

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;
 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.
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36 | Be It Enacted by the Legislature of the State of Florida:
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38 | Section 1. Section 752.011, Florida Statutes, is created
 39 | to 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 towards 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
 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 prior to the death of the parent.

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

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) Any written testamentary statement by the deceased
 101 parent regarding visitation with the grandparent. The absence of
 102 such a 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,
117 including the quantity of time available for enjoyment of the
118 parent-child relationship, and any other consideration related
119 to 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
126 minor child to conduct, moral standards, experiences, or other
127 factors that are inconsistent with influences provided by the
128 parent.

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

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

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

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

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

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

146 (8) An order for grandparent visitation may be modified
 147 upon a showing by the person petitioning for modification that a
 148 substantial change in circumstances has occurred and that
 149 modification of visitation is in the best interest of the minor
 150 child.

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

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

163 (11) Venue shall be in the county where the minor child
 164 primarily resides, unless venue is otherwise governed by chapter
 165 39, chapter 61, or chapter 63.

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

168 752.015 Mediation of visitation disputes.—It shall be the
 169 public policy of this state that families resolve differences
 170 over grandparent visitation within the family. It shall be the
 171 further public policy of this state that when families are
 172 unable to resolve differences relating to grandparent visitation
 173 that the family participate in any formal or informal mediation
 174 services that may be available. If ~~When~~ families are unable to
 175 resolve differences relating to grandparent visitation and a
 176 petition is filed pursuant to s. 752.011 ~~s. 752.01~~, the court
 177 shall, if such services are available in the circuit, refer the
 178 case to family mediation in accordance with the Florida Family
 179 Law Rules of Procedure ~~rules promulgated by the Supreme Court.~~

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

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

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

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

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

196 aunt, uncle, or first cousin.

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

199 39.509 Grandparents' and great-grandparents' ~~Grandparents~~
 200 rights.—Notwithstanding any other provision of law, a maternal
 201 or paternal grandparent or great-grandparent as well as a
 202 stepgrandparent or step-great-grandparent is entitled to
 203 reasonable visitation with his or her grandchild or great-
 204 grandchild who has been adjudicated a dependent child and taken
 205 from the physical custody of the parent unless the court finds
 206 that such visitation is not in the best interest of the child or
 207 that such visitation would interfere with the goals of the case
 208 plan. Reasonable visitation may be unsupervised and, where
 209 appropriate and feasible, may be frequent and continuing. Any
 210 order for visitation or other contact must conform to the
 211 provisions of s. 39.0139.

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

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

231 (3) Any attempt by a grandparent or great-grandparent to
 232 facilitate a meeting between the child who has been adjudicated
 233 a dependent child and the child's parent or legal custodian, or
 234 any other person in violation of a court order shall
 235 automatically terminate future visitation rights of the
 236 grandparent or great-grandparent.

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

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

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

248 (a) The finding of guilt, regardless of adjudication, or
 249 entry or plea of guilty or nolo contendere to charges under the
 250 following statutes, or similar statutes of other jurisdictions:
 251 s. 787.04, relating to removing a minor child ~~minors~~ from the

252 state or concealing a minor child ~~minors~~ contrary to court
 253 order; s. 794.011, relating to sexual battery; s. 798.02,
 254 relating to lewd and lascivious behavior; chapter 800, relating
 255 to lewdness and indecent exposure; s. 826.04, relating to
 256 incest; or chapter 827, relating to the abuse of children.

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

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

263 Section 6. Paragraph (a) of subsection (3) of section
 264 39.801, Florida Statutes, is amended to read:

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

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

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

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

- 280 4. Any person who has physical custody of the child.
- 281 5. Any grandparent or great-grandparent entitled to
- 282 priority for adoption under s. 63.0425.
- 283 6. Any prospective parent who has been identified under s.
- 284 39.503 or s. 39.803.
- 285 7. The guardian ad litem for the child or the
- 286 representative of the guardian ad litem program, if the program
- 287 has been appointed.

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289 The document containing the notice to respond or appear must

290 contain, in type at least as large as the type in the balance of

291 the document, the following or substantially similar language:

292 "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING

293 CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF

294 THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND

295 TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE

296 CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS

297 NOTICE."

298 Section 7. Subsection (1) of section 63.0425, Florida

299 Statutes, is amended to read:

300 63.0425 Grandparent's or great-grandparent's right to

301 notice.—

302 (1) If a child has lived with a grandparent or great-

303 grandparent for at least 6 months within the 24-month period

304 immediately preceding the filing of a petition for termination

305 of parental rights pending adoption, the adoption entity shall

306 provide notice to that grandparent or great-grandparent of the

307 hearing on the petition.

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

310 63.172 Effect of judgment of adoption.—

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

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

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