

CHAPTER 107

(HB 420)

AN ACT relating to temporary delegation of parental custody and care.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (1) *A parent or legal guardian of a child, by a properly executed power of attorney, as established in this section and Section 2 of this Act, may temporarily delegate to another person, named in the instrument as the attorney-in-fact, for a period not to exceed one (1) year any of the traditional parental rights and responsibilities regarding care and custody of the child except the following authorities:*
 - (a) *Consent for the child to marry;*
 - (b) *Consent for an abortion or inducement of an abortion to be performed on or for the child; or*
 - (c) *The termination of parental rights to the child.*
- (2) *A temporary delegation of rights and responsibilities under this section shall not:*
 - (a) *Operate to change or modify any parental or legal rights, obligations, or authority established by an existing court order; or*
 - (b) *Deprive the parent or legal custodian of any parental or legal rights, obligations, or authority regarding the custody, visitation, or support of the child.*
- (3) *The parent or legal custodian of the child shall have the authority to revoke or withdraw the power of attorney authorized by this section at any time.*
- (4) *Upon the termination, withdrawal, expiration, or revocation of the power of attorney established by this section, the child shall be returned to the custody of the parent or legal guardian as soon as reasonably possible.*
- (5) *The attorney-in-fact named in the instrument as established by this section shall not be compensated for serving as the attorney-in-fact pursuant to this section.*
- (6) *Unless the power of attorney established by this section is terminated, revoked, or withdrawn, the attorney-in-fact named in the instrument shall exercise parental or legal authority on a continuous basis for the duration of the power of attorney established by this section.*
- (7)
 - (a) *An attorney-in-fact properly appointed pursuant to this section and in compliance with this section shall not be subject to any statutes dealing with the licensing or regulation of foster care homes or other child-care facility licensing statutes, and the appointment of an attorney-in-fact pursuant to this section and Section 2 of this Act shall not constitute an out-of-home child placement.*
 - (b) *The child or children subject to the power of attorney established in this section shall not be considered placed in foster care, and the parties involved in the power of attorney established in this section shall not be subject to any requirements, monitoring, or other regulation for foster care or community care solely because of the execution of an instrument authorized pursuant to this section or Section 2 of this Act.*
- (8) *Except as otherwise provided pursuant to the Kentucky Revised Statutes, the execution of a power of attorney as established pursuant to this section by a parent or legal guardian shall not by itself constitute evidence of abandonment, abuse, or neglect, unless the parent or legal guardian fails to take custody of the child or execute a new power of attorney after the one (1) year time limit has elapsed. Nothing in this subsection shall be interpreted to prevent an investigation of abuse, neglect, abandonment, other mistreatment of a child, or other crime.*
- (9)
 - (a) *A parent or legal guardian shall not execute a power of attorney pursuant to this section or Section 2 of this Act with the intention of permanently avoiding or divesting himself or herself of parental or legal responsibility for the care of the child or for any other illegal or fraudulent purpose.*
 - (b) *An attorney-in-fact or prospective attorney-in-fact designated or potentially designated pursuant to this section or Section 2 of this Act shall not demand or request that a parent or guardian enter into*

an instrument established pursuant to this section or Section 2 of this Act as a result of any person's financial or other debt or obligation, or for any other illegal or fraudulent purpose.

- (c) *A power of attorney established pursuant to this section and Section 2 of this Act shall not be used solely for the purpose of establishing residency for school attendance purposes unless the child actually resides with the attorney-in-fact in the school district where the enrollment is sought, or the child otherwise resides in the district.*

- (d) *Violation of this section shall be punishable under Kentucky law.*

(10) *If a parent or legal guardian of a child chooses to delegate powers pursuant to this section regarding the care and custody of the child to a person or persons other than a grandparent, aunt, uncle, or adult sibling of the child, a full criminal history and child abuse and neglect background check shall be conducted on the person or persons prior to the execution of the power of attorney authorized by this section. The results of the background check shall be kept with the instrument establishing the power of attorney pursuant to this section. A child shall not be placed with an individual whose background check indicates that he or she has a criminal history of child abuse and neglect.*

(11) *A parent who is a member of the Armed Forces of the United States, including any reserve component thereof, or the commissioned corps of the National Oceanic and Atmospheric Administration, or the Public Health Service of the United States Department of Health and Human Services detailed by proper authority for duty with the Armed Forces of the United States, or a parent who is otherwise required to enter or serve in the active military service of the United States under a call or order of the President of the United States or to serve on state active duty, may delegate his or her traditional parental rights and responsibilities via a power of attorney established in this section for a period longer than one (1) year while on active duty service. The term of delegation permitted by this subsection shall not exceed the term of active duty service plus thirty (30) days.*

(12) *Any period of time during which a child resides with an attorney-in-fact under an unexpired and valid power of attorney properly executed pursuant to this section and Section 2 of this Act, shall not be included in determining whether the child has resided with the attorney-in-fact for the minimum period required to be designated a de facto custodian pursuant to KRS 403.270(1).*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (1) *A power of attorney established pursuant to this section and Section 1 of this Act shall be substantially in the following form, and may include other specific directions which are in accordance with accepted legal practice and not specifically prohibited by any other statute. If any other specific directions are held by a court of appropriate jurisdiction to be invalid, that invalidity shall not affect the power of attorney or other provisions established in this section and Section 1 of this Act.*

*"Power of Attorney for Temporary Delegation
of Parental or Legal Custody and Care*

1. *I certify that I am the parent or legal guardian of:*

<i>(Full Name of minor child)</i>	<i>(Date of Birth)</i>
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<i>(Full Name of minor child)</i>	<i>(Date of Birth)</i>
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<i>(Full Name of minor child)</i>	<i>(Date of Birth)</i>
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2. *I designate _____ (Full name of Attorney-in-fact),*

(Street address, city, state, and zip code of Attorney-in-fact)

(Home phone of Attorney-in-fact)

(Work phone of Attorney-in-fact)

as the Attorney-in-fact of each minor child named above.

3. *I delegate to the Attorney-in-fact 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 shall 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

In the event that Section 4 is completed, Section 3 does not apply.

4. I delegate to the Attorney-in-fact the following specific powers and responsibilities (write in):

This delegation shall 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 (1) year, beginning _____, 20____, and ending _____, 20__.

I reserve the right to revoke this authority at any time.

OR, in the event Section 6 is completed and valid, Section 5 does not apply.

6. I am a parent or legal guardian on active duty as governed by subsection (10) of Section 1 of this Act. My active duty service is scheduled to begin on _____, 20__, and is estimated to end on _____, 20__. I acknowledge that in no event may this delegation of power last more than one (1) year or the term of my active duty plus thirty (30) days, whichever is longer.

7. BY: _____

(Parent/Legal Guardian signature)

8. I hereby accept my designation as Attorney-in-fact for the minor child or children specified in this power of attorney.

(Attorney-in-fact signature)

County of _____

ACKNOWLEDGMENT

Before me, the undersigned, a Notary Public, in and for said County and State on this ____day of _____, 20__, personally appeared

_____, and

(Name of Parent/Legal Guardian)

(Name of Attorney-in-fact),

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 notary public)

My commission expires: _____."

- (2) *The power of attorney is legally sufficient under this section and Section 1 of this Act if the wording of the form complies substantially with subsection (1) of this section, the form is properly completed and signed, and the form or parties are not otherwise invalid pursuant to Section 1 of this Act.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

During a child protection investigation that does not result in an out-of-home placement due to abuse of a child, the Cabinet for Health and Family Services is authorized and encouraged to provide information to the parent or legal guardian about community service programs that provide support services for families in crisis, including organizations that operate programs authorized under Sections 1 and 2 of this Act. The Cabinet for Health and Family Services is authorized to exercise its discretion in recommending programs, organizations, and resources to the parent or legal guardian.

Signed by Governor April 13, 2016.