

HB 19

2013

1 A bill to be entitled
2 An act relating to grandparent visitation rights;
3 creating s. 752.011, F.S.; authorizing the grandparent
4 of a minor child to petition a court for visitation
5 under certain circumstances; providing a rebuttable
6 presumption in favor of the minor child's parent;
7 requiring a preliminary hearing on harm to the minor
8 child resulting from denial of visitation; providing
9 for the payment of attorney fees and costs by a
10 petitioner who fails to make a prima facie showing of
11 harm; authorizing appointment of a guardian ad litem
12 and mediation after a prima facie showing of harm;
13 providing for a psychological evaluation of the minor
14 child if mediation fails; authorizing grandparent
15 visitation if the court makes specified findings;
16 requiring clear and convincing evidence of
17 demonstrable significant mental or emotional harm to
18 the minor child resulting from a denial of visitation;
19 prohibiting grandparent visitation that materially
20 harms the parent-child relationship; providing factors
21 for court consideration in determining whether there
22 is harm to the minor child or to the parent-child
23 relationship; providing for application of the Uniform
24 Child Custody Jurisdiction and Enforcement Act;
25 encouraging the consolidation of certain concurrent
26 actions; providing for modification of an order
27 awarding grandparent visitation; limiting the
28 frequency of actions seeking visitation; limiting

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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29 application to a minor child placed for adoption;
 30 providing for application of sanctions for unsupported
 31 claims or defenses; providing for venue; amending s.
 32 752.015, F.S.; conforming references; creating s.
 33 752.071, F.S.; providing conditions under which a
 34 court may terminate a grandparent visitation order
 35 upon adoption of a minor child by a stepparent or
 36 close relative; amending s. 39.01, F.S.; revising the
 37 definition of "next of kin" to include great-
 38 grandparents for purposes of various proceedings
 39 relating to children; amending s. 39.509, F.S.;
 40 providing for visitation rights of great-grandparents;
 41 amending ss. 39.801 and 63.0425, F.S.; providing for a
 42 great-grandparent's right to notice of adoption;
 43 amending s. 63.172, F.S.; conforming provisions;
 44 repealing s. 752.01, F.S., relating to actions by a
 45 grandparent for visitation rights; repealing s.
 46 752.07, F.S., relating to the effect of adoption of a
 47 child by a stepparent on grandparent visitation
 48 rights; providing an effective date.

49

50 Be It Enacted by the Legislature of the State of Florida:

51

52 Section 1. Section 752.011, Florida Statutes, is created
 53 to read:

54 752.011 Petition for grandparent visitation of a minor
 55 child.—

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56 (1) A grandparent of a minor child may petition the court
57 for visitation with the child if the parent of the child has
58 denied such visitation with the grandparent.

59 (2) In evaluating the petition for visitation, the court
60 shall establish a rebuttable presumption that a parent's
61 decision to deny a grandparent reasonable visitation with the
62 minor child is in the child's best interest and shall accord
63 special weight to the parent's decision.

64 (3) Upon the filing of a petition by a grandparent for
65 visitation, the court shall hold a preliminary hearing to
66 determine whether the petitioner has made a prima facie showing
67 that the minor child is suffering or is threatened with
68 suffering demonstrable significant mental or emotional harm due
69 to the parental decision not to allow visitation with the
70 grandparent. Absent such a showing, the court shall dismiss the
71 petition and shall award reasonable attorney fees and costs to
72 be paid by the petitioner to the respondent.

73 (4) If the court finds that there is prima facie evidence
74 that the minor child is suffering or is threatened with
75 suffering demonstrable significant mental or emotional harm due
76 to the parental decision not to allow visitation with the
77 grandparent, the court may appoint a guardian ad litem and shall
78 order the matter to family mediation as provided in s. 752.015.

79 (5) If mediation fails to yield a resolution, the court
80 shall order a psychological evaluation of the minor child
81 pursuant to the Florida Family Law Rules of Procedure, absent
82 the availability of comparable evidence of the findings expected
83 from such an evaluation.

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84 (6) After conducting a hearing on the issue of visitation,
85 the court may award reasonable visitation to the grandparent
86 with respect to the minor child if the court finds that:

87 (a) There is clear and convincing evidence that the minor
88 child is suffering or is threatened with suffering demonstrable
89 significant mental or emotional harm as a result of a parental
90 decision not to allow visitation with the grandparent and that
91 visitation with the grandparent will alleviate or mitigate the
92 harm.

93 (b) The visitation will not materially harm the parent-
94 child relationship.

95 (7) In assessing demonstrable significant mental or
96 emotional harm under paragraph (6)(a), the court shall consider
97 the totality of the circumstances affecting the mental and
98 emotional well-being of the minor child, including:

99 (a) The love, affection, and other emotional ties existing
100 between the minor child and the grandparent, including those
101 resulting from the relationship that had been previously allowed
102 by the child's parent.

103 (b) The length and quality of the previous relationship
104 between the minor child and the grandparent, including the
105 extent to which the grandparent was involved in providing
106 regular care and support for the child.

107 (c) Whether the grandparent established or attempted to
108 establish ongoing personal contact with the minor child.

109 (d) The reasons that the parent made the decision to end
110 contact or visitation between the minor child and the
111 grandparent which had been previously allowed by the parent.

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112 (e) Whether there has been demonstrable significant mental
113 or emotional harm to the minor child as a result of disruption
114 in the family unit, for which the child derived support and
115 stability from the grandparental relationship, and whether the
116 continuation of that support and stability is likely to prevent
117 further harm.

118 (f) The existence or threat to the minor child of mental
119 injury as defined in s. 39.01.

120 (g) The present mental, physical, and emotional health of
121 the minor child.

122 (h) The present mental, physical, and emotional health of
123 the grandparent.

124 (i) The recommendations of the minor child's guardian ad
125 litem, if one is appointed.

126 (j) The results of the psychological evaluation of the
127 minor child ordered pursuant to subsection (5).

128 (k) The preference of the minor child if the child is
129 determined to be of sufficient maturity to express a preference.

130 (l) If a parent is deceased, any written testamentary
131 statement by the deceased parent requesting that visitation with
132 the grandparent be granted or stating a belief that such
133 visitation would reduce or mitigate demonstrable significant
134 mental or emotional harm to the minor child resulting from the
135 parent's death. The absence of such a testamentary statement
136 does not provide evidence that the deceased parent would have
137 objected to the requested visitation.

138 (m) Whether the parents of the minor child disagree on
139 whether to allow or the extent of grandparent visitation.

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140 (n) Such other factors as the court considers necessary in
141 making its determination.

142 (8) In assessing material harm to the parent-child
143 relationship under paragraph (6) (b), the court shall consider
144 the totality of the circumstances affecting the parent-child
145 relationship, including:

146 (a) Whether there have been previous disputes between the
147 grandparent and the parent or parents over childrearing or other
148 matters related to the care and upbringing of the minor child.

149 (b) Whether visitation would materially interfere with or
150 compromise parental authority.

151 (c) Whether visitation can be arranged in a manner that
152 does not materially detract from the parent-child relationship,
153 including the quantity of time available for enjoyment of the
154 parent-child relationship, and any other consideration related
155 to disruption of the schedule and routines of the parent and the
156 minor child.

157 (d) Whether visitation is being sought for the primary
158 purpose of continuing or establishing a relationship with the
159 minor child with the intent that the child benefit from the
160 relationship.

161 (e) Whether the requested visitation would expose the
162 minor child to conduct, moral standards, experiences, or other
163 factors that are inconsistent with influences provided by the
164 parent.

165 (f) The nature of the relationship between the parent and
166 the grandparent.

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167 (g) The reasons that the parent made the decision to end
168 contact or visitation between the minor child and the
169 grandparent which was previously allowed by the parent.

170 (h) The psychological toll of visitation disputes on the
171 minor child.

172 (i) Such other factors as the court considers necessary in
173 making its determination.

174 (9) Part II of chapter 61, the Uniform Child Custody
175 Jurisdiction and Enforcement Act, applies to actions brought
176 under this section.

177 (10) If separate actions under this section and s. 61.13
178 are pending concurrently, the courts are strongly encouraged to
179 consolidate the actions in order to minimize the burden of
180 litigation of grandparent visitation on the minor child and the
181 other parties.

182 (11) An order for grandparent visitation may be modified
183 upon a showing by the person petitioning for modification that a
184 substantial change in circumstances has occurred and that
185 modification of visitation is in the best interest of the minor
186 child.

187 (12) An original action requesting visitation under this
188 section may be filed by a grandparent only once during any 2-
189 year period, except on good cause shown that the minor child is
190 suffering or threatened with suffering demonstrable significant
191 mental or emotional harm caused by a parental decision to deny
192 visitation between a minor child and the grandparent, which was
193 not known to the grandparent at the time of filing an earlier
194 action.

195 (13) This section does not provide for grandparent
 196 visitation with a minor child placed for adoption under chapter
 197 63 except as provided in s. 752.071 with respect to adoption by
 198 a stepparent or close relative.

199 (14) Section 57.105 applies to actions brought under this
 200 chapter.

201 (15) Venue shall be in the county where the minor child
 202 primarily resides, unless venue is otherwise governed by chapter
 203 39, chapter 61, or chapter 63.

204 Section 2. Section 752.015, Florida Statutes, is amended
 205 to read:

206 752.015 Mediation of visitation disputes.—It shall be the
 207 public policy of this state that families resolve differences
 208 over grandparent visitation within the family. It shall be the
 209 further public policy of this state that when families are
 210 unable to resolve differences relating to grandparent visitation
 211 that the family participate in any formal or informal mediation
 212 services that may be available. If ~~When~~ families are unable to
 213 resolve differences relating to grandparent visitation and a
 214 petition is filed pursuant to s. 752.011 ~~s. 752.01~~, the court
 215 shall, if such services are available in the circuit, refer the
 216 case to family mediation in accordance with the Florida Family
 217 Law Rules of Procedure ~~rules promulgated by the Supreme Court.~~

218 Section 3. Section 752.071, Florida Statutes, is created
 219 to read:

220 752.071 Effect of adoption by stepparent or close
 221 relative.—After the adoption of a minor child by a stepparent or
 222 close relative, the stepparent or close relative may petition

223 the court to terminate an order granting grandparent visitation
 224 under this chapter which was entered before the adoption. The
 225 court may terminate the order unless the grandparent is able to
 226 show that the criteria of s. 752.011 authorizing the visitation
 227 continue to be satisfied.

228 Section 4. Subsection (45) of section 39.01, Florida
 229 Statutes, is amended to read:

230 39.01 Definitions.—When used in this chapter, unless the
 231 context otherwise requires:

232 (45) "Next of kin" means an adult relative of a child who
 233 is the child's brother, sister, grandparent, great-grandparent,
 234 aunt, uncle, or first cousin.

235 Section 5. Section 39.509, Florida Statutes, is amended to
 236 read:

237 39.509 Grandparents' and great-grandparents' ~~Grandparents~~
 238 rights.—Notwithstanding any other provision of law, a maternal
 239 or paternal grandparent or great-grandparent as well as a
 240 stepgrandparent or step-great-grandparent is entitled to
 241 reasonable visitation with his or her grandchild or great-
 242 grandchild who has been adjudicated a dependent child and taken
 243 from the physical custody of the parent unless the court finds
 244 that such visitation is not in the best interest of the child or
 245 that such visitation would interfere with the goals of the case
 246 plan. Reasonable visitation may be unsupervised and, where
 247 appropriate and feasible, may be frequent and continuing. Any
 248 order for visitation or other contact must conform to the
 249 provisions of s. 39.0139.

250 (1) Grandparent or great-grandparent visitation may take

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251 | place in the home of the grandparent or great-grandparent unless
252 | there is a compelling reason for denying such a visitation. The
253 | department's caseworker shall arrange the visitation to which a
254 | grandparent or great-grandparent is entitled pursuant to this
255 | section. The state shall not charge a fee for any costs
256 | associated with arranging the visitation. However, the
257 | grandparent or great-grandparent shall pay for the child's cost
258 | of transportation when the visitation is to take place in the
259 | grandparent's or great-grandparent's home. The caseworker shall
260 | document the reasons for any decision to restrict a
261 | grandparent's or great-grandparent's visitation.

262 | (2) A grandparent or great-grandparent entitled to
263 | visitation pursuant to this section shall not be restricted from
264 | appropriate displays of affection to the child, such as
265 | appropriately hugging or kissing his or her grandchild or great-
266 | grandchild. Gifts, cards, and letters from the grandparent or
267 | great-grandparent and other family members shall not be denied
268 | to a child who has been adjudicated a dependent child.

269 | (3) Any attempt by a grandparent or great-grandparent to
270 | facilitate a meeting between the child who has been adjudicated
271 | a dependent child and the child's parent or legal custodian, or
272 | any other person in violation of a court order shall
273 | automatically terminate future visitation rights of the
274 | grandparent or great-grandparent.

275 | (4) When the child has been returned to the physical
276 | custody of his or her parent, the visitation rights granted
277 | pursuant to this section shall terminate.

278 | (5) The termination of parental rights does not affect the

279 | rights of grandparents or great-grandparents unless the court
 280 | finds that such visitation is not in the best interest of the
 281 | child or that such visitation would interfere with the goals of
 282 | permanency planning for the child.

283 | (6) In determining whether grandparental or great-
 284 | grandparental visitation is not in the child's best interest,
 285 | consideration may be given to the following:

286 | (a) The finding of guilt, regardless of adjudication, or
 287 | entry or plea of guilty or nolo contendere to charges under the
 288 | following statutes, or similar statutes of other jurisdictions:
 289 | s. 787.04, relating to removing a minor child ~~minors~~ from the
 290 | state or concealing a minor child ~~minors~~ contrary to court
 291 | order; s. 794.011, relating to sexual battery; s. 798.02,
 292 | relating to lewd and lascivious behavior; chapter 800, relating
 293 | to lewdness and indecent exposure; s. 826.04, relating to
 294 | incest; or chapter 827, relating to the abuse of children.

295 | (b) The designation by a court as a sexual predator as
 296 | defined in s. 775.21 or a substantially similar designation
 297 | under laws of another jurisdiction.

298 | (c) A report of abuse, abandonment, or neglect under ss.
 299 | 415.101-415.113 or this chapter and the outcome of the
 300 | investigation concerning such report.

301 | Section 6. Paragraph (a) of subsection (3) of section
 302 | 39.801, Florida Statutes, is amended to read:

303 | 39.801 Procedures and jurisdiction; notice; service of
 304 | process.—

305 | (3) Before the court may terminate parental rights, in
 306 | addition to the other requirements set forth in this part, the

307 following requirements must be met:

308 (a) Notice of the date, time, and place of the advisory
 309 hearing for the petition to terminate parental rights and a copy
 310 of the petition must be personally served upon the following
 311 persons, specifically notifying them that a petition has been
 312 filed:

- 313 1. The parents of the child.
- 314 2. The legal custodians of the child.
- 315 3. If the parents who would be entitled to notice are dead
 316 or unknown, a living relative of the child, unless upon diligent
 317 search and inquiry no such relative can be found.
- 318 4. Any person who has physical custody of the child.
- 319 5. Any grandparent or great-grandparent entitled to
 320 priority for adoption under s. 63.0425.
- 321 6. Any prospective parent who has been identified under s.
 322 39.503 or s. 39.803.
- 323 7. The guardian ad litem for the child or the
 324 representative of the guardian ad litem program, if the program
 325 has been appointed.

326
 327 The document containing the notice to respond or appear must
 328 contain, in type at least as large as the type in the balance of
 329 the document, the following or substantially similar language:

330 "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING
 331 CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF
 332 THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND
 333 TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE
 334 CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS

335 NOTICE."

336 Section 7. Subsection (1) of section 63.0425, Florida
 337 Statutes, is amended to read:

338 63.0425 Grandparent's or great-grandparent's right to
 339 notice.—

340 (1) If a child has lived with a grandparent or great-
 341 grandparent for at least 6 months within the 24-month period
 342 immediately preceding the filing of a petition for termination
 343 of parental rights pending adoption, the adoption entity shall
 344 provide notice to that grandparent or great-grandparent of the
 345 hearing on the petition.

346 Section 8. Subsection (2) of section 63.172, Florida
 347 Statutes, is amended to read:

348 63.172 Effect of judgment of adoption.—

349 (2) If one or both parents of a child die without the
 350 relationship of parent and child having been previously
 351 terminated and a spouse of the living parent or a close relative
 352 of the child thereafter adopts the child, the child's right of
 353 inheritance from or through the deceased parent is unaffected by
 354 the adoption and, unless the court orders otherwise, the
 355 adoption does ~~will~~ not terminate any grandparental or great-
 356 grandparental rights delineated under chapter 752. For purposes
 357 of this subsection, a close relative of a child is the child's
 358 brother, sister, grandparent, great-grandparent, aunt, or uncle.

359 Section 9. Sections 752.01 and 752.07, Florida Statutes,
 360 are repealed.

361 Section 10. This act shall take effect July 1, 2013.