COMMITTEE AMENDMENT ADOPTED

April 26, 2016

**S. 1041**

Introduced by Senators Shealy and Young

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Read the first time January 28, 2016.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 7 TO CHAPTER 15, TITLE 63 SO AS TO ENACT THE “SUPPORTING AND STRENGTHENING FAMILIES ACT”, TO ALLOW PARENTS AND PERSONS WITH LEGAL CUSTODY OF A CHILD TO DELEGATE CAREGIVING AUTHORITY FOR THE CHILD TEMPORARILY TO AN ADULT BY EXECUTION OF A POWER OF ATTORNEY, TO PROVIDE FOR THE REQUIREMENTS AND LIMITATIONS OF THE DELEGATION OF CAREGIVING AUTHORITY AND THE RIGHT TO REVOKE THE POWER OF ATTORNEY, AND FOR OTHER PURPOSES; TO AMEND SECTION 63‑7‑920, AS AMENDED, RELATING TO INVESTIGATIONS OF SUSPECTED CHILD ABUSE OR NEGLECT, SO AS TO REQUIRE THE DEPARTMENT OF SOCIAL SERVICES TO PROVIDE CERTAIN INFORMATION ABOUT COMMUNITY SUPPORTIVE SERVICES TO A PARENT WHEN THE INVESTIGATION DOES NOT RESULT IN PLACEMENT OF THE CHILD OUTSIDE OF THE HOME; AND TO AMEND SECTION 63‑13‑20, RELATING TO THE DEFINITION OF A CHILDCARE FACILITY, SO AS TO EXCLUDE AN ADULT DESIGNATED AS AN ATTORNEY‑IN‑FACT FOR A CHILD IN A POWER OF ATTORNEY EXECUTED PURSUANT TO ARTICLE 7, CHAPTER 15, TITLE 63.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “Supporting and Strengthening Families Act”.

SECTION 2. Chapter 15, Title 63 of the 1976 Code is amended by adding:

“Article 7

Supporting and Strengthening Families Act

Section 63‑15‑710. As used in this article:

(1) ‘Attorney‑in‑fact’ means an adult to whom a parent or person with legal custody of a child delegates caregiving authority pursuant to this article.

(2) ‘Child’ means a minor child of a parent.

(3) ‘Parent’ means:

(a) both parents if the parents are living together;

(b) the parent who has legal custody if the parents are divorced, separated, or widowed; or both parents if the parents have joint legal custody; or

(c) either parent if the parents are living together but one parent is unavailable because of illness or infirmity or because that parent is not within the boundaries of this State or because physical presence is impossible.

(4) ‘Person with legal custody’ means a person, other than a parent, who has been awarded permanent custody of a child by a court order.

(5) ‘Qualified nonprofit organization’ means a charitable or religious institution that is exempt from federal income taxation under Section 501(a) of the Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code, which assists a parent of a child with the process of delegating temporary caregiving authority under this article, including identifying and screening an appropriate attorney‑in‑fact and providing services and resources to support the child, parents, and other persons authorized to provide temporary care for a child under a delegation.

Section 63‑15‑720. (A) A parent or person with legal custody of a child may, by a properly executed power of attorney, delegate to an adult, as attorney‑in‑fact, caregiving authority regarding the child for a period not to exceed one year, except as provided in Section 63‑15‑800.

(B) The delegated caregiving authority may include any power or authority regarding the care and physical custody 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, enlistment in the armed forces, major nonemergency medical and surgical treatment, and the termination of parental rights to the minor child.

(C) The caregiving authority may be delegated without the approval of a court by executing in writing a power of attorney in a form substantially complying with the provisions of Section 63‑15‑810.

(D) A delegation of caregiving authority pursuant to this article does not deprive the parent or person with legal custody of the child of any parental or legal rights, obligations, or authority established by an existing court order or deprive the parent or person with legal custody of the child of any parental or legal rights, obligations, or authority regarding custody, visitation, or support of the child.

(E) If the parent or person with legal custody of a child chooses to delegate temporary caregiving authority under this article to another person, a full background check, to include a criminal history record check, child abuse and neglect central registry check, and a sex offender registry check, shall be conducted for the prospective attorney‑in‑fact and any members of such person’s household over eighteen years of age. The results of the background check shall be kept with the power of attorney establishing the delegation pursuant to this article. A child shall not be placed in the home of a prospective attorney‑in‑fact if such person or anyone eighteen years of age or older has a substantiated history of child abuse or neglect or has pled guilty or nolo contendere or has been convicted of any offense listed in Section 63‑7‑2350.

Section 63‑15‑730. (A) Except as otherwise limited by federal law, this article, or the power of attorney executed by the parent or person with legal custody of the child pursuant to this article, the attorney‑in‑fact has the same rights, duties, and responsibilities that would otherwise be exercised by the parent of a child pursuant to the laws of this State.

(B) An attorney‑in‑fact under the power of attorney executed pursuant to this article shall act in the best interests of the child. The attorney‑in‑fact is not liable for consenting or refusing to consent to medical, dental, or mental health care for a child when the decision is made in good faith and is exercised in the best interests of the child.

Section 63‑15‑740. (A) The attorney‑in‑fact for a child under a power of attorney executed pursuant to this article has the right to enroll the child in a public school serving the area where the attorney‑in‑fact resides and may enroll the child in a private school, kindergarten, prekindergarten, home study program, or childcare facility.

(B) A school shall allow the attorney‑in‑fact, with a properly executed power of attorney that complies with the requirements of Section 63‑15‑810, to enroll the child and must not delay in the enrollment of the child. At the time of enrollment, the attorney‑in‑fact shall provide to the school the residency documentation required by the school for any parent of a child.

Section 63‑15‑750. (A) A parent or person with legal custody of a child shall send written notice to any noncustodial parent of the execution of the power of attorney as soon as is reasonably possible.

(B) The provisions of this article shall not affect a noncustodial parent’s rights with respect to the modification of custody or child support orders.

Section 63‑15‑760. (A) A parent or person with legal custody of a child executing a power of attorney pursuant to this article shall certify that the decision to execute the power of attorney is not for the primary purpose of enrolling the child in a school solely to participate in the academic or interscholastic athletic programs provided by that school, except as allowed by federal law, or for any other unlawful purpose.

(B) A parent or person with legal custody of a child must not execute a power of attorney pursuant to this article while the South Carolina Department of Social Services is providing any protective services or while there is any open investigation or case by the South Carolina Department of Social Services relating to the child, the parent, the person with legal custody of the child, or another child of the parent or the person with legal custody of the child. However, the department may permit a parent or person with legal custody of a child subject to an ongoing child protection investigation to execute a power of attorney pursuant to this article if the department believes that the temporary delegation of parental and legal authority is in the best interests of the child and will help the parent or person with legal custody of the child to address the issues that led to the department’s investigation. Nothing contained in this article affects the power or responsibilities of any court or investigative entity with regard to child abuse and neglect proceedings.

Section 63‑15‑770. A parent or person with legal custody of a child has the authority to revoke or withdraw a power of attorney authorized pursuant to Section 63‑15‑720 at any time. Except as provided in Section 63‑15‑800, if the delegation of power and authority lasts longer than one year, the parent or person with legal custody of the child shall execute a new power of attorney for each additional year that the delegation exists. If the parent or person with legal custody of the child withdraws or revokes the power of attorney, the child must be returned to the custody of the parent or person with legal custody of the child as soon as reasonably possible. If a parent or person with legal custody of the child revokes a power of attorney while the South Carolina Department of Social Services is providing any protective services or while there is any open investigation or case by the South Carolina Department of Social Services relating to the child, the parent, the person with legal custody of the child, or another child of the parent or the person with legal custody of the child, such revocation must be approved by the South Carolina Department of Social Services.

Section 63‑15‑780. Unless a parent or person with legal custody of a child revokes or withdraws the power of attorney as allowed pursuant to Section 63‑15‑770, the attorney‑in‑fact shall exercise parental or legal authority on a continuous basis without compensation for the duration of the power of attorney.

Section 63‑15‑790. (A) The execution of a power of attorney by a parent or person with legal custody of a child pursuant to this article does not constitute abandonment of a child or child abuse or neglect, unless the parent or person with legal custody fails to take custody of the child or execute a new power of attorney after the one‑year time limit has elapsed.

(B) A child subject to a power of attorney executed pursuant to this article is not considered to be placed in foster care or in another placement outside of the home pursuant to Chapter 7, Title 63.

(C) An attorney‑in‑fact of a child designated in the power of attorney executed pursuant to this article is not subject to licensing regulations or other requirements applicable to foster parents, foster homes, other placements outside of the home, or childcare facilities, for exercising the parental or legal authority delegated in the power of attorney.

Section 63‑15‑800. A member of the Armed Forces of the United States, including a reserve component of the armed forces or a commissioned corps of the National Oceanic and Atmospheric Administration or the Public Health Service of the United States Department of Health and Human Services detailed by proper authority for duty with the Armed Forces of the United States, or who is required to enter or serve in the active military service of the United States under a call or order of the President of the United States or to serve on state active duty who is a parent or person with legal custody of a child may delegate caregiving authority to an attorney‑in‑fact for a period longer than one year if on active duty service. The term of delegation, however, may not exceed the term of active duty service plus thirty days.

Section 63‑15‑810. The form to be used by a parent or person with legal custody of a child to delegate powers regarding the care and physical custody of the child to an attorney‑in‑fact pursuant to Section 63‑15‑720 must comply substantially with the following form:

Power of Attorney

to Delegate Limited Parental or Legal Custodian Powers

I certify that I am the parent or person with legal custody of:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Full name of minor child) (Date of birth)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Full name of minor child) (Date of birth)

I designate the following individual as the‑attorney‑in‑fact for each minor child named above:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Full name of attorney‑in‑fact)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Home address, city, state, and zip code)

\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_

(Home phone) (Work phone) (Cell phone)

INITIAL ONE OF THE FOLLOWING STATEMENTS:

\_\_\_\_\_\_\_ I delegate to the attorney‑in‑fact all of my power and authority regarding the care, physical custody, and property of each child named above including, but not limited to, the right to enroll the child in school; the right to inspect and obtain copies of education records and other school records concerning the child; the right to attend school activities and other functions concerning the child and to give or withhold any consent or waiver with respect to school activities; the right to give or withhold consent or waiver with respect to the provision or receipt of health care for the child, including medical, dental, and mental health care; and the right to inspect and obtain copies of health care records concerning the child. This delegation does not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, enlistment in the armed forces, major nonemergency medical and surgical treatment, or the termination of parental rights to the minor child; or

\_\_\_\_\_\_\_ I delegate to the attorney‑in‑fact the following specific powers and authorities listed below:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. This delegation does not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, enlistment in the armed forces, major nonemergency medical and surgical treatment, or the termination of parental rights to the minor child.

INITIAL THE FOLLOWING STATEMENT:

\_\_\_\_\_\_\_ I certify that the decision to execute the power of attorney is not for the primary purpose of enrolling the child in a school solely to participate in the academic or interscholastic athletic programs provided by that school, except as allowed by federal law, or for any other unlawful propose.

\_\_\_\_\_\_\_ I certify that at the present time, the South Carolina Department of Social Services or other child protection agency is not providing any protective services and that there are no open investigations or cases by the South Carolina Department of Social Services relating to me, the child, or any other child in my household. If I become aware that I may be involved in a case with the South Carolina Department of Social Services or other child protection agency, I will make that agency aware of the existence of this power of attorney.

INITIAL ONE OF THE FOLLOWING STATEMENTS:

\_\_\_\_\_\_\_ This power of attorney is effective for a period not to exceed one year, beginning \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, and ending \_\_\_\_\_\_\_, 20\_\_\_\_. I reserve the right to revoke this authority at any time; or

\_\_\_\_\_\_\_ I am a member of the armed forces or a person serving in a commissioned corps as provided in Section 63‑15‑800. My active duty service is scheduled to begin on \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, and is estimated to end on \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_. I acknowledge that in no event may this delegation of power last more than one year or the term on my active duty plus thirty days, whichever is longer.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature of Parent or Person with Legal Custody)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Date)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature of Parent or Person with Legal Custody)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Date)

I hereby accept my designation as attorney‑in‑fact for the minor child(ren) specified in this power of attorney.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_

(Signature of Attorney‑in‑Fact) (Date)

AFFIDAVIT

State of South Carolina

County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

We, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the undersigned witnesses to the foregoing power of attorney, dated the \_\_\_\_ day of \_\_\_, 20\_\_\_, at least one of us being first duly sworn, declare to the undersigned authority, on the basis of our best information and belief, that the power of attorney was on that date signed by the parent or person with legal custody of the child and the attorney‑in‑fact in our presence and we, at their request and in their presence, and in the presence of each other, subscribe our names as witnesses on that date.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Witness

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Witness

ACKNOWLEDGEMENT

State of South Carolina

\_\_\_\_\_\_\_\_\_\_\_\_\_ County

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a notary public for this State and county, certify that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, whose name is signed to the foregoing power of attorney as the parent or legal guardian of the child(ren) listed in this power of attorney, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, whose name is signed to the foregoing power of attorney as the attorney‑in‑fact designated by the parent or legal guardian of the child, and who are both known to me, have both acknowledged before me on this day that, being informed of the contents of the power of attorney, the parent or legal guardian of the child and attorney‑in‑fact executed the same voluntarily on the day the same bears date.

Given under my hand this the \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_, 20\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public (seal)

My commission expires: \_\_\_\_\_\_\_\_\_\_\_\_.”

Section 63‑15‑820. (A) A child placement agency or qualified nonprofit organization may establish a program in which it assists parents with providing temporary care for children pursuant to a delegation authorized by this article. Such program shall not be subject to the requirements of any other child care facility licensing statutes, rules or regulations or foster care licensing laws or rules or regulations, except as provided under this article and amendments thereto.

(B) Prior to the placement of a child under a delegation authorized by this article, the qualified nonprofit organization shall conduct a full background check to include a criminal history record check, child abuse and neglect central registry check, and a sex offenders registry check on the prospective attorney‑in‑fact and any members of such person’s household over eighteen years of age. A child shall not be placed in the home of a prospective attorney‑in‑fact if such person or anyone eighteen years of age or older has a substantiated history of child abuse or neglect or has pled guilty or nolo contendere or has been convicted of any offense listed in Section 63‑7‑2350. The cost associated with conducting the required background checks shall be paid by the qualified nonprofit organization, the parent, or the prospective attorney‑in‑fact. The qualified nonprofit organization shall maintain a record of the background checks conducted with a copy of the power of attorney.”

SECTION 3. Section 63‑7‑920 of the 1976 Code, as last amended by Act 62 of 2015, is further amended by adding an appropriately lettered subsection at the end to read:

“( ) If an investigation of suspected child abuse or neglect does not result in the placement of the child outside of the home, the department shall provide information to the parent about community resources for families in crisis.”

SECTION 4. Section 63‑13‑20(4) of the 1976 Code is amended by adding an appropriately lettered subitem at the end to read:

“( ) a person designated as an attorney‑in‑fact pursuant to Section 63‑15‑720.”

SECTION 5. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 6. This act takes effect upon approval by the Governor.

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