

HOUSE BILL NO. 783

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patrons Prior to Substitute--Delegates Herring and Sullivan [HB 112])

A BILL to amend and reenact §§ 20-166, 20-167, 63.2-1201.1, and 63.2-1230 of the Code of Virginia, relating to adoption; parental placement and agency adoption; discharge of newborn infant.

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-166, 20-167, 63.2-1201.1, and 63.2-1230 of the Code of Virginia are amended and reenacted as follows:

§ 20-166. Power of attorney to delegate parental or legal custodial powers.

A. A parent or legal custodian of a child, by a properly executed power of attorney pursuant to § 20-167, may delegate to another person, for a period not to exceed 180 days, any of the powers regarding the custody, care, and property of the child except the power 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. In the event that both parents of a child are exercising joint custody, both parents shall be required to execute such power of attorney.

Such parent or legal custodian who is a service member may delegate such powers for a period longer than 180 days while on active duty service if such active duty is longer than 180 days, but such period shall not exceed the term of active duty service plus 30 days. For the purposes of this section, "service member" means (i) a member of the Armed Forces of the United States, (ii) a member of the Armed Forces Reserves, (iii) a member of the National Guard, (iv) a member of the commissioned corps of the National Oceanic and Atmospheric Administration, (v) a member of the commissioned corps of the U.S. Public Health Services, or (vi) any person otherwise required to enter or serve in the active military services of the United States under a call or order of the President of the United States or to serve on state active duty.

27 A delegation of powers under this section shall not operate to change or modify any parental or
28 legal rights, obligations, or authority established by an existing court order or deprive a parent or legal
29 custodian of any parental or legal rights, obligations, or authority regarding the custody, visitation, or
30 support of any child under this title.

31 B. Any power of attorney properly executed pursuant to § 20-167 shall be signed by all persons
32 with authority to make decisions concerning the child pursuant to Chapter 6.1 (§ 20-124.1 et seq.), the
33 person to whom powers are delegated under the power of attorney, ~~and~~ including adoptive parents in a
34 direct parental placement adoption pursuant to § 63.2-1230, or a representative of a licensed child-placing
35 agency that assists parents and legal guardians with the process of delegating parental and legal custodial
36 powers of their children, including assistance with identifying appropriate placements for their children
37 and providing services and resources to support children, parents and legal guardians, and persons to
38 whom parental or legal custodial powers are delegated pursuant to this chapter. ~~That~~ Such licensed child-
39 placing agency shall file notice of the arrangement authorized by the power of attorney with the local
40 department of social services in the jurisdiction where the parents or legal guardian resides within seven
41 days of its execution.

42 C. Any person who has signed the form under § 20-167 shall have the authority to revoke or
43 withdraw the power of attorney authorized by subsection A at any time unless such authority is superseded
44 by a court order. If the delegation of authority lasts longer than 180 days, a new power of attorney shall
45 be executed. Where such delegation is executed by a service member, if the delegation is longer than 180
46 days while on active duty service and exceeds the term of active duty service plus 30 days, a new power
47 of attorney shall be executed.

48 D. The attorney-in-fact shall exercise parental or legal authority on a continuous basis for not less
49 than 24 hours and without compensation for the intended duration of the power of attorney authorized by
50 subsection A and shall not be subject to the licensing requirements of § 63.2-1701.

51 E. The execution of a power of attorney by a parent or legal custodian authorized by subsection A
52 shall not constitute abandonment, abuse, or neglect as defined in § 63.2-100 unless the parent or legal
53 custodian fails to make contact or execute a new power of attorney after the time limit has elapsed.

54 F. Under a delegation of powers as authorized by subsection A, the child subject to the power of
55 attorney shall not be deemed placed in foster care, in a foster home, or in an independent foster home as
56 defined in § 63.2-100, and the parties shall not be subject to any of the licensing requirements or
57 regulations for foster care.

58 G. A licensed child-placing agency that assists parents and legal guardians with the process of
59 delegating parental and legal custodial powers of their children shall (i) comply with background check
60 requirements established by regulations of the Board of Social Services or otherwise provided by law; (ii)
61 develop and implement written policies and procedures for (a) governing active and closed cases, (b)
62 governing admissions, (c) monitoring the administration of medications, (d) prohibiting corporal
63 punishment, (e) ensuring that children are not subjected to abuse or neglect, (f) investigating allegations
64 of misconduct toward children, (g) implementing back-up emergency care plans for children, (h) assigning
65 designated casework staff, (i) managing all records, (j) utilizing discharge policies, and (k) regulating the
66 use of seclusion and restraint; and (iii) provide pre-service and ongoing training for temporary placement
67 providers and staff. Any person to whom any powers are delegated pursuant to this section shall comply
68 with background check requirements established by regulations of the Board of Social Services or
69 otherwise provided by law.

70 H. Except as may be permitted by the federal No Child Left Behind Act, 20 U.S.C. §§ 6301 et seq.
71 and 7801 et seq., a power of attorney executed pursuant to § 20-167 shall be invalid if executed for the
72 primary purpose of enrolling the child in a school for the sole purpose of participating in the academic or
73 interscholastic athletics programs provided by that school or for any other unlawful purpose. Violation of
74 this subsection shall be punishable in accordance with the laws of the Commonwealth and may require,
75 in addition to any other remedies, repayment by such parent of all costs incurred by the school as a result
76 of the violation.

77 **§ 20-167. Statutory form for power of attorney to delegate parental or legal custodial powers.**

78 A. A power of attorney to delegate parental or legal authority executed pursuant to this chapter
79 shall be substantially as follows:

80 POWER OF ATTORNEY TO DELEGATE PARENTAL OR LEGAL CUSTODIAL POWERS

81 1. I/We certify that I/we am/are the parent or legal custodian of:

82 Full name of minor child: _____ Date of birth: _____

83 Full name of minor child: _____ Date of birth: _____

84 Full name of minor child: _____ Date of birth: _____

85 2. I/We designate _____ (insert full name, address, and phone number of
86 designated attorney-in-fact) as the attorney-in-fact of each child listed above.

87 3. I/We delegate to the attorney-in-fact all of my/our power and authority regarding the care,
88 custody, and property of each minor child named above, including discharge of a newborn infant from the
89 hospital of birth, the initial physical placement of a child with the adoptive parent in accordance with the
90 provisions of Title 63.2 of the Code of Virginia, the right to enroll the child in school, the right to inspect
91 and obtain copies of education records and other records concerning the child, the right to attend school
92 activities and other functions concerning the child, and the right to give or withhold any consent or waiver
93 with respect to school activities, medical and dental treatment, and any other activity, function, or
94 treatment that may concern the child. This delegation shall not include the power or authority to consent
95 to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or
96 the termination of parental rights to the child. I/We understand that this power of attorney shall not operate
97 to change or modify any parental or legal rights, obligations, or authority established by an existing court
98 order or deprive a parent or legal custodian of any parental or legal rights, obligations, or authority
99 regarding the custody, visitation, or support of any child under Title 20 of the Code of Virginia, and I/we
100 understand that I/we shall continue to be bound by any obligations in such order. By my/our signature
101 below, I/we hereby certify that I/we am/are not executing this power of attorney for any unlawful purpose
102 or for the primary purpose of enrolling my/our child/children in a school for the sole purpose of
103 participating in the academic or interscholastic athletics programs provided by that school.

104 OR

105 3. I/We delegate to the attorney-in-fact the following specific powers and responsibilities:

106 _____

107 _____.

108 This delegation shall not include the power or authority to consent to marriage or adoption of the
 109 child, the performance or inducement of an abortion on or for the child, or the termination of parental
 110 rights to the child. I/We understand that this power of attorney shall not operate to change or modify any
 111 parental or legal rights, obligations, or authority established by an existing court order or deprive a parent
 112 or legal custodian of any parental or legal rights, obligations, or authority regarding the custody, visitation,
 113 or support of any child under Title 20 of the Code of Virginia, and I/we understand that I/we shall continue
 114 to be bound by any obligations in such order. By my/our signature below, I/we hereby certify that I/we
 115 am/are not executing this power of attorney for any unlawful purpose or for the primary purpose of
 116 enrolling my/our child/children in a school for the sole purpose of participating in the academic or
 117 interscholastic athletics programs provided by that school.

118 4. This power of attorney is effective for a period not to exceed 180 days, beginning _____
 119 (insert date) and ending _____ (insert date). I/We reserve the right to revoke this authority at any
 120 time.

121 OR

122 4. I/We am/are a service member, as defined by § 20-166 of the Code of Virginia, and am/are on,
 123 or am/are scheduled to be on, active duty for a period that is set to last longer than 180 days. This power
 124 of attorney is effective for a period not to exceed the period of active duty plus 30 days, beginning
 125 _____ (insert date) and ending _____ (insert date). I/We reserve the right to revoke this
 126 authority at any time.

127 Signature(s) of parent/legal custodian: _____ Date: _____

128 5. I hereby accept my designation as attorney-in-fact for the minor child/children specified in this
 129 power of attorney and agree to act at all times in the best interests of the child/children specified herein
 130 and within the limits of the powers delegated to me. I understand that this power of attorney does not
 131 change or modify any parental or legal rights, obligations, or authority established by an existing court
 132 order or deprive a parent or legal custodian of any parental or legal rights, obligations, or authority
 133 regarding the custody, visitation, or support of the child/children specified herein. By my signature below,
 134 I affirm that I have received notice of any existing court order regarding the custody, visitation, or support

135 of the child/children and agree to honor the rights of a parent or legal custodian of the child/children as
136 specified in such order.

137 Signature of attorney-in-fact: _____ Date: _____

138 6. I, _____ (insert name of representative of licensed child-placing agency), on
139 behalf of _____ (insert name of licensed child-placing agency), hereby approve the
140 designation of the aforementioned attorney-in-fact for the minor child/children specified in this power of
141 attorney and accept responsibility for the supervision of the placement during the time the child/children
142 is/are in the care of the attorney-in-fact.

143 Signature of representative of licensed child-placing agency: _____ Date:
144 _____

145 B. A power of attorney executed under this chapter is legally sufficient if the wording of the form
146 complies substantially with subsection A, the form is properly completed, and the signatures of the parties
147 are acknowledged or verified before a notary public.

148 **§ 63.2-1201.1. Previously married persons who stood in loco parentis during the time of the**
149 **marriage may adopt in the same manner as married persons.**

150 A. ~~A man and woman~~ Persons previously married to each other who stood in loco parentis to a
151 child during their marriage to each other, and who could have adopted or readopted the child pursuant to
152 this chapter while married to each other, but whose marriage is void, has been annulled, or has dissolved,
153 may adopt or readopt the child pursuant to the provisions in this chapter that are applicable to married
154 persons.

155 B. An individual previously married to a parent of a child by birth or adoption, and who stood in
156 loco parentis to that child during the marriage, and who could have adopted the child pursuant to § 63.2-
157 1241 during the marriage, may, with the consent of the prior spouse who is a parent of the child by birth
158 or adoption, adopt the child, after the marriage has been dissolved, annulled, or voided, pursuant to the
159 provisions of this chapter that are applicable to step-parents.

160 C. Any person or persons seeking to adopt or readopt pursuant to this section may be permitted to
161 do so even if they have remarried.

162 D. Nothing in this section shall be construed to permit any child to have more than two living
163 parents by birth or adoption, who have legal rights and obligations in respect to the child, ~~in the form of~~
164 ~~one father and one mother.~~

165 **§ 63.2-1230. Placement of children by parent or guardian.**

166 The birth parent, legal guardian, or adoptive parent of a child may place his child for adoption
167 directly with the adoptive parents of his choice. Such parent or legal guardian may execute a power of
168 attorney to the adoptive parent for discharge of a newborn infant from a hospital or for the initial physical
169 placement of a child with an adoptive parent pursuant to subsection B of § 20-166 and subsection A of §
170 54.1-2969. Consent to the proposed adoption shall be executed upon compliance with the provisions of
171 this chapter before a juvenile and domestic relations district court or, if the birth parent or legal guardian
172 does not reside in Virginia, before a court having jurisdiction over child custody matters in the jurisdiction
173 where the birth parent or legal guardian resides when requested by a juvenile and domestic relations
174 district court of this Commonwealth, pursuant to § 20-146.11. Consent proceedings shall be advanced on
175 the juvenile and domestic relations district court docket so as to be heard by the court within ~~ten~~ 10 days
176 of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.

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