

By Senator Brandes

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1                   A bill to be entitled  
2           An act relating to the temporary care of a child;  
3           amending s. 39.302, F.S.; authorizing the Department  
4           of Children and Families to provide parents or  
5           guardians with certain information following a  
6           protective investigation not resulting in an out-of-  
7           home placement of the child; amending s. 409.175,  
8           F.S.; revising a term; revising applicability to  
9           include a certain agent caring for children; creating  
10          s. 709.2209, F.S.; providing legislative findings;  
11          defining terms; authorizing a parent, legal guardian,  
12          or legal custodian of a child to establish a power of  
13          attorney for temporary delegation of care of a child  
14          as an alternative to guardianship under certain  
15          circumstances; prohibiting the delegation of certain  
16          powers to an agent; providing that the temporary care  
17          period may not exceed a specified timeframe; providing  
18          that a new power of attorney must be executed for each  
19          additional year that delegation of care is extended;  
20          providing that the delegation of powers does not  
21          change or modify certain parental or legal rights,  
22          obligations, or authority established by court order  
23          or deprive parents, guardians, or custodians of such  
24          rights; providing that the power of attorney is  
25          revocable subject to certain requirements; requiring  
26          the agent to exercise parental or legal authority on a  
27          continuous basis without compensation; providing that  
28          a delegation of powers is not considered to be  
29          placement of a child in foster care, and the parties  
30          are not subject to certain licensing laws or agency  
31          rules; providing that the execution of a power of  
32          attorney does not constitute abandonment, abuse, or

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33 neglect, subject to certain requirements; authorizing  
34 a qualified nonprofit organization to assist a parent,  
35 legal guardian, or legal custodian in delegating  
36 parental or legal authority; providing that a  
37 qualified nonprofit organization is not considered a  
38 child-placing agency and is not required to be  
39 licensed as such unless it pursues certain child-  
40 placing activities; prescribing duties to the  
41 qualified nonprofit organization; providing  
42 requirements for a power of attorney; requiring a  
43 notary public to acknowledge a power of attorney for  
44 it to be valid and to verify any required background  
45 checks; providing an effective date.

46  
47 Be It Enacted by the Legislature of the State of Florida:

48  
49 Section 1. Present subsection (7) of section 39.302,  
50 Florida Statutes, is redesignated as subsection (8), and a new  
51 subsection (7) is added to that section, to read:

52 39.302 Protective investigations of institutional child  
53 abuse, abandonment, or neglect.—

54 (7) When an investigation of institutional abuse, neglect,  
55 or abandonment does not result in an out-of-home placement, the  
56 department may provide information to the parent, legal  
57 guardian, or legal custodian about community service programs  
58 that provide respite care, voluntary guardianship, or other  
59 support services for families in crisis.

60 Section 2. Paragraph (e) of subsection (2) and paragraph  
61 (d) of subsection (4) of section 409.175, Florida Statutes, are

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62 amended to read:

63 409.175 Licensure of family foster homes, residential  
64 child-caring agencies, and child-placing agencies; public  
65 records exemption.—

66 (2) As used in this section, the term:

67 (e) "Family foster home" means a private residence in which  
68 children who are unattended by a parent or legal guardian are  
69 provided 24-hour care. Such homes include emergency shelter  
70 family homes and specialized foster homes for children with  
71 special needs. A person who cares for a child of a friend for a  
72 period not to exceed 90 days, a relative who cares for a child  
73 and does not receive reimbursement for such care from the state  
74 or federal government, ~~or~~ an adoptive home that ~~which~~ has been  
75 approved by the department or by a licensed child-placing agency  
76 for children placed for adoption, or an agent caring for  
77 children under s. 709.2209 is not considered a family foster  
78 home.

79 (4)

80 (d) This license requirement does not apply to boarding  
81 schools, recreation and summer camps, nursing homes, hospitals,  
82 ~~or to~~ persons who care for children of friends or neighbors in  
83 their homes for periods not to exceed 90 days, ~~or to~~ persons who  
84 have received a child for adoption from a licensed child-placing  
85 agency, or agents caring for children under s. 709.2209.

86 Section 3. Section 709.2209, Florida Statutes, is created  
87 to read:

88 709.2209 Power of attorney for temporary care of child.—

89 (1) The Legislature finds that in circumstances in which a  
90 parent or legal guardian of a child is temporarily unable to

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91 provide care for the child, but does not need the full support  
92 of the child welfare system, a less intrusive alternative to  
93 supervision by the Department of Children and Families and the  
94 dependency court under chapter 39 should be available. In such  
95 circumstances, the parent or legal guardian should be able to  
96 delegate temporary care of the child to another natural person  
97 through a properly executed power of attorney.

98 (2) For the purposes of this section, the term:

99 (a) "Agent" means a natural person granted authority to act  
100 for a principal under a power of attorney, whether denominated  
101 an agent, an attorney in fact, or otherwise. The term includes  
102 an original agent and a co-agent.

103 (b) "Department" means the Department of Children and  
104 Families.

105 (c) "Qualified nonprofit organization" means a charity or  
106 religious institution qualified under s. 501(c)(3) of the  
107 Internal Revenue Code which assists parents, legal guardians,  
108 and legal custodians in providing temporary care for a child  
109 pursuant to a power of attorney executed under this section.  
110 Such assistance may include identifying an appropriate and safe  
111 placement for the child and providing services and resources to  
112 support the child, the parents, and persons authorized to  
113 provide temporary care for the child.

114 (d) "Serving parent" means a parent, legal guardian, or  
115 legal custodian who is a member of the regular or reserve  
116 component of the United States Armed Forces or of the  
117 commissioned corps of the National Oceanic and Atmospheric  
118 Administration or the United States Public Health Service when  
119 detailed by proper authority for duty with the armed forces, or

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120 who is required to serve on state active duty as defined in s.  
121 250.01.

122 (3) (a) A parent, legal guardian, or legal custodian of a  
123 child may provide for the temporary care of the child by  
124 delegating to an agent, by means of a power of attorney properly  
125 executed pursuant to this section, any of the powers regarding  
126 the care and custody of the child.

127 (b) A parent, legal guardian, or legal custodian may not  
128 delegate the power to consent to marriage or adoption of the  
129 child, the power to consent to an abortion on behalf of the  
130 child, or the termination of parental rights to the child by  
131 means of a power of attorney executed pursuant to this section.

132 (c) Except as provided in paragraph (d), the period of such  
133 delegation may not exceed 1 year, and the parent, legal  
134 guardian, or legal custodian of the child must execute a new  
135 power of attorney for each additional year that he or she wishes  
136 the delegation to continue.

137 (d) A serving parent may delegate powers pursuant to this  
138 section for a period longer than 1 year if on active duty;  
139 however, the extended term may not exceed the term of active  
140 duty service plus 30 days.

141 (e) Successor agents are not permitted under this section.

142 (4) A delegation of powers under this section does not  
143 limit the ability of a parent, legal guardian, or legal  
144 custodian to appoint a guardian for a child pursuant to chapter  
145 744. This section does not change or modify any parental or  
146 legal rights, obligations, or authority established by an  
147 existing court order or deprive the parent, legal guardian, or  
148 legal custodian of any parental or legal rights, obligations, or

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149 authority regarding the custody, visitation, or support of the  
150 child.

151 (5) The parent, legal guardian, or legal custodian of the  
152 child may, at any time, revoke or withdraw a power of attorney  
153 executed under this section. If the parent, legal guardian, or  
154 legal custodian revokes or withdraws the power of attorney, the  
155 child must be returned to the custody of such person.

156 (6) Unless the power of attorney is revoked or withdrawn by  
157 the parent, legal guardian, or legal custodian, or is otherwise  
158 terminated, the agent shall exercise parental or legal authority  
159 on a continuous basis without compensation for the duration of  
160 the power of attorney.

161 (7) A delegation of powers under this section is not  
162 considered to be placement of the child in foster care, and the  
163 parties are not subject to any of the requirements or licensing  
164 laws, agency rules for foster care, or other regulations  
165 relating to community care for children. An agent who is  
166 delegated authority under this section by a parent, legal  
167 guardian, or legal custodian is not required to meet foster care  
168 licensing requirements under s. 409.175, and such delegation  
169 does not constitute placement in a family foster home as defined  
170 in s. 409.175(2)(e).

171 (8) Except as otherwise provided by law, the execution of a  
172 power of attorney by a parent, legal guardian, or legal  
173 custodian pursuant to this section, without any other evidence,  
174 does not constitute abandonment, abuse, or neglect as those  
175 terms are defined in s. 39.01, unless the parent, legal  
176 guardian, or legal custodian fails to take custody of the child  
177 or to annually execute a new power of attorney continuing the

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178 delegation. Nothing in this subsection shall be interpreted to  
179 prevent the department or law enforcement from investigating  
180 allegations of abandonment, abuse, neglect, or unlawful  
181 desertion of a child.

182 (9) A qualified nonprofit organization may assist a parent,  
183 legal guardian, or legal custodian in delegating parental or  
184 legal authority pursuant to a power of attorney under this  
185 section. Such an organization is not a child-placing agency as  
186 defined in s. 409.175(2)(d) and is not required to be licensed  
187 as such unless the qualified nonprofit organization pursues  
188 child-placing activities as provided in s. 409.175(2)(d). A  
189 qualified nonprofit organization assisting a parent, legal  
190 guardian, or legal custodian with a delegation of powers under  
191 this section shall:

192 (a) Complete a state and national criminal history record  
193 check, pursuant to s. 943.0542, on all employees or volunteers  
194 who may have unsupervised contact with a child placed with an  
195 agent pursuant to this section, including the agent and all  
196 members of the agent's household who are 12 years of age or  
197 older.

198 (b) Require a parent or legal guardian seeking its services  
199 to disclose if the department is conducting an ongoing  
200 investigation of abuse or neglect involving the child or the  
201 child's parent or legal guardian, or is otherwise providing  
202 services to the parent or legal guardian.

203 1. The qualified nonprofit organization shall notify the  
204 parent or legal guardian that providing false information  
205 regarding the status of an investigation or services by the  
206 department may be grounds for termination of the qualified

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207 nonprofit organization's services or reporting to the  
208 department.

209 2. If the qualified nonprofit organization finds that the  
210 department has an open investigation of abuse or neglect  
211 involving the child or the child's parent or legal guardian and  
212 the parent or legal guardian failed to disclose this  
213 information, the qualified nonprofit organization shall  
214 immediately notify the department.

215 (c) Train all agents, host families, and volunteers.

216 (10) To be legally sufficient, a power of attorney executed  
217 under this section must include:

218 (a) Identification of the child.

219 (b) Identification of the parent, legal guardian, or legal  
220 custodian delegating his or her authority.

221 (c) Identification of the agent to whom powers are  
222 delegated.

223 (d) A statement of powers delegated to the agent for the  
224 care and custody of the child.

225 (e) A statement that the delegation does not include powers  
226 excluded under subsection (3).

227 (f) The effective date and end date of the power of  
228 attorney.

229 (g) A statement that the duration of the power of attorney  
230 is 1 year and that it automatically expires 1 year after the  
231 effective date, except as authorized under paragraph (3)(d).

232 (h) The signature of the parent, legal guardian, or legal  
233 custodian delegating powers.

234 (i) The signature of the agent accepting delegation.

235 (j) Space for authorization by a notary public.



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236       (11) At execution of the power of attorney, the parties  
237 shall provide the notary public with proof that the required  
238 criminal history checks have been completed. If a qualified  
239 nonprofit organization assisted with the delegation of powers  
240 pursuant to this section, such evidence shall be a notarized  
241 letter signed by a representative of the qualified nonprofit  
242 organization attesting to the existence of a favorable  
243 background screening of the agent and the appropriate members of  
244 the agent's household.

245       (a) The notary public may not execute the power of attorney  
246 in the absence of such proof.

247       (b) Proof of compliance must be attached to each copy of  
248 the power of attorney provided to the parties by the notary.

249       Section 4. This act shall take effect July 1, 2016.