

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: SB 990

INTRODUCER: Senator Joyner

SUBJECT: Natural Guardians

DATE: January 18, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Irwin	Cibula	JU	Pre-meeting
2.			CF	
3.				
4.				
5.				
6.				

I. Summary:

Under s. 744.301, F.S., the mother and father of a child generally are the natural guardians of the child. The statute gives natural guardians substantial authority to act on the behalf of their minor child in matters of managing assets, transferring real or personal property, and settling of disputes when, in the aggregate, those matters do not exceed \$15,000. This bill conforms terminology used in s. 744.301, F.S., to terminology used in ch. 61, F.S. Specifically, the bill changes “mother and father” to “parents” and changes “child custody” to “parental responsibility.”

This bill amends section 744.301, Florida Statutes.

II. Present Situation:

Chapter 61, F.S., focuses predominately on issues arising from the dissolution of marriage with the purpose of “mitigat[ing] the potential harm to the spouses and their children caused by the process of legal dissolution of marriage.”¹ In 1982, focus was shifted away from the award of custody and onto a presumption of shared parental responsibility in the best interests of the child.² Section 744.301, F.S., dealing with the authority of natural guardians, currently uses the terminology of “custody” and therefore does not reflect the current status of Florida family law.³

¹ Section 61.001(2)(c), F.S.

² 23 FLA. PRAC. *Florida Family Law* s. 9:7 (2011).

³ Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper: Natural Guardians Defined – Section 744.301* (2011) (on file with the Senate Committee on Judiciary).

Additionally, ch. 61, F.S., defines and uses the term “parent.” Section 744.301, F.S., currently uses the terminology “mother and father.”⁴ As a result, s. 744.301, F.S., “does not reflect the current statutory terminology as defined in the Florida Statutes and as used in family law.”⁵

III. Effect of Proposed Changes:

Under s. 744.301, F.S., the mother and father of a child generally are the natural guardians of the child. The statute gives natural guardians substantial authority to act on the behalf of their minor child in matters of managing assets, transferring real or personal property, and settling of disputes when, in the aggregate, those matters do not exceed \$15,000. This bill conforms terminology used in s. 744.301, F.S., to terminology used in ch. 61, F.S. Specifically, the bill changes “mother and father” to “parents” and changes “child custody” to “parental responsibility.”

This bill provides an effect date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Conformity in terminology should alleviate some burden on the private sector for a legal determination on the status of natural guardianship.⁶

C. Government Sector Impact:

Conformity in terminology should alleviate some burden on the need for the State Court System to determine the status of natural guardians.⁷

⁴ Section 61.13001(1)(d), F.S.

⁵ Real Property, Probate, and Trust Law Section of The Florida Bar, *supra* note 3, at 1.

⁶ *Id.*

⁷ *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
