

Regular Session, 2010

SENATE BILL NO. 281

BY SENATOR BROOME

CHILDREN. Extends provisional custody of children by mandate to grandparents.
(8/15/10)

1 AN ACT

2 To amend and reenact R.S. 9:951(A), 952(B)(1) and (3) and 954, and to enact R.S. 9:951(C),
3 relative to provisional custody by mandate; to extend to grandparents with custody
4 the right to confer the power of provisional custody by mandate for the care, custody,
5 and control of a minor child; to provide for exceptions; and to provide for related
6 matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 9:951(A), 952(B)(1) and (3) and 954 are hereby amended and
9 reenacted and R.S. 9:951(C) is hereby enacted to read as follows:

10 §951. Provisional custody by mandate; conferring

11 A. Parents acting jointly or, in the event of divorce, or separation from bed
12 and board, or illegitimacy, the natural tutor, tutrix, or cotutors acting jointly, or a
13 **grandparent awarded custody**, may authorize any person of legal age to provide
14 for the care, custody, and control of a minor child.

15 * * *

16 **C. Provisional custody by mandate may not be conferred upon a parent**
17 **or other person previously denied custody by court order.**

1 §952. Duration of provisional custody; termination

2 * * *

3 B. Regardless of the duration provided above, the mandate of provisional
4 custody shall terminate:

5 (1) When revoked by either parent, by a natural tutor or tutrix, ~~or~~ by either
6 natural cotutor, **or by a grandparent awarded custody.**

7 * * *

8 (3) Fifteen days after the death of either parent, natural tutor or tutrix, ~~or~~
9 natural cotutor, **or grandparent awarded custody.**

10 * * *

11 §954. Statutory form

12 The following is a suggested form which may be used by a parent, natural
13 tutor, tutrix, or cotutors acting jointly, **or a grandparent awarded custody,** to
14 confer the power of provisional custody for the care, custody, and control of the
15 named minor child as authorized herein:

16 PROVISIONAL CUSTODY BY MANDATE

17 STATE OF LOUISIANA

18 PARISH OF _____

19 BE IT KNOWN THAT on this ____ day of _____, ~~1920~~, before me, the
20 undersigned notary, and in the presence of the competent witnesses hereinafter named and
21 undersigned:

22 Personally came and appeared:

23
24
25 (affiant's name, marital status, and mailing address), who is the (parent(s), or, in the event
26 of divorce, separation, or illegitimacy, the natural (co)tutor or tutrix), **or grandparent**
27 **awarded custody** of (minor child(ren)) who, by these presents make, name, constitute, and
28 appoint (agent's name and mailing address) and grant provisional custody of the above
29 named child(ren), to provide for the health, education, and welfare of the child as provided
30 by the law on Provisional Custody by Mandate, specifically including the authority to:

31 INITIAL ALL APPLICABLE PROVISIONS:

- 32 _____ (1) Consent to and authorize such medical care, treatment, or surgery as may be
- 33 deemed necessary for the health, safety, and welfare of the child.
- 34 _____ (2) Enroll the child in such schools or educational institutions as may be deemed
- 35 necessary for his due and proper education.
- 36 _____ (3) Discipline the child in such reasonable manner as may be necessary for his proper
- 37 rearing, supervision, and training.
- 38 _____ (4) Do and perform all other such acts as may be necessary for the shelter, support,
- 39
- 40

1 and general welfare of the child.

2
3 This Provisional Custody by Mandate will continue to be effective until
4 _____, ~~1920~~, or one year from date hereof, whichever period is shorter.

5
6 I agree that any third party who receives a copy of this document may rely upon the
7 authority granted the agent as indicated herein and may act in reliance on such authority.
8 Revocation or termination by operation of law is not effective as to a third party until he has
9 actual knowledge thereof. I agree to indemnify and hold harmless the third party for any
10 claims that arise against him because of reliance on this Provisional Custody by Mandate.

11
12 The undersigned agent does hereby accept the provisional custody of the children
13 named herein.

14
15 THUS DONE AND PASSED at _____, state of _____,
16 in the presence of _____ and _____, competent witnesses, who sign
17 these presents with the appearers and me, notary, after due reading of the whole.

18
19 WITNESSES:

20 _____
21 (Parent, Tutor, ~~or~~ Tutrix, **or Grandparent**
22 **awarded custody**)

23
24 _____
25 (Other parent, ~~or~~ Cotutor, **or Grandparent**
26 **awarded custody**)

27
28 _____
29 (Agent)

30
31 _____
32 NOTARY PUBLIC

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Camille Sebastien Perry.

DIGEST

Broome (SB 281)

Present law allows parents acting jointly or, in the event of divorce, or separation from bed and board, or illegitimacy, the natural tutor, tutrix, or cotutors acting jointly, to authorize any person of legal age to provide for the care, custody, and control of a minor child not to exceed one year from the date of execution.

Present law terminates the mandate of provisional custody when revoked by either parent, by a natural tutor or tutrix, or by either natural cotutor when the agent resigns or otherwise renounces the mandate, 15 days after the death of either parent, natural tutor or tutrix, or natural cotutor, and upon the qualification of a court appointed tutor or provisional tutor. Present law provides for a statutory form that may be used by a parent, natural tutor, tutrix, or cotutors acting jointly to confer the power of provisional custody for the care, custody, and control of the named minor child.

Proposed law retains present law provisions but additionally extends to grandparents with custody the right to confer the power of provisional custody by mandate for the care,

custody, and control of a minor child.

Proposed law provides that provisional custody by mandate may not be conferred upon a parent or other person previously denied custody by court order.

Effective August 15, 2010.

(Amends R.S. 9:951(A), 952(B)(1) and (3) and 954); adds 9:951(c)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill.

1. Denies provisional custody by mandate to a parent or other person previously denied custody by court order.