

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

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 and §49-8-5, all relating to the temporary
3 delegation of certain custodial powers by a parent or guardian; defining terms; permitting
4 the delegation of certain custodial powers; creating a parental rights form; requiring certain
5 background checks; mandating certain disclosures; 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 and §49-8-5, all to read as follows:

ARTICLE 8. SUPPORTING AND STRENGTHENING FAMILIES ACT.

§49-8-1. Definitions.

1 The following term means:

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

3 (2) "Serving parent" means a parent who is a member of the reserves of the Army, Navy,
4 Air Force, Marine Corps or Coast Guard of the United States or the commissioned corps of the
5 National Oceanic and Atmospheric Administration or the Public Health Service of the United
6 States Department of Health and Human Services detailed by proper authority for duty with the
7 Army or Navy of the United States, or who is required to enter or serve in the active military service
8 of the United States under a call or order of the President of the United States or to serve on state
9 active duty.

§49-8-2. Delegation of care and custody of a child.

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

3 (b) A parent or legal custodian may not delegate:

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

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

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

7 (c) A delegation of care and custody of a child, under this article, does not change or
8 modify any parental or legal rights, obligations, or authority established by an existing court order,
9 or deprive the parent or legal custodian of any parental or legal rights, obligations, or authority
10 regarding the custody, visitation, or support of the child.

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

14 (e) Unless the authority is revoked or withdrawn by the parent or legal custodian, the
15 designee shall exercise parental or legal authority on a continuous basis without compensation
16 for the duration of the power of attorney.

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

23 (g) If a parent or legal custodian of a child wishes to delegate any powers regarding the
24 care and custody of the child to a person other than a grandparent, aunt, uncle, or adult sibling of
25 the child, a criminal history and child abuse and neglect background check shall be conducted on
26 the person prior to the execution of the power of attorney. The criminal history and child abuse
27 and neglect background check shall be paid for by either the parent or designee.

28 (h) A serving parent, may delegate to a person for a period longer than one year if on
29 active duty service. The term of delegation, however, may not exceed thirty days past the term of
30 active duty service.

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

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

§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 am a serving parent as defined in §49-2F-2. My active duty service is scheduled to
40 begin on _____, _____, and is estimated to end on _____, _____. I acknowledge
41 that in no event may this delegation of power last more than one year or the thirty days past the
42 term on my active duty, whichever is longer.

43 By: _____ (Parent/Legal Custodian signature)”

44 (7) “I hereby accept my designation as designee for the minor child/children specified in
45 this power of attorney.

46 By: _____ (Designee signature)

47 State of _____

48 County of _____

49 ACKNOWLEDGMENT

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

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

57 _____ (Signature of notarial officer)

58 _____ (Title and Rank)

59 My commission expires: _____ ”

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

§49-8-4. 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.

§49-8-5. 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.

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.