

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

House Bill 4237

(BY O'NEAL, ARVON, STORCH, AZINGER, BUTLER,
HAMRICK, KESSINGER, ROWAN, P. SMITH, FERRO AND
LONGSTRETH)

[Introduced January 22, 2016;

referred to the Committee on the Judiciary.]

1 A BILL 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 guardian; providing
4 findings, defining terms; permitting the delegation of certain custodial powers; creating a
5 parental rights form; requiring certain background checks; mandating certain disclosures;
6 and providing exemptions.

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. Findings.

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

§49-8-2. Definitions.

1 The following terms are defined as follows:

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

3 (b) "Qualified Nonprofit Organization" means a charitable or religious institution that is
4 exempt from federal income taxation under Section 501(a), Internal Revenue Code 1986, as an
5 organization described by Section 501(c)(3) of that code, which assists a parent or legal guardian

6 of a child with the process of providing for the temporary care of a child through the execution of
7 a power of attorney as described in this section.

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

1 (a) The following shall apply only to situations where a parent or legal custodian of a child
2 provides for the temporary care and custody of a child with the assistance of a Qualified Nonprofit
3 Organization as defined herein. Nothing in this section shall be interpreted to restrict the rights of
4 parents providing for the care of children by power of attorney in other contexts.

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

7 (c) A parent or legal custodian may not delegate:

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

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

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

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

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

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

21 (g) The execution of a power of attorney by a parent or legal custodian does not, without
22 other evidence, constitute abandonment, abuse or neglect unless the parent or legal custodian
23 fails to either take custody of the child or execute a new power of attorney after the one year time

24 limit has elapsed: *Provided*, That nothing in this article may be interpreted to prevent the West
25 Virginia Bureau for Children and Families or law enforcement from investigating allegations of
26 abuse, abandonment, neglect or other mistreatment of a child.

27 (h) If a parent or legal custodian of a child wishes to utilize the power of attorney authorized
28 by this section to delegate any powers regarding the care and custody of the child to another
29 person, the Qualified Nonprofit Organization shall conduct a criminal history and federal and state
30 background check on the person to whom powers are delegated prior to the execution of the
31 power of attorney. The criminal history and federal and state background check shall be paid for
32 by the Qualified Nonprofit Organization, the parent or parent's designee. Additionally, the
33 Qualified Nonprofit Organization shall train the designee in the rights, duties, and limitations
34 associated with providing care for a child under this section, including the prevention and reporting
35 of suspected child abuse or neglect.

36 (i) The designee may not move from the address listed on the parental rights form without
37 written approval of the parent or legal custodian.

38 (j) If a parent or legal custodian dies or becomes incapacitated then article ten, chapter
39 forty-four applies.

40 (k) Nothing in this section is intended nor shall be interpreted to otherwise restrict the rights
41 of custodial parents or non-custodial parents to temporarily delegate or provide for the care and
42 custody of a child, or to assert their right to request custody, in accordance with other provisions
43 of West Virginia law.

§49-8-3. 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.” Or

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

41 By: _____ (Designee signature)

42 State of _____

43 County of _____

44 ACKNOWLEDGMENT

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

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

52 _____ (Signature of notarial officer)

53 _____ (Title and Rank)

54 My commission expires: _____ ”

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

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

§49-8-6. Licensing and other requirements on childcare facilities.

1 A delegation under this article by a parent or legal custodian is not subject to the
2 requirements of the child care facility licensing statutes or foster care licensing statutes, and does
3 not constitute an out of home child placement under this code. A Qualified Nonprofit Organization
4 as defined herein shall not be considered a child care center, child placing agency, or child welfare
5 agency as defined in section two hundred six of article one, chapter forty-nine of this Code, unless
6 such organization also pursues these activities in addition to providing services outlined under
7 this section.

NOTE: The purpose of this bill is to permit the temporary delegation of certain custodial powers by a parent or guardian. This bill was recommended for introduction by the Joint Committee on Children and Families that met during the 2015-2016 Interim session.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.