

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4237

(BY DELEGATES O'NEAL, ARVON, STORCH, AZINGER,
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FERRO AND LONGSTRETH)

[Passed March 12, 2016; in effect ninety days from passage.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §49-8-1, §49-8-2, §49-8-3, §49-8-4, §49-8-5 and §49-8-6, all relating to the
3 temporary delegation of certain custodial powers by a parent or legal custodian; setting
4 forth legislative findings and purpose; defining terms; requiring qualified nonprofit
5 organizations to register with Department of Health and Human Resources; requiring
6 qualified nonprofit organizations to provide quarterly reports to Department of Health and
7 Human Resources concerning child placements; permitting the delegation of certain
8 custodial powers; limiting scope of delegation; permitting parent or legal custodian to
9 revoke or withdraw power of attorney at any time; clarifying that scope of delegation of
10 power of attorney only extends to the extent, and so long as, the parent, guardian or legal
11 custodian retains custody; providing that power of attorney shall be revoked if parental
12 rights terminated; directing court to notify person assuming parental rights under power of
13 attorney; permitting child to remain with person assuming parental rights under power of
14 attorney until court finalizes subsequent placement of child; clarifying that period of
15 placement with person shall not be considered as a factor in custody hearing in which
16 family member seeks to be awarded custody of child; providing that execution of power of
17 attorney does not, without other evidence, constitute abandonment, abuse or neglect;
18 creating exception under certain circumstances; reaffirming authority of Bureau for
19 Children and Families and law enforcement to investigate allegations of abuse,
20 abandonment, neglect or other mistreatment of child; requiring qualified nonprofit
21 organization to conduct criminal history and background checks prior to execution of
22 power of attorney; providing for payment of criminal history and background checks;
23 requiring qualified nonprofit organization to train the designee on rights, duties and
24 limitations associated with providing care for a child, including preventing and reporting of
25 suspected child abuse or neglect; prohibiting designee from moving without written
26 approval of parent or legal custodian; making persons who accept custody under this

27 article mandatory reporters of suspected child abuse and neglect; providing for
28 circumstances in which parent or legal custodian dies or becomes incapacitated; clarifying
29 that temporary delegation of certain custodial powers does not restrict certain other rights;
30 creating a form for delegation of parental or legal custody; making legally sufficient a power
31 of attorney that substantially complies with form contains acknowledged signatures of the
32 parties; mandating certain disclosures by child investigative personnel; and clarifying
33 applicability of licensing and other requirements of childcare facilities.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 article, designated §49-8-1, §49-8-2, §49-8-3, §49-8-4, §49-8-5 and §49-8-6, all to read as follows:

ARTICLE 8. SUPPORTING AND STRENGTHENING FAMILIES ACT.

§49-8-1. Legislative findings; statement of legislative purpose.

1 (a) The Legislature finds that in certain circumstances where a parent, guardian or legal
2 custodian of a child is temporarily unable to care for the child due to a crisis or other
3 circumstances, a less intrusive alternative to guardianship or the Department of Health and
4 Human Resources taking custody of the child should be available. In such circumstances, a
5 parent, guardian or legal custodian may benefit from the assistance of charitable organizations in
6 their community that assist families by providing safe, temporary care for children and support for
7 families during difficult times.

8 (b) It is the purpose of this article to ensure that a parent, guardian or legal guardian has
9 the right to provide for the temporary care of their child with the assistance of a qualified nonprofit
10 organization as set forth in this article.

§49-8-2. Definitions.

1 For purposes of this article:

2 (1) "Child" means an individual under eighteen years of age;

3 (2) “Qualified nonprofit organization” means a charitable or religious institution that is
4 exempt from federal income taxation under Section 501(a) of the Internal Revenue Code of 1986,
5 as an organization described by Section 501(c)(3) of that code, which assists the parent or legal
6 guardian of a child with the process of providing for the temporary care of a child through the
7 execution of a power of attorney as described in this section.

8 **§49-8-3. Delegation of care and custody of a child**

1 (a) The following shall apply only to situations where a parent, guardian or legal custodian
2 of a child provides for the temporary care and custody of a child with the assistance of a qualified
3 nonprofit organization. Nothing in this section shall be interpreted to restrict the rights of parents,
4 guardians or legal custodians providing for the care of children by power of attorney in other
5 contexts.

6 (b) A parent, guardian or legal custodian of a child may, by a properly executed power of
7 attorney, delegate to a person, for a period not to exceed one year, the care and custody of the
8 child.

9 (c) A parent, guardian or legal custodian may not delegate:

10 (1) The power to consent to marriage or adoption of the child;

11 (2) The performance or inducement of an abortion on or for the child; or

12 (3) The termination of parental rights to the child.

13 (d) A delegation of care and custody of a child, under this article, does not change or
14 modify any parental or legal rights, obligations, or authority established by an existing court order,
15 or deprive the parent, guardian or legal custodian of any parental or legal rights, obligations, or
16 authority regarding the custody, visitation, or support of the child.

17 (e) The parent, guardian or legal custodian of the child may revoke or withdraw this power
18 of attorney at any time. Upon the termination, expiration, or revocation of the power of attorney
19 the child shall be returned to the custody of the parent, guardian or legal custodian within forty-
20 eight hours.

21 (f) Unless the authority is revoked or withdrawn by the parent, guardian or legal custodian,
22 the designee shall exercise parental or legal authority on a continuous basis without
23 compensation for the duration of the power of attorney.

24 (g) The care and custody of a child may only be delegated to the extent, and so long as,
25 the parent, guardian or legal custodian retains care and custody. If the rights of the parent,
26 guardian or custodian of the child are terminated, the power of attorney shall be deemed to be
27 revoked. A court that revokes the care and custody rights of a parent, guardian or legal custodian
28 shall notify the person to whom those parental rights has been delegated, and the child may
29 remain with that person until the court shall finalize the subsequent placement of the child:
30 *Provided*, That no period of placement with a person pursuant to the provisions of this article shall
31 be considered as a factor in a custody hearing in which a family member seeks to be awarded
32 custody of the child.

33 (h) The execution of a power of attorney by a parent, guardian or legal custodian does
34 not, without other evidence, constitute abandonment, abuse or neglect unless the parent,
35 guardian or legal custodian fails to either take custody of the child or execute a new power of
36 attorney after the one year time limit has elapsed: *Provided*, That nothing in this article may be
37 interpreted to prevent the West Virginia Bureau for Children and Families or law enforcement from
38 investigating allegations of abuse, abandonment, neglect or other mistreatment of a child.

39 (i) If a parent, guardian or legal custodian of a child wishes to utilize the power of attorney
40 authorized by this section to delegate any powers regarding the care and custody of the child to
41 another person, the qualified nonprofit organization shall conduct a criminal history and federal
42 and state background check on the person to whom powers are delegated prior to the execution
43 of the power of attorney. The criminal history and federal and state background check shall be
44 paid for by the qualified nonprofit organization, the parent, guardian or legal custodian, or the
45 parent's designee. Additionally, the qualified nonprofit organization shall train the designee in the
46 rights, duties, and limitations associated with providing care for a child under this section,
47 including the prevention and reporting of suspected child abuse or neglect.

48 (j) The designee may not move from the address listed on the parental rights form without
49 written approval of the parent, guardian or legal custodian.

50 (k) Any person who accepts care and custody of a child pursuant to the provisions of this
51 article shall be deemed a person mandated to report suspected abuse and neglect pursuant to
52 the provisions of section eight hundred three, article two, chapter forty-nine of this code.

53 (l) If a parent, guardian or legal custodian dies or becomes incapacitated, then the
54 provisions of article ten, chapter forty-four of this code shall apply.

55 (m) Nothing in this section is intended, nor shall anything herein be interpreted, to
56 otherwise restrict the rights of custodial parents or non-custodial parents to temporarily delegate
57 or provide for the care and custody of a child, or to assert their right to request custody, in
58 accordance with other provisions of West Virginia law.

§49-8-4. Delegation of parental rights form.

1 (a) The following statutory form of power of attorney to delegate parental or legal custody
2 may be used:

3 STATE OF WEST VIRGINIA

4 STATUTORY FORM FOR POWER OF ATTORNEY TO DELEGATE PARENTAL OR
5 LEGAL CUSTODIAN POWERS

6 (1) "I, _____, certify that I am the parent or legal custodian of:

7 _____

8 (Full name of minor child)

(Date of birth)

9 _____

10 (Full name of minor child)

(Date of birth)

11 _____

12 (Full name of minor child)

(Date of birth)

13 who is/are minor children."

14 (2) "I designate _____ (Full name of designee),
15 _____
16 (Street address, city, state and zip code of designee)
17 _____
18 (Home phone of designee) (Work phone of designee) as the designee of each minor child
19 named above."

20 (3) "I delegate to the designee all of my power and authority regarding the care, custody
21 and property of each minor child named above, including but not limited to the right to enroll the
22 child in school, inspect and obtain copies of education records and other records concerning the
23 child, the right to attend school activities and other functions concerning the child, and the right to
24 give or withhold any consent or waiver with respect to school activities, medical and dental
25 treatment, and any other activity, function or treatment that may concern the child. This delegation
26 does not include the power or authority to consent to marriage or adoption of the child, the
27 performance or inducement of an abortion on or for the child, or the termination of parental rights
28 to the child."

29 Or
30 (4) "I delegate to the designee the following specific powers and responsibilities
31 (write in): _____
32 (In the event paragraph four is completed paragraph three does not apply).

33 This delegation does not include the power or authority to consent to marriage or adoption
34 of the child, the performance or inducement of an abortion on or for the child, or the termination
35 of parental rights to the child."

36 (5) "This power of attorney is effective for a period not to exceed one year, beginning,
37 _____, ____, and ending _____, _____. I reserve the right to revoke this
38 authority at any time."

39 By: _____ (Parent/Legal Custodian signature)

40 (6) "I hereby accept my designation as designee for the minor child/children specified in
41 this power of attorney.

42 By: _____ (Designee signature)

43 State of _____

44 County of _____

45 ACKNOWLEDGMENT

46 Before me, the undersigned, a Notary Public, in and for said County and State on this
47 ____ day of _____, _____, personally appeared _____ (Name of
48 Parent/Legal Custodian) and _____ (Name of designee), to me known to
49 be the identical persons who executed this instrument and acknowledged to me that each
50 executed the same as his or her free and voluntary act and deed for the uses and purposes set
51 forth in the instrument.

52 Witness my hand and official seal the day and year above written.

53 _____ (Signature of notarial officer)

54 _____ (Title and Rank)

55 My commission expires: _____"

56 (b) A power of attorney is legally sufficient under this article if the wording of the form
57 substantially complies with this section, the form is properly completed, and the signatures of the
58 parties are acknowledged.

59 (c) A copy of each power of attorney executed pursuant to this article shall be retained by
60 the qualified nonprofit organization for a period of three years following the conclusion of the
61 power of attorney. The qualified nonprofit organization shall, upon request, make these records
62 available to the Department of Health and Human Resources.

§49-8-5. Mandatory disclosures by child investigative personnel.

1 During a child protective investigation that does not result in an out-of-home placement, a
2 child protective investigator shall provide information to the parent, guardian or legal custodian

3 about community service programs that provide respite care, voluntary guardianship or other
4 support services for families in crisis.

§49-8-6. Applicability of licensing and other requirements of childcare facilities.

1 (a) A delegation under this article by a parent, guardian or legal custodian is not subject
2 to the requirements of the child care facility licensing statutes or foster care licensing statutes,
3 and does not constitute an out of home child placement under this code.

4 (b) A qualified nonprofit organization as defined herein shall not be considered a child care
5 center, child placing agency, or child welfare agency as defined in section two hundred six of
6 article one, chapter forty-nine of this Code, unless such organization also pursues these activities
7 in addition to providing services outlined under this section.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2016.

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Governor