

By the Committee on Children, Families, and Elder Affairs; and
Senator Storms

586-02702-09

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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 for dismissal of the petition; providing
18 that an order granting concurrent custody does not
19 affect the ability of the parents to obtain the
20 physical custody of the child at any time; providing
21 for the court to terminate an order for concurrent
22 custody if a parent withdraws his or her consent to
23 the order; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

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

29 751.01 Purpose of act.—The purposes of ss. 751.01-751.05

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30 are to:

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

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

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

- 40 1. Medical, dental, and psychiatric records;
- 41 2. Birth certificates and other records; and
- 42 3. Educational records;

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

46 (d) Do all other things necessary for the care of the
47 child.

48 Section 2. Section 751.011, Florida Statutes, is amended to
49 read:

50 751.011 Definitions.—As used in this chapter ~~ss. 751.01-~~
51 ~~751.05~~, the term:

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

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59 parent or parents.

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

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

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

69 Section 3. Section 751.02, Florida Statutes, is amended to
70 read:

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

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

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

80 Section 4. Section 751.03, Florida Statutes, is amended to
81 read:

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

87 (1) The name, date of birth, and current address of the

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88 child.~~†~~

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

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

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

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

97 (6) The residence and post office address of the
98 petitioner.~~†~~

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

100 (8) If concurrent custody is being requested, the consent
101 of the child's parents, or a description of the efforts made by
102 the petitioner to obtain consent and the results of those
103 efforts.

104 (9)~~(8)~~ If temporary custody is being requested, the consent
105 of the child's parents, or the specific acts or omissions of the
106 parents which demonstrate that the parents have abused,
107 abandoned, or neglected the child as defined in chapter 39.~~†~~

108 (10)~~(9)~~ Any temporary or permanent orders for child
109 support, the court entering the order, and the case number.~~†~~

110 (11)~~(10)~~ Any temporary or permanent order for protection
111 entered on behalf of or against either parent, the petitioner,
112 or the child; the court entering the order; and the case
113 number.~~†~~

114 (12)~~(11)~~ That it is in the best interest of the child for
115 the petitioner to have custody of the child.~~†~~ ~~and~~

116 (13)~~(12)~~ A statement of the period of time the petitioner

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117 is requesting temporary custody, including a statement of the
118 reasons supporting that request.

119

120 ~~Only an extended family member may file a petition under this~~
121 ~~chapter.~~

122 Section 5. Section 751.05, Florida Statutes, is amended to
123 read:

124 751.05 Order granting temporary or concurrent custody.—

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

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

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

136 (a) The petition for concurrent custody, the court shall
137 give the petitioner the option of converting the petition to a
138 petition for temporary custody. If the petitioner so elects, the
139 court shall set the matter for further hearing and proceed
140 pursuant to paragraph (b). If the petition is not converted into
141 a petition for temporary custody, it shall be dismissed without
142 prejudice.

143 (b) The petition for temporary custody ~~granting of~~
144 ~~temporary custody to the petitioner,~~ the court shall grant the
145 petition only upon a finding, by clear and convincing evidence,

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146 that the child's parent or parents are unfit to provide for the
147 care and control of the child. In determining that a parent is
148 unfit, the court must find that the parent has abused,
149 abandoned, or neglected the child, as defined in chapter 39.

150 (4) The order granting:

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

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

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

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

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

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175 order. The temporary or concurrent custody order shall be
176 recorded and filed in the original action in which child support
177 was determined and become a part thereof. A copy of the
178 temporary or concurrent custody order shall also be filed with
179 the depository that serves as the official recordkeeper for
180 support payments due under the support order. The depository
181 must ~~shall~~ maintain separate accounts and separate account
182 numbers for individual obligees.

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

190 (7) At any time, either or both of the child's parents may
191 petition the court to modify or terminate the order granting
192 concurrent custody. The court shall terminate the order upon a
193 finding that either or both of the child's parents withdraw
194 consent to the order. The court may modify an order granting
195 concurrent custody if the parties consent and if modification is
196 in the best interest of the child.

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