

By Senator Storms

10-01145-09

20091888__

1 A bill to be entitled

2 An act relating to temporary and concurrent custody of
3 a child; revising ch. 751, F.S., relating to petitions
4 and court orders awarding the temporary custody of a
5 child to an extended family member, to also provide
6 for concurrent custody with the parents of the child;
7 amending ss. 751.01 and 751.02, F.S.; conforming
8 provision to changes made by the act; amending s.
9 751.011, F.S.; revising definitions; defining the term
10 "concurrent custody"; amending s. 751.03, F.S.;
11 revising the petition for concurrent custody to also
12 include a description of efforts made to obtain
13 consent; amending s. 751.05, F.S.; providing that if a
14 parent objects to a petition for concurrent custody,
15 the court shall give the petitioner the option of
16 converting the petition to one for temporary custody;
17 providing that an order granting concurrent custody
18 does not affect the ability of the parents to obtain
19 the physical custody of the child at any time;
20 amending ss. 39.013 and 49.011, F.S.; conforming
21 references; 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

10-01145-09

20091888__

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 to
47 read:

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

50 (1) "Concurrent custody" means that a person who is
51 eligible to obtain temporary custody of a minor child under this
52 chapter obtains custodial rights to care for the child
53 concurrently with the child's parent or parents. A finding of
54 abuse, abandonment, or neglect is not necessary for granting
55 concurrent custody over the objection of a parent. An order
56 granting concurrent custody does not eliminate or diminish the
57 custodial rights of the child's parent or parents.

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

10-01145-09

20091888__

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

61 (b)~~(2)~~ The stepparent of a minor child if the stepparent is
 62 currently married to the parent of the child and is not a party
 63 in a pending dissolution, separate maintenance, domestic
 64 violence, or other civil or criminal proceeding in any court of
 65 competent jurisdiction involving one or both of the child's
 66 parents as an adverse party.

67 Section 3. Section 751.02, Florida Statutes, is amended to
 68 read:

69 751.02 ~~Determination of~~ Temporary or concurrent custody
 70 proceedings; jurisdiction.—The following individuals may bring
 71 proceedings in the circuit court to determine the temporary or
 72 concurrent custody of a minor child:

73 (1) Any extended family member who has the signed,
 74 notarized consent of the child's legal parents; or

75 (2) Any extended family member who is caring full time for
 76 the child in the role of a substitute parent and with whom the
 77 child is presently living.

78 Section 4. Section 751.03, Florida Statutes, is amended to
 79 read:

80 751.03 Petition for temporary or concurrent custody;
 81 contents.—Each petition for temporary or concurrent custody of a
 82 minor child must be verified by the petitioner, who must be an
 83 extended family member, and must contain statements, to the best
 84 of petitioner's knowledge and belief, providing showing:

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

87 (2) The names and current addresses of the child's

10-01145-09

20091888__

88 parents.~~†~~89 (3) The names and current addresses of the persons with
90 whom the child has lived during the past 5 years.~~†~~91 (4) The places where the child has lived during the past 5
92 years.~~†~~93 (5) Information concerning any custody proceeding in this
94 or any other state with respect to the child.~~†~~95 (6) The residence and post office address of the
96 petitioner.~~†~~97 (7) The petitioner's relationship to the child.~~†~~98 (8) If concurrent custody is being requested, the consent
99 of the child's parents, or a description of the efforts made by
100 the petitioner to obtain consent and the results of those
101 efforts.102 (9)~~(8)~~ If temporary custody is being requested, the consent
103 of the child's parents, or the specific acts or omissions of the
104 parents which demonstrate that the parents have abused,
105 abandoned, or neglected the child as defined in chapter 39.~~†~~106 (10)~~(9)~~ Any temporary or permanent orders for child
107 support, the court entering the order, and the case number.~~†~~108 (11)~~(10)~~ Any temporary or permanent order for protection
109 entered on behalf of or against either parent, the petitioner,
110 or the child; the court entering the order; and the case
111 number.~~†~~112 (12)~~(11)~~ That it is in the best interest of the child for
113 the petitioner to have custody of the child.~~†~~ ~~and~~114 (13)~~(12)~~ A statement of the period of time the petitioner
115 is requesting temporary custody, including a statement of the
116 reasons supporting that request.

10-01145-09

20091888__

117

118 ~~Only an extended family member may file a petition under this~~
119 ~~chapter.~~

120 Section 5. Section 751.05, Florida Statutes, is amended to
121 read:

122 751.05 Order granting temporary or concurrent custody.—

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

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

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

134 (a) The petition for concurrent custody, the court shall
135 give the petitioner the option of converting the petition to a
136 petition for temporary custody. If the petitioner so elects, the
137 court shall set the matter for further hearing and proceed
138 pursuant to paragraph (b).

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

10-01145-09

20091888__

146 (4) The order granting:

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

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

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

155 (a) May not include an order for the support of the child
156 unless the parent has received personal or substituted service
157 of process, the petition requests an order for the support of
158 the child, and there is evidence of the parent's ability to pay
159 the support ordered.

160 ~~(b) The order granting temporary custody~~ May redirect all
161 or part of an existing child support obligation to be paid to
162 the extended family member who is granted temporary or
163 concurrent custody of the child. If the court redirects an
164 existing child support obligation, the order granting temporary
165 or concurrent custody must include, if possible, the
166 determination of arrearages owed to the obligee and the person
167 awarded temporary or concurrent custody and must order payment
168 of the arrearages. The clerk of the circuit court in which the
169 ~~temporary custody~~ order is entered shall transmit a certified
170 copy ~~thereof~~ to the court originally entering the child support
171 order. The temporary or concurrent custody order shall be
172 recorded and filed in the original action in which child support
173 was determined and become a part thereof. A copy of the
174 temporary or concurrent custody order shall also be filed with

10-01145-09

20091888__

175 the depository that serves as the official recordkeeper for
176 support payments due under the support order. The depository
177 must ~~shall~~ maintain separate accounts and separate account
178 numbers for individual obligees.

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

186 Section 6. Subsection (3) of section 39.013, Florida
187 Statutes, is amended to read:

188 39.013 Procedures and jurisdiction; right to counsel.—

189 (3) If ~~When~~ a child is under the jurisdiction of the
190 circuit court pursuant to this chapter, the circuit court
191 assigned to handle dependency matters may exercise the general
192 and equitable jurisdiction over guardianship proceedings under
193 chapter 744 and proceedings for temporary or concurrent custody
194 of minor children by an extended family member under chapter
195 751.

196 Section 7. Subsection (14) of section 49.011, Florida
197 Statutes, is amended to read:

198 49.011 Service of process by publication; cases in which
199 allowed.—Service of process by publication may be made in any
200 court on any party identified in s. 49.021 in any action or
201 proceeding:

202 (14) For temporary or concurrent custody of a minor child,
203 under chapter 751 ~~ss. 751.01-751.05~~.

10-01145-09

20091888__

204

Section 8. This act shall take effect July 1, 2009.