WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4237

(By Delegates O'Neal, Arvon, Storch, Azinger,
Butler, Hamrick, Kessinger, Rowan, P. Smith,
Ferro and Longstreth)

[Passed March 12, 2016; in effect ninety days from passage.]
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[Passed March 12, 2016; in effect ninety days from passage.]
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §49-8-1, §49-8-2, §49-8-3, §49-8-4, §49-8-5 and §49-8-6, all relating to the temporary delegation of certain custodial powers by a parent or legal custodian; setting forth legislative findings and purpose; defining terms; requiring qualified nonprofit organizations to register with Department of Health and Human Resources; requiring qualified nonprofit organizations to provide quarterly reports to Department of Health and Human Resources concerning child placements; permitting the delegation of certain custodial powers; limiting scope of delegation; permitting parent or legal custodian to revoke or withdraw power of attorney at any time; clarifying that scope of delegation of power of attorney only extends to the extent, and so long as, the parent, guardian or legal custodian retains custody; providing that power of attorney shall be revoked if parental rights terminated; directing court to notify person assuming parental rights under power of attorney; permitting child to retain with person assuming parental rights under power of attorney until court finalizes subsequent placement of child; clarifying that period of placement with person shall not be considered as a factor in custody hearing in which family member seeks to be awarded custody of child; providing that execution of power of attorney does not, without other evidence, constitute abandonment, abuse or neglect; creating exception under certain circumstances; reaffirming authority of Bureau for Children and Families and law enforcement to investigate allegations of abuse, abandonment, neglect or other mistreatment of child; requiring qualified nonprofit organization to conduct criminal history and background checks prior to execution of power of attorney; providing for payment of criminal history and background checks; requiring qualified nonprofit organization to train the designee on rights, duties and limitations associated with providing care for a child, including preventing and reporting of suspected child abuse or neglect; prohibiting designee from moving without written approval of parent or legal custodian; making persons who accept custody under this
article mandatory reporters of suspected child abuse and neglect; providing for circumstances in which parent or legal custodian dies or becomes incapacitated; clarifying that temporary delegation of certain custodial powers does not restrict certain other rights; creating a form for delegation of parental or legal custody; making legally sufficient a power of attorney that substantially complies with form contains acknowledged signatures of the parties; mandating certain disclosures by child investigative personnel; and clarifying applicability of licensing and other requirements of childcare facilities.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new 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.

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

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

§49-8-2. Definitions.

For purposes of this article:

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

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

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

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

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

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

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

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

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

(e) The parent, guardian or legal custodian of the child may revoke or withdraw this power of attorney at any time. Upon the termination, expiration, or revocation of the power of attorney the child shall be returned to the custody of the parent, guardian or legal custodian within forty-eight hours.
(f) Unless the authority is revoked or withdrawn by the parent, guardian or legal custodian, the designee shall exercise parental or legal authority on a continuous basis without compensation for the duration of the power of attorney.

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

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

(i) If a parent, guardian or legal custodian of a child wishes to utilize the power of attorney authorized by this section to delegate any powers regarding the care and custody of the child to another person, the qualified nonprofit organization shall conduct a criminal history and federal and state background check on the person to whom powers are delegated prior to the execution of the power of attorney. The criminal history and federal and state background check shall be paid for by the qualified nonprofit organization, the parent, guardian or legal custodian, or the parent’s designee. Additionally, the qualified nonprofit organization shall train the designee in the rights, duties, and limitations associated with providing care for a child under this section, including the prevention and reporting of suspected child abuse or neglect.
(j) The designee may not move from the address listed on the parental rights form without written approval of the parent, guardian or legal custodian.

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

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

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

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

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

STATE OF WEST VIRGINIA

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

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

__________________________________________  ______________________________________

(Full name of minor child)  (Date of birth)

__________________________________________  ______________________________________

(Full name of minor child)  (Date of birth)

__________________________________________  ______________________________________

(Full name of minor child)  (Date of birth)

who is/are minor children."
(2) "I designate ______________________ (Full name of designee),

______________________________________________________________

(Street address, city, state and zip code of designee)

______________________________________________________________

(Home phone of designee) (Work phone of designee) as the designee of each minor child
named above."

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

Or

(4) "I delegate to the designee the following specific powers and responsibilities
(write in): _________________________________________________________

(In the event paragraph four is completed paragraph three does not apply).

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

(5) "This power of attorney is effective for a period not to exceed one year, beginning,

___________, ____, and ending ______, ____. I reserve the right to revoke this
authority at any time."

By: _______________________________ (Parent/Legal Custodian signature)
(6) "I hereby accept my designation as designee for the minor child/children specified in
this power of attorney.

By: ________________________________ (Designee signature)

State of _________________________

County of _________________________

ACKNOWLEDGMENT

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

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

__________________________ (Signature of notarial officer)

__________________________ (Title and Rank)

My commission expires: _________________

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

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

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

During a child protective investigation that does not result in an out-of-home placement, a
child protective investigator shall provide information to the parent, guardian or legal custodian
about community service programs that provide respite care, voluntary guardianship or other
support services for families in crisis.

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

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

(b) A qualified nonprofit organization as defined herein shall not be considered a child care
center, child placing agency, or child welfare agency as defined in section two hundred six of
article one, chapter forty-nine of this Code, unless such organization also pursues these activities
in addition to providing services outlined under this section.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

 Clerk of the House of Delegates

 Clerk of the Senate

 Speaker of the House of Delegates

 President of the Senate

The within is approved this the 1st

day of April, 2016.

Governor