

By the Committee on Judiciary; and Senator Storms

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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 provisions 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
12 require additional information; amending s. 751.05,
13 F.S.; providing that if a parent objects to a petition
14 for concurrent custody, the court may not grant the
15 petition and must 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 either or both parents object to the order;
23 providing for filing for temporary custody if an order
24 for concurrent custody has been terminated; providing
25 for the court to modify an existing child support
26 order; providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. Subsection (3) of section 751.01, Florida
31 Statutes, is amended to read:

32 751.01 Purpose of act.—The purposes of ss. 751.01-751.05
33 are to:

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

37 (a) Consent to all necessary and reasonable medical and
38 dental care for the child, including nonemergency surgery and
39 psychiatric care. ~~†~~

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

- 43 1. Medical, dental, and psychiatric records;
44 2. Birth certificates and other records; and
45 3. Educational records;

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

49 (d) Do all other things necessary for the care of the
50 child.

51 Section 2. Section 751.011, Florida Statutes, is amended to
52 read:

53 751.011 Definitions.—As used in this chapter ~~ss. 751.01-~~
54 ~~751.05~~, the term:

55 (1) "Concurrent custody" means that an eligible extended
56 family member is awarded custodial rights to care for a child
57 concurrently with the child's parent or parents.

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

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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.-

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

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

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

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

81 (a) Currently have physical custody of the child, and have
82 had physical custody of the child for at least 10 days in any
83 30-day period within the last 12 months; and

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

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88 Section 4. Section 751.03, Florida Statutes, is amended to
89 read:

90 751.03 Petition for temporary or concurrent custody;
91 contents.—Each petition for temporary or concurrent custody of a
92 minor child must be verified by the petitioner, who must be an
93 extended family member, and must contain statements, to the best
94 of the petitioner's knowledge and belief, providing ~~showing~~:

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

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

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

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

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

105 (6) The residence and post office address of the
106 petitioner.†

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

108 (8) If concurrent custody is being requested:

109 (a) The time periods during the last 12 months in which the
110 child resided with the petitioner;

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

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

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

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118 A copy of the written consent and any documents provided by the
119 parent to assist the petitioner in obtaining services must be
120 attached to the petition.

121 (9)~~(8)~~ If temporary custody is being requested, the consent
122 of the child's parents, or the specific acts or omissions of the
123 parents which demonstrate that the parents have abused,
124 abandoned, or neglected the child as defined in chapter 39.~~†~~

125 (10)~~(9)~~ Any temporary or permanent orders for child
126 support, the court entering the order, and the case number.~~†~~

127 (11)~~(10)~~ Any temporary or permanent order for protection
128 entered on behalf of or against either parent, the petitioner,
129 or the child; the court entering the order; and the case
130 number.~~†~~

131 (12)~~(11)~~ That it is in the best interest of the child for
132 the petitioner to have custody of the child.~~†~~~~and~~

133 (13)~~(12)~~ A statement of the period of time the petitioner
134 is requesting temporary custody, including a statement of the
135 reasons supporting that request.

136

137 ~~Only an extended family member may file a petition under this~~
138 ~~chapter.~~

139 Section 5. Section 751.05, Florida Statutes, is amended to
140 read:

141 751.05 Order granting temporary or concurrent custody.—

142 (1) At the hearing on the petition for temporary or
143 concurrent custody, the court must hear the evidence concerning
144 a minor child's need for care by the petitioner, all other
145 matters required to be set forth in the petition, and the

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146 objections or other testimony of the child's parents, if
147 present.

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

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

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

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

169 (4) The order granting:

170 (a) Concurrent custody of the minor child may not eliminate
171 or diminish the custodial rights of the child's parent or
172 parents. The order must expressly state that the grant of
173 custody does not affect the ability of the child's parent or
174 parents to obtain physical custody of the child at any time.

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

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

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

185 ~~(b) The order granting temporary custody~~ May redirect all
186 or part of an existing child support obligation to be paid to
187 the extended family member who is granted temporary or
188 concurrent custody of the child. If the court redirects an
189 existing child support obligation, the order granting temporary
190 or concurrent custody must include, if possible, the
191 determination of arrearages owed to the obligee and the person
192 awarded temporary or concurrent custody and must order payment
193 of the arrearages. The clerk of the circuit court in which the
194 ~~temporary custody~~ order is entered shall transmit a certified
195 copy ~~thereof~~ to the court originally entering the child support
196 order. The temporary or concurrent custody order shall be
197 recorded and filed in the original action in which child support
198 was determined and become a part thereof. A copy of the
199 temporary or concurrent custody order shall also be filed with
200 the depository that serves as the official recordkeeper for
201 support payments due under the support order. The depository
202 must ~~shall~~ maintain separate accounts and separate account
203 numbers for individual obligees.

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

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

219 (8) At any time the petitioner, or either or both of the
220 child's parents, may move the court to modify the existing child
221 support order pursuant to chapter 61. The court may modify an
222 existing order granting child support if the parties consent and
223 if modification is in the best interest of the child. Any order
224 modifying child support in a concurrent custody proceeding shall
225 be copied and placed in the related family court files.

226 Section 6. This act shall take effect January 1, 2011.