

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

586-03365-13

2013384c1

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; requiring a preliminary
6 hearing; providing for the payment of attorney fees
7 and costs by a petitioner who fails to make a prima
8 facie showing of harm; authorizing grandparent
9 visitation if the court makes specified findings;
10 providing factors for court consideration; providing
11 for application of the Uniform Child Custody
12 Jurisdiction and Enforcement Act; encouraging the
13 consolidation of certain concurrent actions; providing
14 for modification of an order awarding grandparent
15 visitation; limiting the frequency of actions seeking
16 visitation; limiting application to a minor child
17 placed for adoption; providing for venue; amending s.
18 752.015, F.S.; conforming references; creating s.
19 752.071, F.S.; providing conditions under which a
20 court may terminate a grandparent visitation order
21 upon adoption of a minor child by a stepparent or
22 close relative; amending s. 39.01, F.S.; revising the
23 definition of "next of kin" to include great-
24 grandparents for purposes of various proceedings
25 relating to children; amending s. 39.509, F.S.;
26 providing for visitation rights of great-grandparents;
27 amending ss. 39.801 and 63.0425, F.S.; providing for a
28 great-grandparent's right to notice of adoption;
29 amending s. 63.172, F.S.; conforming provisions;

586-03365-13

2013384c1

30 repealing s. 752.01, F.S., relating to actions by a
31 grandparent for visitation rights; repealing s.
32 752.07, F.S., relating to the effect of adoption of a
33 child by a stepparent on grandparent visitation
34 rights; providing an effective date.

35
36 Be It Enacted by the Legislature of the State of Florida:

37
38 Section 1. Section 752.011, Florida Statutes, is created to
39 read:

40 752.011 Petition for grandparent visitation of a minor
41 child.—A grandparent of a minor child whose parent or parents
42 are deceased, missing, or in a permanent vegetative state may
43 petition the court for court-ordered visitation with the
44 grandchild under this section.

45 (1) Upon the filing of a petition by a grandparent for
46 visitation the court shall hold a preliminary hearing to
47 determine whether the petitioner has made a prima facie showing
48 of parental unfitness or significant harm to the child. Absent
49 such a showing, the court shall dismiss the petition and shall
50 award reasonable attorney fees and costs to be paid by the
51 petitioner to the respondent.

52 (2) If the court finds that there is prima facie evidence
53 that a parent is unfit or that there is a danger of significant
54 harm to the child, the court shall proceed toward a final
55 hearing, may appoint a guardian ad litem, and shall order the
56 matter to family mediation as provided in s. 752.015.

57 (3) After conducting a final hearing on the issue of
58 visitation, the court may award reasonable visitation to the

586-03365-13

2013384c1

59 grandparent with respect to the minor child if the court finds
60 by clear and convincing evidence that a parent is unfit or that
61 there is a danger of significant harm to the child, that
62 visitation is in the best interest of the minor child, and that
63 the visitation will not materially harm the parent-child
64 relationship.

65 (4) In assessing the best interest of the child under
66 subsection (3), the court shall consider the totality of the
67 circumstances affecting the mental and emotional well-being of
68 the minor child, including:

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

73 (b) The length and quality of the previous relationship
74 between the minor child and the grandparent, including the
75 extent to which the grandparent was involved in providing
76 regular care and support for the child.

77 (c) Whether the grandparent established ongoing personal
78 contact with the minor child before the death of the parent.

79 (d) The reasons that the surviving parent made the decision
80 to end contact or visitation between the minor child and the
81 grandparent.

82 (e) Whether there has been demonstrable significant mental
83 or emotional harm to the minor child as a result of disruption
84 in the family unit, for which the child derived support and
85 stability from the grandparental relationship, and whether the
86 continuation of that support and stability is likely to prevent
87 further harm.

586-03365-13

2013384c1

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

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

92 (h) The present mental, physical, and emotional health of
93 the grandparent.

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

96 (j) The results of any psychological evaluation of the
97 minor child.

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

100 (l) A written testamentary statement by the deceased parent
101 regarding visitation with the grandparent. The absence of such a
102 testamentary statement does not provide evidence that the
103 deceased parent would have objected to the requested visitation.

104 (m) Such other factors as the court considers necessary in
105 making its determination.

106 (5) In assessing material harm to the parent-child
107 relationship under subsection (3), the court shall consider the
108 totality of the circumstances affecting the parent-child
109 relationship, including:

110 (a) Whether there have been previous disputes between the
111 grandparent and the parent over childrearing or other matters
112 related to the care and upbringing of the minor child.

113 (b) Whether visitation would materially interfere with or
114 compromise parental authority.

115 (c) Whether visitation can be arranged in a manner that
116 does not materially detract from the parent-child relationship,

586-03365-13

2013384c1

117 including the quantity of time available for enjoyment of the
118 parent-child relationship and any other consideration related to
119 disruption of the schedule and routines of the parent and the
120 minor child.

121 (d) Whether visitation is being sought for the primary
122 purpose of continuing or establishing a relationship with the
123 minor child with the intent that the child benefit from the
124 relationship.

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

128 (f) The nature of the relationship between the parent and
129 the grandparent.

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

133 (h) The psychological toll of visitation disputes on the
134 minor child.

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

137 (6) Part II of chapter 61, the Uniform Child Custody
138 Jurisdiction and Enforcement Act, applies to actions brought
139 under this section.

140 (7) If separate actions under this section and s. 61.13 are
141 pending concurrently, the courts are strongly encouraged to
142 consolidate the actions in order to minimize the burden of
143 litigation of grandparent visitation on the minor child and the
144 other parties.

145 (8) An order for grandparent visitation may be modified

586-03365-13

2013384c1

146 upon a showing by the person petitioning for modification that a
147 substantial change in circumstances has occurred and that
148 modification of visitation is in the best interest of the minor
149 child.

150 (9) An original action requesting visitation under this
151 section may be filed by a grandparent only once during any 2-
152 year period, except on good cause shown that the minor child is
153 suffering or threatened with suffering demonstrable significant
154 mental or emotional harm caused by a parental decision to deny
155 visitation between a minor child and the grandparent, which was
156 not known to the grandparent at the time of filing an earlier
157 action.

158 (10) This section does not provide for grandparent
159 visitation with a minor child placed for adoption under chapter
160 63, except as provided in s. 752.071 with respect to adoption by
161 a stepparent or close relative.

162 (11) Venue shall be in the county where the minor child
163 primarily resides, unless venue is otherwise governed by chapter
164 39, chapter 61, or chapter 63.

165 Section 2. Section 752.015, Florida Statutes, is amended to
166 read:

167 752.015 Mediation of visitation disputes.—It shall be the
168 public policy of this state that families resolve differences
169 over grandparent visitation within the family. It shall be the
170 further public policy of this state that when families are
171 unable to resolve differences relating to grandparent visitation
172 that the family participate in any formal or informal mediation
173 services that may be available. If ~~When~~ families are unable to
174 resolve differences relating to grandparent visitation and a

586-03365-13

2013384c1

175 petition is filed pursuant to s. 752.011 ~~s. 752.01~~, the court
176 shall, if such services are available in the circuit, refer the
177 case to family mediation in accordance with the Florida Family
178 Law Rules of Procedure ~~rules promulgated by the Supreme Court.~~

179 Section 3. Section 752.071, Florida Statutes, is created to
180 read:

181 752.071 Effect of adoption by stepparent or close
182 relative.—After the adoption of a minor child by a stepparent or
183 close relative, the stepparent or close relative may petition
184 the court to terminate an order granting grandparent visitation
185 under this chapter which was entered before the adoption. The
186 court may terminate the order unless the grandparent is able to
187 show that the criteria of s. 752.011 authorizing the visitation
188 continue to be satisfied.

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

191 39.01 Definitions.—When used in this chapter, unless the
192 context otherwise requires:

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

196 Section 5. Section 39.509, Florida Statutes, is amended to
197 read:

198 39.509 Grandparents' and great-grandparents' ~~Grandparents~~
199 ~~rights.~~—Notwithstanding any other provision of law, a maternal
200 or paternal grandparent or great-grandparent as well as a
201 stepgrandparent or step-great-grandparent is entitled to
202 reasonable visitation with his or her grandchild or great-
203 grandchild who has been adjudicated a dependent child and taken

586-03365-13

2013384c1

204 from the physical custody of the parent unless the court finds
205 that such visitation is not in the best interest of the child or
206 that such visitation would interfere with the goals of the case
207 plan. Reasonable visitation may be unsupervised and, where
208 appropriate and feasible, may be frequent and continuing. Any
209 order for visitation or other contact must conform to the
210 provisions of s. 39.0139.

211 (1) Grandparent or great-grandparent visitation may take
212 place in the home of the grandparent or great-grandparent unless
213 there is a compelling reason for denying such a visitation. The
214 department's caseworker shall arrange the visitation to which a
215 grandparent or great-grandparent is entitled pursuant to this
216 section. The state shall not charge a fee for any costs
217 associated with arranging the visitation. However, the
218 grandparent or great-grandparent shall pay for the child's cost
219 of transportation when the visitation is to take place in the
220 grandparent's or great-grandparent's home. The caseworker shall
221 document the reasons for any decision to restrict a
222 grandparent's or great-grandparent's visitation.

223 (2) A grandparent or great-grandparent entitled to
224 visitation pursuant to this section shall not be restricted from
225 appropriate displays of affection to the child, such as
226 appropriately hugging or kissing his or her grandchild or great-
227 grandchild. Gifts, cards, and letters from the grandparent or
228 great-grandparent and other family members shall not be denied
229 to a child who has been adjudicated a dependent child.

230 (3) Any attempt by a grandparent or great-grandparent to
231 facilitate a meeting between the child who has been adjudicated
232 a dependent child and the child's parent or legal custodian, or

586-03365-13

2013384c1

233 any other person in violation of a court order shall
234 automatically terminate future visitation rights of the
235 grandparent or great-grandparent.

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

239 (5) The termination of parental rights does not affect the
240 rights of grandparents or great-grandparents unless the court
241 finds that such visitation is not in the best interest of the
242 child or that such visitation would interfere with the goals of
243 permanency planning for the child.

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

247 (a) The finding of guilt, regardless of adjudication, or
248 entry or plea of guilty or nolo contendere to charges under the
249 following statutes, or similar statutes of other jurisdictions:
250 s. 787.04, relating to removing a minor child ~~minors~~ from the
251 state or concealing a minor child ~~minors~~ contrary to court
252 order; s. 794.011, relating to sexual battery; s. 798.02,
253 relating to lewd and lascivious behavior; chapter 800, relating
254 to lewdness and indecent exposure; s. 826.04, relating to
255 incest; or chapter 827, relating to the abuse of children.

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

259 (c) A report of abuse, abandonment, or neglect under ss.
260 415.101-415.113 or this chapter and the outcome of the
261 investigation concerning such report.

586-03365-13

2013384c1

262 Section 6. Paragraph (a) of subsection (3) of section
263 39.801, Florida Statutes, is amended to read:

264 39.801 Procedures and jurisdiction; notice; service of
265 process.—

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

269 (a) Notice of the date, time, and place of the advisory
270 hearing for the petition to terminate parental rights and a copy
271 of the petition must be personally served upon the following
272 persons, specifically notifying them that a petition has been
273 filed:

274 1. The parents of the child.

275 2. The legal custodians of the child.

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

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

280 5. Any grandparent or great-grandparent entitled to
281 priority for adoption under s. 63.0425.

282 6. Any prospective parent who has been identified under s.
283 39.503 or s. 39.803.

284 7. The guardian ad litem for the child or the
285 representative of the guardian ad litem program, if the program
286 has been appointed.

287

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

586-03365-13

2013384c1

291 "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING
292 CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF
293 THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND
294 TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE
295 CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS
296 NOTICE."

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

299 63.0425 Grandparent's or great-grandparent's right to
300 notice.-

301 (1) If a child has lived with a grandparent or great-
302 grandparent for at least 6 months within the 24-month period
303 immediately preceding the filing of a petition for termination
304 of parental rights pending adoption, the adoption entity shall
305 provide notice to that grandparent or great-grandparent of the
306 hearing on the petition.

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

309 63.172 Effect of judgment of adoption.-

310 (2) If one or both parents of a child die without the
311 relationship of parent and child having been previously
312 terminated and a spouse of the living parent or a close relative
313 of the child thereafter adopts the child, the child's right of
314 inheritance from or through the deceased parent is unaffected by
315 the adoption and, unless the court orders otherwise, the
316 adoption does ~~will~~ not terminate any grandparental or great-
317 grandparental rights delineated under chapter 752. For purposes
318 of this subsection, a close relative of a child is the child's
319 brother, sister, grandparent, great-grandparent, aunt, or uncle.

586-03365-13

2013384c1

320 Section 9. Sections 752.01 and 752.07, Florida Statutes,
321 are repealed.

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