

1                   A bill to be entitled  
2           An act relating to guardianship; creating s. 709.2209,  
3           F.S.; providing definitions; authorizing a parent or  
4           legal guardian of a child to provide for temporary  
5           care of his or her child by delegating care to an  
6           agent by a properly executed power of attorney;  
7           providing limitations; providing for revocation or  
8           withdrawal of a power of attorney; requiring a power  
9           of attorney to be executed each year of delegation of  
10          care; providing construction; providing requirements  
11          for a qualified nonprofit organization that assists a  
12          parent or legal guardian in delegating parental or  
13          legal authority; requiring a child abuse and criminal  
14          history background check for certain employees or  
15          volunteers; requiring approval by the Department of  
16          Children and Families for placement of a child under  
17          specified circumstances; providing for extension of  
18          delegation of care under certain circumstances;  
19          providing requirements for a power of attorney to be  
20          legally sufficient; requiring the department to  
21          provide information to a parent or legal guardian in  
22          certain investigations; amending s. 744.1012, F.S.;  
23          revising legislative intent; providing an effective  
24          date.

25  
26   Be It Enacted by the Legislature of the State of Florida:

27  
28 Section 1. Section 709.2209, Florida Statutes, is created  
29 to read:

30 709.2209 Power of attorney for temporary care of minor  
31 child.-

32 (1) As used in this section, the term:

33 (a) "Agent" has the same meaning as provided in s.  
34 709.2102.

35 (b) "Department" means the Department of Children and  
36 Families.

37 (c) "Qualified nonprofit organization" means a charity or  
38 religious institution organized under s. 501(c)(3) of the United  
39 States Internal Revenue Code that assists parents and legal  
40 guardians with the provision of temporary care of children  
41 pursuant to a power of attorney executed under this section.  
42 Such assistance includes identifying appropriate placement for a  
43 child and providing services and resources to support the child,  
44 parents, and agents authorized to provide temporary care for the  
45 child.

46 (d) "Serving parent" means a parent or legal guardian who  
47 is a member of the United States Armed Forces, the Florida  
48 National Guard, the United States Reserve Forces, the  
49 commissioned corps of the National Oceanic and Atmospheric  
50 Administration, or the public health service of the United  
51 States Department of Health and Human Services detailed by  
52 proper authority for duty with the United States Armed Forces.

53       (2) As a least restrictive appropriate alternative to  
54 guardianship pursuant to s. 744.344(2), a parent or legal  
55 guardian of a child, by a properly executed power of attorney  
56 authorized under this section, may provide for temporary care of  
57 his or her child by delegating to an agent, for a period not to  
58 exceed 1 year, any of the powers regarding the care and custody  
59 of the child, except the power to consent to marriage or  
60 adoption of the child, the performance or inducement of an  
61 abortion on or for the child, or the termination of parental  
62 rights to the child. This subsection does not limit the ability  
63 of a parent or legal guardian to appoint a guardian for a child  
64 pursuant to chapter 744; does not change or modify parental or  
65 legal rights, obligations, or authority established by an  
66 existing court order; and does not deprive the parent or legal  
67 guardian of parental or legal rights, obligations, or authority  
68 regarding the custody, visitation, or support of the child.

69       (3) The parent or legal guardian of the child may revoke  
70 or withdraw the power of attorney authorized under this section  
71 at any time. Upon such revocation or withdrawal, the child shall  
72 be returned to the custody of the parent or legal guardian as  
73 soon as practicable. Except as provided in subsection (8), the  
74 parent or legal guardian shall execute a new power of attorney  
75 for each year beyond the first year that the delegation exists.

76       (4) Unless the authority is revoked or withdrawn by the  
77 parent or legal guardian or otherwise terminated, an agent shall  
78 exercise parental or legal authority without compensation for

79 the duration of the power of attorney.

80 (5) A power of attorney executed under this section may  
81 not be construed as placing the child in foster care, and an  
82 agent is not required to meet foster care licensing requirements  
83 under chapter 409 and does not constitute a family foster home  
84 as defined in s. 409.175(2) (e).

85 (6) Except as otherwise provided by law, the execution of  
86 a power of attorney by a parent or legal guardian may not be  
87 construed as abandonment, abuse, or neglect as defined in s.  
88 39.01 unless the parent or legal guardian fails to take custody  
89 of the child or execute a new power of attorney after 1 year.

90 (7) A qualified nonprofit organization is not a child-  
91 placing agency as defined in s. 409.175(2) (d) and is not  
92 required to be licensed as such unless the qualified nonprofit  
93 organization pursues child-placing activities as provided in s.  
94 409.175(2) (d).

95 (a) A qualified nonprofit organization shall complete a  
96 child abuse and criminal history background check, in accordance  
97 with Level 2 screening standards as defined in s. 435.04, on all  
98 employees or volunteers who may have unsupervised contact with a  
99 child placed with an agent pursuant to this section, including  
100 the agent and all members of the agent's household who are 12  
101 years of age and older.

102 (b) A qualified nonprofit organization shall notify the  
103 department of the placement of a child with an agent by a power  
104 of attorney authorized under this section to verify that the

105 department does not have an open investigation of abuse or  
106 neglect involving the child or the child's parent or legal  
107 guardian and is not otherwise providing services to the parent  
108 or legal guardian.

109 1. If the department has an open investigation or is  
110 otherwise providing services to the parent or legal guardian,  
111 the department must approve the power of attorney before  
112 placement of the child with the designated agent.

113 2. If the department does not have an open investigation  
114 and is not otherwise providing services to the parent or legal  
115 guardian, the department need not approve the power of attorney.  
116 The department may not open an investigation based solely on  
117 receipt of notification of the placement of a child with an  
118 agent.

119 (8) A serving parent may delegate temporary care of his or  
120 her child by a power of attorney authorized under this section  
121 for a period longer than 1 year if the serving parent is on  
122 active duty service. The term of delegation may not exceed 30  
123 days beyond the term of active duty service.

124 (9) A power of attorney executed under this section that  
125 substantially complies with the following required information  
126 and is acknowledged before a notary public is deemed to be  
127 legally sufficient to delegate temporary parental or legal  
128 authority:

129 (a) Identification of the child.

130 (b) Identification of the parent or legal guardian

131 delegating authority.

132 (c) Identification of the attorney in fact to whom powers  
133 are delegated.

134 (d) A statement of the powers delegated to the attorney in  
135 fact for the care and custody of the child.

136 (e) A statement that the delegation does not include  
137 authority to consent to marriage or adoption of the child, the  
138 performance or inducement of an abortion on or for the child, or  
139 the termination of parental rights to the child.

140 (f) The effective date for the power of attorney.

141 (g) The expiration date for the power of attorney.

142 (h) A statement that the power of attorney shall only be  
143 effective for 1 year and automatically expire after the  
144 expiration of 1 year from the effective date.

145 (i) The signature of the parent or legal guardian  
146 delegating powers.

147 (j) The signature of the attorney in fact accepting  
148 delegation.

149 (k) Space for authorization by a notary public.

150 (10) At the execution of the power of attorney, the  
151 parties to the power of attorney shall provide the notary public  
152 with the completed background checks required under subsection  
153 (7). A notary public may not acknowledge a power of attorney  
154 executed under this section without first verifying that  
155 required background checks have been completed. Copies of the  
156 completed background checks must be attached to any copy of the

157 power of attorney provided to the parties.

158 (11) During a child protective investigation that does not  
159 result in an out-of-home placement, the department shall provide  
160 information to the parent or legal guardian about community  
161 service programs that provide respite care, voluntary  
162 guardianship, or other support services for families in crisis.

163 Section 2. Section 744.1012, Florida Statutes, is amended  
164 to read:

165 744.1012 Legislative intent.—The Legislature finds that  
166 adjudicating a person totally incapacitated and in need of a  
167 guardian deprives such person of all her or his civil and legal  
168 rights and that such deprivation may be unnecessary. The  
169 Legislature further finds that it is desirable to make available  
170 the least restrictive form of guardianship to assist persons who  
171 are only partially incapable of caring for their needs.  
172 Recognizing that every individual has unique needs and differing  
173 abilities, the Legislature declares that it is the purpose of  
174 this act to promote the public welfare by establishing a system  
175 that permits incapacitated persons to participate as fully as  
176 possible in all decisions affecting them; that assists such  
177 persons in meeting the essential requirements for their physical  
178 health and safety, in protecting their rights, in managing their  
179 financial resources, and in developing or regaining their  
180 abilities to the maximum extent possible; and that accomplishes  
181 these objectives through providing, in each case, the form of  
182 assistance that least interferes with the legal capacity of a

183 person to act in her or his own behalf. This act shall be  
184 liberally construed to accomplish this purpose. In circumstances  
185 in which a parent or legal guardian of a child is temporarily  
186 unable to provide care for the child, the Legislature finds that  
187 a less intrusive alternative to guardianship or custody granted  
188 to the Department of Children and Families should be available.  
189 In such circumstances, the parent or legal guardian may delegate  
190 temporary care of the child to an agent for a period not to  
191 exceed 1 year pursuant to s. 709.2209, including powers relating  
192 to the care and custody of the child, but excluding the power to  
193 consent to marriage or adoption of the child, the performance or  
194 inducement of an abortion on or for the child, or the  
195 termination of parental rights to the child.

196 Section 3. This act shall take effect July 1, 2016.