

By Senator Abruzzo

25-00290-13

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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  
29          application to a minor child placed for adoption;

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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 to  
53 read:

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

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.

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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.

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

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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.

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

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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.

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:

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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 minor  
162 child to conduct, moral standards, experiences, or other factors  
163 that are inconsistent with influences provided by the parent.

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

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

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

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

173 (9) Part II of chapter 61, the Uniform Child Custody  
174 Jurisdiction and Enforcement Act, applies to actions brought

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175 under this section.

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

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

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

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

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

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

203 Section 2. Section 752.015, Florida Statutes, is amended to

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204 read:

205 752.015 Mediation of visitation disputes.—It shall be the  
206 public policy of this state that families resolve differences  
207 over grandparent visitation within the family. It shall be the  
208 further public policy of this state that when families are  
209 unable to resolve differences relating to grandparent visitation  
210 that the family participate in any formal or informal mediation  
211 services that may be available. If ~~When~~ families are unable to  
212 resolve differences relating to grandparent visitation and a  
213 petition is filed pursuant to s. 752.011 ~~s. 752.01~~, the court  
214 shall, if such services are available in the circuit, refer the  
215 case to family mediation in accordance with the Florida Family  
216 Law Rules of Procedure ~~rules promulgated by the Supreme Court.~~

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

219 752.071 Effect of adoption by stepparent or close  
220 relative.—After the adoption of a minor child by a stepparent or  
221 close relative, the stepparent or close relative may petition  
222 the court to terminate an order granting grandparent visitation  
223 under this chapter which was entered before the adoption. The  
224 court may terminate the order unless the grandparent is able to  
225 show that the criteria of s. 752.011 authorizing the visitation  
226 continue to be satisfied.

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

229 39.01 Definitions.—When used in this chapter, unless the  
230 context otherwise requires:

231 (45) "Next of kin" means an adult relative of a child who  
232 is the child's brother, sister, grandparent, great-grandparent,



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233 aunt, uncle, or first cousin.

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

236 39.509 Grandparents' and great-grandparents' ~~Grandparents~~  
237 rights.—Notwithstanding any other provision of law, a maternal  
238 or paternal grandparent or great-grandparent as well as a  
239 stepgrandparent or step-great-grandparent is entitled to  
240 reasonable visitation with his or her grandchild or great-  
241 grandchild who has been adjudicated a dependent child and taken  
242 from the physical custody of the parent unless the court finds  
243 that such visitation is not in the best interest of the child or  
244 that such visitation would interfere with the goals of the case  
245 plan. Reasonable visitation may be unsupervised and, where  
246 appropriate and feasible, may be frequent and continuing. Any  
247 order for visitation or other contact must conform to the  
248 provisions of s. 39.0139.

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

261 (2) A grandparent or great-grandparent entitled to

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

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

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

277 (5) The termination of parental rights does not affect the  
278 rights of grandparents or great-grandparents unless the court  
279 finds that such visitation is not in the best interest of the  
280 child or that such visitation would interfere with the goals of  
281 permanency planning for the child.

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

285 (a) The finding of guilt, regardless of adjudication, or  
286 entry or plea of guilty or nolo contendere to charges under the  
287 following statutes, or similar statutes of other jurisdictions:  
288 s. 787.04, relating to removing a minor child ~~minors~~ from the  
289 state or concealing a minor child ~~minors~~ contrary to court  
290 order; s. 794.011, relating to sexual battery; s. 798.02,

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291 relating to lewd and lascivious behavior; chapter 800, relating  
292 to lewdness and indecent exposure; s. 826.04, relating to  
293 incest; or chapter 827, relating to the abuse of children.

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

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

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

302 39.801 Procedures and jurisdiction; notice; service of  
303 process.—

304 (3) Before the court may terminate parental rights, in  
305 addition to the other requirements set forth in this part, the  
306 following requirements must be met:

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

312 1. The parents of the child.

313 2. The legal custodians of the child.

314 3. If the parents who would be entitled to notice are dead  
315 or unknown, a living relative of the child, unless upon diligent  
316 search and inquiry no such relative can be found.

317 4. Any person who has physical custody of the child.

318 5. Any grandparent or great-grandparent entitled to  
319 priority for adoption under s. 63.0425.

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320 6. Any prospective parent who has been identified under s.  
321 39.503 or s. 39.803.

322 7. The guardian ad litem for the child or the  
323 representative of the guardian ad litem program, if the program  
324 has been appointed.

325

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

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

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

337 63.0425 Grandparent's or great-grandparent's right to  
338 notice.—

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

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

347 63.172 Effect of judgment of adoption.—

348 (2) If one or both parents of a child die without the

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349 relationship of parent and child having been previously  
350 terminated and a spouse of the living parent or a close relative  
351 of the child thereafter adopts the child, the child's right of  
352 inheritance from or through the deceased parent is unaffected by  
353 the adoption and, unless the court orders otherwise, the  
354 adoption does ~~will~~ not terminate any grandparental or great-  
355 grandparental rights delineated under chapter 752. For purposes  
356 of this subsection, a close relative of a child is the child's  
357 brother, sister, grandparent, great-grandparent, aunt, or uncle.

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

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