

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

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

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40 | Be It Enacted by the Legislature of the State of Florida:

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42 | Section 1. Section 752.011, Florida Statutes, is created
 43 | to read:

44 | 752.011 Petition for grandparental visitation.--

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

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

56 | (3) Upon the filing of a verified petition by a

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

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

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

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

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

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

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

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

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

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

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

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

108 (h) The present mental, physical, and emotional health of
109 the grandparent.

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

112 (j) The results of the home study investigation or

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113 professional evaluation of the minor, if one is ordered pursuant
114 to subsection (5).

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

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

125 (m) Whether the parents of the minor disagree on whether
126 to allow, or the extent of, grandparental visitation.

127 (n) Whether the visitation will materially harm the
128 parent-child relationship.

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

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

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

139 (10) An order for grandparental visitation may be modified
140 upon a showing by the person petitioning for modification of a

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141 substantial change in circumstances and that modifying
142 visitation is in the best interest of the minor.

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

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

154 (a) Upon filing the motion, the court shall direct the
155 parties to mediation and set a hearing on the merits of the
156 motion.

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

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

- 167 1. A specific visitation schedule.
168 2. Visitation that compensates for the visitation denied

169 or otherwise interfered with, which may be of the same type as
 170 the visitation denied or otherwise interfered with, including
 171 holidays, weekdays, weekends, summers, and at the convenience of
 172 the grandparent.

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

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

179 (13) The court may not grant grandparental visitation to a
 180 minor child subsequent to a final order of adoption of that
 181 child except as provided in s. 752.071.

182 (14) Section 57.105 applies to actions brought under this
 183 chapter.

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

187 Section 2. Section 752.015, Florida Statutes, is amended
 188 to read:

189 752.015 Mediation of visitation disputes.--It is ~~shall be~~
 190 the public policy of this state that families resolve
 191 differences over grandparental ~~grandparent~~ visitation within the
 192 family. It is ~~shall be~~ the further public policy of this state
 193 that when families are unable to resolve differences relating to
 194 grandparental ~~grandparent~~ visitation that the family participate
 195 in any formal or informal mediation services that may be
 196 available. If ~~When~~ families are unable to resolve differences

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197 relating to grandparental ~~grandparent~~ visitation and a petition
 198 is filed pursuant to s. 752.011 ~~s. 752.01~~, the court shall, if
 199 such services are available in the circuit, refer the case to
 200 family mediation in accordance with the Florida Family Law Rules
 201 of Procedure ~~rules promulgated by the Supreme Court.~~

202 Section 3. Section 752.071, Florida Statutes, is created
 203 to read:

204 752.071 Effect of adoption by stepparent or close
 205 relative.--Following the adoption of a minor child by a
 206 stepparent or close relative, the stepparent or close relative
 207 may petition the court to terminate an order granting
 208 grandparental visitation under this chapter which was entered
 209 prior to the adoption. The court may terminate the order unless
 210 the grandparent is able to show that the criteria of s. 752.011
 211 authorizing the visitation continues to be satisfied.

212 Section 4. Sections 752.01 and 752.07, Florida Statutes,
 213 are repealed.

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