GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

2016 REGULAR SESSION

HOUSE BILL NO. 420

AS ENACTED

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ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY K. Adler

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

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO

4 READ AS FOLLOWS:

5 ***(1) A parent or legal guardian of a child, by a properly executed power of attorney,***

6 ***as established in this section and Section 2 of this Act, may temporarily delegate***

7 ***to another person, named in the instrument as the attorney-in-fact, for a period***

8 ***not to exceed one (1) year any of the traditional parental rights and***

9 ***responsibilities regarding care and custody of the child except the following***

10 ***authorities:***

11 ***(a) Consent for the child to marry;***

12 ***(b) Consent for an abortion or inducement of an abortion to be performed on***

13 ***or for the child; or***

14 ***(c) The termination of parental rights to the child.***

15 ***(2) A temporary delegation of rights and responsibilities under this section shall not:***

16 ***(a) Operate to change or modify any parental or legal rights, obligations, or***

17 ***authority established by an existing court order; or***

18 ***(b) Deprive the parent or legal custodian of any parental or legal rights,***

19 ***obligations, or authority regarding the custody, visitation, or support of the***

20 ***child.***

21 ***(3) The parent or legal custodian of the child shall have the authority to revoke or***

22 ***withdraw the power of attorney authorized by this section at any time.***

23 ***(4) Upon the termination, withdrawal, expiration, or revocation of the power of***

24 ***attorney established by this section, the child shall be returned to the custody of***

25 ***the parent or legal guardian as soon as reasonably possible.***

26 ***(5) The attorney-in-fact named in the instrument as established by this section shall***

27 ***not be compensated for serving as the attorney-in-fact pursuant to this section.***

1 *(6) Unless the power of attorney established by this section is terminated, revoked, or*
2 *withdrawn, the attorney-in-fact named in the instrument shall exercise parental*
3 *or legal authority on a continuous basis for the duration of the power of attorney*
4 *established by this section.*
5 *(7) (a) An attorney-in-fact properly appointed pursuant to this section and in*
6 *compliance with this section shall not be subject to any statutes dealing with*
7 *the licensing or regulation of foster care homes or other child-care facility*
8 *licensing statutes, and the appointment of an attorney-in-fact pursuant to*
9 *this section and Section 2 of this Act shall not constitute an out-of-home*
10 *child placement.*
11 *(b) The child or children subject to the power of attorney established in this*
12 *section shall not be considered placed in foster care, and the parties*
13 *involved in the power of attorney established in this section shall not be*
14 *subject to any requirements, monitoring, or other regulation for foster care*
15 *or community care solely because of the execution of an instrument*
16 *authorized pursuant to this section or Section 2 of this Act.*
17 *(8) Except as otherwise provided pursuant to the Kentucky Revised Statutes, the*
18 *execution of a power of attorney as established pursuant to this section by a*
19 *parent or legal guardian shall not by itself constitute evidence of abandonment,*
20 *abuse, or neglect, unless the parent or legal guardian fails to take custody of the*
21 *child or execute a new power of attorney after the one (1) year time limit has*
22 *elapsed. Nothing in this subsection shall be interpreted to prevent an*
23 *investigation of abuse, neglect, abandonment, other mistreatment of a child, or*
24 *other crime.*
25 *(9) (a) A parent or legal guardian shall not execute a power of attorney pursuant*
26 *to this section or Section 2 of this Act with the intention of permanently*
27 *avoiding or divesting himself or herself of parental or legal responsibility*

1 *for the care of the child or for any other illegal or fraudulent purpose.*
2 *(b) An attorney-in-fact or prospective attorney-in-fact designated or potentially*
3 *designated pursuant to this section or Section 2 of this Act shall not demand*
4 *or request that a parent or guardian enter into an instrument established*
5 *pursuant to this section or Section 2 of this Act as a result of any person's*
6 *financial or other debt or obligation, or for any other illegal or fraudulent*
7 *purpose.*
8 *(c) A power of attorney established pursuant to this section and Section 2 of*
9 *this Act shall not be used solely for the purpose of establishing residency for*
10 *school attendance purposes unless the child actually resides with the*
11 *attorney-in-fact in the school district where the enrollment is sought, or the*
12 *child otherwise resides in the district.*
13 *(d) Violation of this section shall be punishable under Kentucky law.*
14 *(10) If a parent or legal guardian of a child chooses to delegate powers pursuant to*
15 *this section regarding the care and custody of the child to a person or persons*
16 *other than a grandparent, aunt, uncle, or adult sibling of the child, a full*
17 *criminal history and child abuse and neglect background check shall be*
18 *conducted on the person or persons prior to the execution of the power of*
19 *attorney authorized by this section. The results of the background check shall be*
20 *kept with the instrument establishing the power of attorney pursuant to this*
21 *section. A child shall not be placed with an individual whose background check*
22 *indicates that he or she has a criminal history of child abuse and neglect.*
23 *(11) A parent who is a member of the Armed Forces of the United States, including*
24 *any reserve component thereof, or the commissioned corps of the National*
25 *Oceanic and Atmospheric Administration, or the Public Health Service of the*
26 *United States Department of Health and Human Services detailed by proper*
27 *authority for duty with the Armed Forces of the United States, or a parent who is*

1 *otherwise required to enter or serve in the active military service of the United*
2 *States under a call or order of the President of the United States or to serve on*
3 *state active duty, may delegate his or her traditional parental rights and*
4 *responsibilities via a power of attorney established in this section for a period*
5 *longer than one (1) year while on active duty service. The term of delegation*
6 *permitted by this subsection shall not exceed the term of active duty service plus*
7 *thirty (30) days.*
8 *(12) Any period of time during which a child resides with an attorney-in-fact under an*
9 *unexpired and valid power of attorney properly executed pursuant to this section*
10 *and Section 2 of this Act, shall not be included in determining whether the child*
11 *has resided with the attorney-in-fact for the minimum period required to be*
12 *designated a de facto custodian pursuant to KRS 403.270(1).*
13 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO
14 READ AS FOLLOWS:
15 *(1) A power of attorney established pursuant to this section and Section 1 of this Act*
16 *shall be substantially in the following form, and may include other specific*
17 *directions which are in accordance with accepted legal practice and not*
18 *specifically prohibited by any other statute. If any other specific directions are*
19 *held by a court of appropriate jurisdiction to be invalid, that invalidity shall not*
20 *affect the power of attorney or other provisions established in this section and*
21 *Section 1 of this Act.*
22 *"Power of Attorney for Temporary Delegation*
23 *of Parental or Legal Custody and Care*
24 *1. I certify that I am the parent or legal guardian of:*
25 _____
26 *(Full Name of minor child)* _____ *(Date of Birth)*
27 _____

1 *(Full Name of minor child)* *(Date of Birth)*

2 _____

3 *(Full Name of minor child)* *(Date of Birth)*

4 *2. I designate* *(Full name of Attorney-in-fact),*

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

6 *(Home phone of Attorney-in-fact)* *(Work phone of Attorney-in-fact)*

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

8 *3. I delegate to the Attorney-in-fact all of my power and authority regarding the*

9 *care, custody, and property of each minor child named above, including but not limited*

10 *to the right to enroll the child in school, inspect and obtain copies of education records*

11 *and other records concerning the child, the right to attend school activities and other*

12 *functions concerning the child, and the right to give or withhold any consent or waiver*

13 *with respect to school activities, medical and dental treatment, and any other activity,*

14 *function, or treatment that may concern the child. This delegation shall not include the*

15 *power or authority to consent to marriage or adoption of the child, the performance or*

16 *inducement of an abortion on or for the child, or the termination of parental rights to*

17 *the child.*

18 *OR*

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

20 *4. I delegate to the Attorney-in-fact the following specific powers and*

21 *responsibilities (write in):*

22 _____

23 _____

24 _____

25 _____

26 _____

27 *This delegation shall not include the power or authority to consent to marriage or*

1 *adoption of the child, the performance or inducement of an abortion on or for the*
2 *child, or the termination of parental rights to the child.*
3 *5. This power of attorney is effective for a period not to exceed one (1) year,*
4 *beginning _____, 20 __,*
5 *and ending _____, 20 __.*
6 *I reserve the right to revoke this authority at any time.*
7 *OR, in the event Section 6 is completed and valid, Section 5 does not apply.*
8 *6. I am a parent or legal guardian on active duty as governed by subsection (10) of*
9 *Section 1 of this Act. My active duty service is scheduled to begin on*
10 *_____, 20 __, and is estimated to end on*
11 *_____, 20 __. I acknowledge that in no event may this*
12 *delegation of power last more than one (1) year or the term of my active duty plus*
13 *thirty (30) days, whichever is longer.*
14 *7. BY: _____*
15 *_____ (Parent/Legal Guardian signature)*
16 *8. I hereby accept my designation as Attorney-in-fact for the minor child or children*
17 *specified in this power of attorney.*
18 *_____*
19 *(Attorney-in-fact signature)*
20 *County of _____*
21 *ACKNOWLEDGMENT*
22 *Before me, the undersigned, a Notary Public, in and for said County and State on this*
23 *____ day of _____, 20 __, personally appeared*
24 *_____, and*
25 *(Name of Parent/Legal Guardian)*
26 *_____*
27 *(Name of Attorney-in-fact),*

1 *to me known to be the identical persons who executed this instrument and*
2 *acknowledged to me that each executed the same as his or her free and voluntary act*
3 *and deed for the uses and purposes set forth in the instrument.*
4 *Witness my hand and official seal the day and year above written.*
5 _____
6 *(Signature of notary public)*
7 *My commission expires: _____."*
8 *(2) The power of attorney is legally sufficient under this section and Section 1 of this*
9 *Act if the wording of the form complies substantially with subsection (1) of this*
10 *section, the form is properly completed and signed, and the form or parties are*
11 *not otherwise invalid pursuant to Section 1 of this Act.*
12 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO
13 READ AS FOLLOWS:
14 *During a child protection investigation that does not result in an out-of-home*
15 *placement due to abuse of a child, the Cabinet for Health and Family Services is*
16 *authorized and encouraged to provide information to the parent or legal guardian*
17 *about community service programs that provide support services for families in crisis,*
18 *including organizations that operate programs authorized under Sections 1 and 2 of*
19 *this Act. The Cabinet for Health and Family Services is authorized to exercise its*
20 *discretion in recommending programs, organizations, and resources to the parent or*
21 *legal guardian.*

Speaker, House of Representatives

President of Senate

Attest: Chief Clerk of House of Representatives

Approved Governor

Date 13 APRIL 2016