, and there is evidence of the parent's ability to pay
 181 the support ordered.

182 ~~(b) The order granting temporary custody~~ May redirect all
 183 or part of an existing child support obligation to be paid to
 184 the extended family member who is granted temporary or
 185 concurrent custody of the child. If the court redirects an
 186 existing child support obligation, the order granting temporary
 187 or concurrent custody must include, if possible, the
 188 determination of arrearages owed to the obligee and the person
 189 awarded temporary or concurrent custody and must order payment
 190 of the arrearages. The clerk of the circuit court in which the
 191 ~~temporary custody~~ order is entered shall transmit a certified
 192 copy ~~thereof~~ to the court originally entering the child support
 193 order. The temporary or concurrent custody order shall be
 194 recorded and filed in the original action in which child support
 195 was determined and become a part thereof. A copy of the
 196 temporary or concurrent custody order shall also be filed with

CS/CS/CS/HB 1519

2009

197 the depository that serves as the official recordkeeper for
198 support payments due under the support order. The depository
199 must ~~shall~~ maintain separate accounts and separate account
200 numbers for individual obligees.

201 (6) At any time, either or both of the child's parents may
202 petition the court to modify or terminate the order granting
203 temporary custody. The court shall terminate the order upon a
204 finding that the parent is a fit parent, or by consent of the
205 parties. The court may modify an order granting temporary
206 custody if the parties consent or if modification is in the best
207 interest of the child.

208 (7) At any time, the petitioner or either or both of the
209 child's parents may move the court to modify the child support
210 provision or terminate the order granting concurrent custody.
211 The court shall terminate the order upon a finding that either
212 or both of the child's parents object to the order. The fact
213 that an order for concurrent custody has been terminated does
214 not preclude any person who is otherwise eligible to petition
215 for temporary custody from filing such petition. The court may
216 modify an order granting child support if the parties consent
217 and if modification is in the best interest of the child.

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