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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/06/2009	.	
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The Committee on Judiciary (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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

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



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13 (a) Consent to all necessary and reasonable medical and
14 dental care for the child, including nonemergency surgery and
15 psychiatric care.~~†~~

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

- 19 1. Medical, dental, and psychiatric records;
- 20 2. Birth certificates and other records; and
- 21 3. Educational records;

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

25 (d) Do all other things necessary for the care of the
26 child.

27 Section 2. Section 751.011, Florida Statutes, is amended to
28 read:

29 751.011 Definitions.—As used in this chapter ~~ss. 751.01-~~
30 ~~751.05~~, the term:

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

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

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

37 (b) ~~(2)~~ The stepparent of a minor child if the stepparent is
38 currently married to the parent of the child and is not a party
39 in a pending dissolution, separate maintenance, domestic
40 violence, or other civil or criminal proceeding in any court of
41 competent jurisdiction involving one or both of the child's



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42 parents as an adverse party.

43 Section 3. Section 751.02, Florida Statutes, is amended to
44 read:

45 751.02 ~~Determination of~~ Temporary or concurrent custody
46 proceedings; jurisdiction.-

47 (1) The following individuals may bring proceedings in the
48 circuit court to determine the temporary or concurrent custody
49 of a minor child:

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

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

55 (2) In addition to the requirements of subsection (1), an
56 individual seeking concurrent custody must:

57 (a) Currently have physical custody of the child, and have
58 had physical custody of the child for at least 10 days in any
59 30-day period within the last 12 months; and

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

64 Section 4. Section 751.03, Florida Statutes, is amended to
65 read:

66 751.03 Petition for temporary or concurrent custody;
67 contents.-Each petition for temporary or concurrent custody of a
68 minor child must be verified by the petitioner, who must be an
69 extended family member, and must contain statements, to the best
70 of the petitioner's knowledge and belief, providing ~~showing~~:



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71 (1) The name, date of birth, and current address of the
72 child.~~†~~

73 (2) The names and current addresses of the child's
74 parents.~~†~~

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

77 (4) The places where the child has lived during the past 5
78 years.~~†~~

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

81 (6) The residence and post office address of the
82 petitioner.~~†~~

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

84 (8) If concurrent custody is being requested:

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

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

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

91 (d) Whether each parent has consented, in writing to the
92 entry of an order of concurrent custody.

93
94 A copy of the written consent and any documents provided by the
95 parent to assist the petitioner in obtaining services must be
96 attached to the petition.

97 (9)~~(8)~~ If temporary custody is being requested, the consent
98 of the child's parents, or the specific acts or omissions of the
99 parents which demonstrate that the parents have abused,



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100 abandoned, or neglected the child as defined in chapter 39.~~†~~

101 ~~(10)(9)~~ Any temporary or permanent orders for child
102 support, the court entering the order, and the case number.~~†~~

103 ~~(11)(10)~~ Any temporary or permanent order for protection
104 entered on behalf of or against either parent, the petitioner,
105 or the child; the court entering the order; and the case
106 number.~~†~~

107 ~~(12)(11)~~ That it is in the best interest of the child for
108 the petitioner to have custody of the child.~~†~~ ~~and~~

109 ~~(13)(12)~~ A statement of the period of time the petitioner
110 is requesting temporary custody, including a statement of the
111 reasons supporting that request.

112

113 ~~Only an extended family member may file a petition under this~~
114 ~~chapter.~~

115 Section 5. Section 751.05, Florida Statutes, is amended to
116 read:

117 751.05 Order granting temporary or concurrent custody.-

118 (1) At the hearing on the petition for temporary or
119 concurrent custody, the court must hear the evidence concerning
120 a minor child's need for care by the petitioner, all other
121 matters required to be set forth in the petition, and the
122 objections or other testimony of the child's parents, if
123 present.

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

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



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129 (a) The petition for concurrent custody, in writing, the
130 court may not grant the petition even if the other parent
131 consents, in writing, to the entry of the order. The court shall
132 give the petitioner the option of converting the petition to a
133 petition for temporary custody. If the petitioner so elects, the
134 court shall set the matter for further hearing, provide notice
135 to the parent or parents, and proceed pursuant to paragraph (b).
136 If the petition is not converted into a petition for temporary
137 custody, it shall be dismissed without prejudice.

138 (b) The petition for temporary custody ~~granting of~~
139 ~~temporary custody to the petitioner,~~ the court shall grant the
140 petition only upon a finding, by clear and convincing evidence,
141 that the child's parent or parents are unfit to provide for the
142 care and control of the child. In determining that a parent is
143 unfit, the court must find that the parent has abused,
144 abandoned, or neglected the child, as defined in chapter 39.

145 (4) The order granting:

146 (a) Concurrent custody of the minor child may not eliminate
147 or diminish the custodial rights of the child's parent or
148 parents. The order must expressly state that the grant of
149 custody does not affect the ability of the child's parent or
150 parents to obtain physical custody of the child at any time.

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

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

156 (a) May not include an order for the support of the child
157 unless the parent has received personal or substituted service



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158 of process, the petition requests an order for the support of
159 the child, and there is evidence of the parent's ability to pay
160 the support ordered.

161 (b) ~~The order granting temporary custody~~ May redirect all
162 or part of an existing child support obligation to be paid to
163 the extended family member who is granted temporary or
164 concurrent custody of the child. If the court redirects an
165 existing child support obligation, the order granting temporary
166 or concurrent custody must include, if possible, the
167 determination of arrearages owed to the obligee and the person
168 awarded temporary or concurrent custody and must order payment
169 of the arrearages. The clerk of the circuit court in which the
170 ~~temporary custody~~ order is entered shall transmit a certified
171 copy ~~thereof~~ to the court originally entering the child support
172 order. The temporary or concurrent custody order shall be
173 recorded and filed in the original action in which child support
174 was determined and become a part thereof. A copy of the
175 temporary or concurrent custody order shall also be filed with
176 the depository that serves as the official recordkeeper for
177 support payments due under the support order. The depository
178 must ~~shall~~ maintain separate accounts and separate account
179 numbers for individual obligees.

180 (6) At any time, either or both of the child's parents may
181 petition the court to modify or terminate the order granting
182 temporary custody. The court shall terminate the order upon a
183 finding that the parent is a fit parent, or by consent of the
184 parties. The court may modify an order granting temporary
185 custody if the parties consent or if modification is in the best
186 interest of the child.



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187 (7) At any time, the petitioner, either or both of the
188 child's parents, may move the court to modify the child support
189 provision or terminate the order granting concurrent custody.
190 The court shall terminate the order upon a finding that either
191 or both of the child's parents object to the order. The fact
192 that an order for concurrent custody has been terminated does
193 not preclude any person who is otherwise eligible to petition
194 for temporary custody from filing such petition. The court may
195 modify an order granting child support if the parties consent
196 and if modification is in the best interest of the child.

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

198
199 ===== T I T L E A M E N D M E N T =====

200 And the title is amended as follows:

201 Delete everything before the enacting clause
202 and insert:

203 A bill to be entitled
204 An act relating to temporary and concurrent custody of
205 a child; revising ch. 751, F.S., relating to petitions
206 and court orders awarding the temporary custody of a
207 child to an extended family member, to also provide
208 for concurrent custody with the parents of the child;
209 amending ss. 751.01 and 751.02, F.S.; conforming
210 provisions to changes made by the act; amending s.
211 751.011, F.S.; revising definitions; defining the term
212 "concurrent custody"; amending s. 751.03, F.S.;
213 revising the petition for concurrent custody to
214 require additional information; amending s. 751.05,
215 F.S.; providing that if a parent objects to a petition



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216 for concurrent custody, the court may not grant the
217 petition and must give the petitioner the option of
218 converting the petition to one for temporary custody;
219 providing for dismissal of the petition; providing
220 that an order granting concurrent custody does not
221 affect the ability of the parents to obtain the
222 physical custody of the child at any time; providing
223 for the court to terminate an order for concurrent
224 custody if a parent withdraws his or her consent to
225 the order; providing an effective date.