

1 **SENATE FLOOR VERSION**

2 March 25, 2014

3 ENGROSSED HOUSE
4 BILL NO. 2536

5 By: Nelson, Kern, Ownbey,
6 Pittman, Nollan, Sherrer
7 and McDaniel (Jeannie) of
8 the House

9 and

10 Treat of the Senate

11 An Act relating to children; permitting parent or
12 custodian to execute a power of attorney to delegate
13 care and custody powers to another person; limiting
14 delegation of certain powers; providing for
15 revocation or withdrawal of delegation; requiring
16 execution of new power of attorney after one year;
17 directing attorney-in-fact to exercise continuous
18 authority without compensation; providing for
19 abandonment, abuse or neglect; clarifying status of
20 child; providing statutory form for power of
21 attorney; requiring execution and acknowledgement of
22 form; amending 10 O.S. 2011, Section 403, as amended
23 by Section 2, Chapter 308, O.S.L. 2013 (10 O.S. Supp.
24 2013, Section 403), which relates to the Oklahoma
Child Care Facilities Licensing Act; exempting care
provided by attorney-in-fact; amending 10A O.S. 2011,
Sections 1-7-101 and 1-7-109, which relate to the
Oklahoma Children's Code; providing exception;
excepting licensing requirement; providing for
codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 700 of Title 10, unless there is
3 created a duplication in numbering, reads as follows:

4 A. A parent or legal custodian of a child, by a properly
5 executed power of attorney provided in Section 2 of this act, may
6 delegate to another person, for a period not to exceed one (1) year,
7 any of the powers regarding the care and custody of the child,
8 except the power to consent to marriage or adoption of the child,
9 the performance or inducement of an abortion on or for the child, or
10 the termination of parental rights to the child. A delegation of
11 powers under this section shall not deprive the parent or legal
12 custodian of any parental or legal authority regarding the care and
13 custody of the child.

14 B. The parent or legal custodian of the child shall have the
15 authority to revoke or withdraw the power of attorney authorized by
16 subsection A of this section at any time. If the delegation of
17 authority lasts longer than one (1) year, the parent or legal
18 custodian of the child shall execute a new power of attorney for
19 each additional year that the delegation exists.

20 C. The attorney-in-fact shall exercise parental or legal
21 authority on a continuous basis for not less than twenty-four (24)
22 hours and without compensation for the intended duration of the
23 power of attorney authorized by subsection A of this section and
24

1 shall not be subject to the requirements of the Oklahoma Child Care
2 Facilities Licensing Act.

3 D. Except as provided by Section 1-4-904 of Title 10A of the
4 Oklahoma Statutes, a parent or legal custodian who executes a power
5 of attorney authorized by subsection A of this section shall not
6 constitute abandonment, abuse or neglect as defined in Section 1-1-
7 105 of Title 10A of the Oklahoma Statutes unless the parent or legal
8 custodian fails to make contact or execute a new power of attorney
9 after the one-year time limit has elapsed.

10 E. Under a delegation of powers as authorized by subsection A
11 of this section, the child or children subject to the power of
12 attorney shall not be considered placed in foster care as defined in
13 Section 1-1-105 of Title 10A of the Oklahoma Statutes and the
14 parties shall not be subject to any of the requirements or licensing
15 regulations for foster care.

16 SECTION 2. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 701 of Title 10, unless there is
18 created a duplication in numbering, reads as follows:

19 A. The following statutory form of power of attorney to
20 delegate parental or legal authority as authorized by Section 1 of
21 this act is legally sufficient:

22 Statutory Form for Power of Attorney to Delegate Parental or Legal
23 Custodian Powers

24 1. "I certify that I am the parent or legal custodian of:

1 _____
2 (Full name of minor child) (Date of birth)

3 _____
4 (Full name of minor child) (Date of birth)

5 _____
6 (Full name of minor child) (Date of birth)

7 (minor child(ren))."

8 2. "I designate

9 _____,
10 (Full name of Attorney-in-fact)

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

13 _____
14 (Home phone of Attorney-in-Fact) (Work phone of Attorney-in-Fact)

15 as the attorney-in-fact of each minor child named above."

16 3. _____ "I delegate to the attorney-in-fact all of my power
17 and authority regarding the care, custody and property of each minor
18 child named above, including but not limited to the right to enroll
19 the child in school, inspect and obtain copies of education records
20 and other records concerning the child, the right to attend school
21 activities and other functions concerning the child, and the right
22 to give or withhold any consent or waiver with respect to school
23 activities, medical and dental treatment, and any other activity,
24 function or treatment that may concern the child. This delegation

1 shall not include the power or authority to consent to marriage or
2 adoption of the child, the performance or inducement of an abortion
3 on or for the child, or the termination of parental rights to the
4 child." or

5 4. _____ "I delegate to the attorney-in-fact the following
6 specific powers and responsibilities (write in):

7 _____

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

12 5. "This power of attorney is effective for a period not to
13 exceed one year, beginning _____, 20__, and ending
14 _____, 20__. I reserve the right to revoke this authority
15 at any time."

16 By: _____

17 (Parent/Legal Custodian signature)

18 6. "I hereby accept my designation as attorney-in-fact for

19 _____

20 (Minor child(ren)) as specified in this power of attorney."

21 _____

22 (Attorney-in-fact signature)

23 State of _____

24 County of _____

1 ACKNOWLEDGEMENT

2 Before me, the undersigned, a Notary Public, in and for said
3 County and State on this ____ day of _____, 20__,
4 personally appeared _____ (Name of
5 Parent/Legal Custodian) and _____ (Name of
6 Attorney-in-fact), to me known to be the identical persons who
7 executed this instrument and acknowledged to me that each executed
8 the same as his or her free and voluntary act and deed for the uses
9 and purposes set forth in the instrument.

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

11 _____

12 (Signature of notarial officer)

13 (Seal, if any)

14 _____

15 (Title and Rank)

16 My commission expires: _____

17 B. The power of attorney is legally sufficient under this act,
18 if the wording of the form complies substantially with subsection A
19 of this section, the form is properly completed, and the signatures
20 of the parties are acknowledged.

21 SECTION 3. AMENDATORY 10 O.S. 2011, Section 403, as
22 amended by Section 2, Chapter 308, O.S.L. 2013 (10 O.S. Supp. 2013,
23 Section 403), is amended to read as follows:

1 Section 403. A. The provisions of the Oklahoma Child Care
2 Facilities Licensing Act shall not apply to:

3 1. Care provided in a child's own home or by relatives;

4 2. Informal arrangements which parents make with friends or
5 neighbors for the occasional care of their children;

6 3. Care provided by an attorney-in-fact authorized by Section 1
7 of this act who exercises parental or legal authority on a
8 continuous basis for not less than twenty-four (24) hours and
9 without compensation for the intended duration of the power of
10 attorney;

11 4. Programs in which school-aged children three (3) years of
12 age and older are participating in home-schooling;

13 ~~4.~~ 5. Programs that serve children three (3) years of age and
14 older and that are operated during typical school hours by a public
15 school district;

16 ~~5.~~ 6. Programs that serve children three (3) years of age and
17 older and that are operated during typical school hours by a private
18 school that offers elementary education in grades kindergarten
19 through third grade;

20 ~~6.~~ 7. Summer youth camps for children who are at least five (5)
21 years of age, that are accredited by a national standard-setting
22 agency or church camp accreditation program;

23 ~~7.~~ 8. Programs in which children attend on a drop-in basis and
24 parents are on the premises and readily accessible;

1 ~~8.~~ 9. A program of specialized activity or instruction for
2 children that is not designed or intended for child care purposes
3 including, but not limited to, scouts, 4-H clubs and summer resident
4 youth camps, programs that limit children from enrolling in multiple
5 sessions because of the type of activity or ages accepted, and
6 single-activity programs such as academics, athletics, gymnastics,
7 hobbies, art, music, dance and craft instruction;

8 ~~9.~~ 10. Any child care facility that:

- 9 a. provides care and supervision for fifteen (15) or
10 fewer hours per week,
- 11 b. operates less than eight (8) weeks annually, or
- 12 c. operates in the summer for less than eight (8) hours
13 per day;

14 ~~10.~~ 11. Facilities whose primary purpose is medical treatment;

15 ~~11.~~ 12. Boarding schools that have education as their primary
16 purpose and that are recognized as accredited by the State Board of
17 Education. To be exempt, such programs shall:

- 18 a. have classroom facilities that are not used for
19 residential living,
- 20 b. not have been granted nor have assumed legal custody
21 of any child attending the facility, and
- 22 c. adhere to standard educational holiday and seasonal
23 recess periods to permit students reasonable
24

1 opportunities to return to their primary places of
2 residence with parents or legal guardians;

3 ~~12.~~ 13. Day treatment programs and maternity homes operated by
4 a licensed hospital;

5 ~~13.~~ 14. Juvenile facilities certified by the Office of Juvenile
6 Affairs or certified by any other state agency authorized by law to
7 license such facilities;

8 ~~14.~~ 15. A program where children are not enrolled by the
9 parents and are free to come and go;

10 ~~15.~~ 16. A program in tribal land as defined at 25 U.S.C.A. 1903
11 (10); and

12 ~~16.~~ 17. A program on a military base or federal property.

13 B. The provisions of the Oklahoma Child Care Facilities
14 Licensing Act shall be equally incumbent upon all private and public
15 child care facilities.

16 SECTION 4. AMENDATORY 10A O.S. 2011, Section 1-7-101, is
17 amended to read as follows:

18 Section 1-7-101. A. This section applies to persons,
19 institutions, or agencies, other than the Department of Human
20 Services, which receive custody of a child pursuant to a court order
21 as provided by the Oklahoma Children's Code.

22 B. 1. The person, institution, or agency receiving custody
23 shall have the right to, and shall be responsible for, the care and
24

1 control of the child, and shall have the duty and authority to
2 provide the following for the child:

- 3 a. food, clothing, and shelter,
- 4 b. medical care as authorized by the court, and
- 5 c. education and discipline.

6 2. The person, institution, or agency may provide or arrange
7 for the emergency admission, inpatient evaluation, or inpatient
8 treatment of a child only pursuant to the Inpatient Mental Health
9 and Substance Abuse Treatment of Minors Act. Nothing in this
10 subsection shall be interpreted to prohibit or preclude the
11 provision of outpatient behavioral health services, including an
12 outpatient examination, counseling, educational, rehabilitative or
13 other similar services to such child, as necessary and appropriate,
14 in the absence of a specific court order for such services.

15 3. Nothing in this subsection shall be interpreted to:

- 16 a. relieve a parent of the obligation to provide for the
- 17 support of the child as otherwise provided by law, or
- 18 b. limit the authority of the court to order a parent to
- 19 make support payments or to make payments or
- 20 reimbursements for medical care or treatment,
- 21 including behavioral health care or treatment, to the
- 22 person, institution, or agency having custody of the
- 23 child, or

24

1 c. abrogate the right of the child to any benefits
2 provided through public funds for which the child is
3 otherwise eligible.

4 4. No person, agency, or institution shall be liable in a civil
5 suit for damages for authorizing or not authorizing medical care, as
6 determined by competent medical authority.

7 C. 1. If the child is placed in the custody of a person,
8 institution, or agency, whether in emergency, temporary, or
9 permanent custody, the person, institution, or agency shall ensure
10 the child is not returned to the care or supervision of any person
11 from whom the child was removed or to any person the court has
12 previously ordered not to have contact with the child without
13 specific authorization from the court.

14 2. The person, institution, or agency having legal custody of a
15 child pursuant to an order of the court shall receive notice of
16 court proceedings regarding the child and shall be allowed to
17 intervene upon application as a party to all court proceedings
18 pertaining to the care and custody of the child.

19 D. This section shall not apply when a parent or legal
20 custodian executes a power of attorney to delegate parental or legal
21 authority as authorized by Section 1 of this act.

22 SECTION 5. AMENDATORY 10A O.S. 2011, Section 1-7-109, is
23 amended to read as follows:

1 Section 1-7-109. A. Except as otherwise provided by this
2 section, no child in the custody of the Department of Human Services
3 shall be placed with any foster placement unless the foster
4 placement:

5 1. Has a current license or authorization issued pursuant to
6 the Oklahoma Child Care Facilities Licensing Act; or

7 2. Meets licensing standards as required by the Oklahoma Child
8 Care Facilities Licensing Act and is otherwise approved for foster
9 care by the state agency for children within its custody.

10 B. Except as otherwise provided by this section, no person,
11 corporation, or other legal entity shall receive a child for foster
12 care or provide foster care services to a child unless such legal
13 entity has a license or meets licensing standards as required by the
14 Oklahoma Child Care Facilities Licensing Act, and is otherwise
15 approved by the state agency for children within its custody.

16 C. The provisions of this section shall not be construed to
17 prohibit foster placement of children in foster homes licensed or
18 approved by Indian tribes, pursuant to the terms in Section 40.8 of
19 Title 10 of the Oklahoma Statutes.

20 D. This section shall not apply when a parent or legal
21 custodian executes a power of attorney to delegate parental or legal
22 authority as authorized by Section 1 of this act.

23 SECTION 6. It being immediately necessary for the preservation
24 of the public peace, health and safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

3 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
4 March 25, 2014 - DO PASS
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