

CS FOR SENATE BILL NO. 180(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/11/16

Referred: Rules

Sponsor(s): SENATOR GIESSEL

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the temporary delegation by a parent or guardian of powers related**
2 **to a child; relating to adoption; relating to nonprofit organizations that provide certain**
3 **assistance to parents; relating to the distribution to a parent or guardian in a child**
4 **protection situation of information on family support services; and providing for an**
5 **effective date."**

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 * **Section 1.** AS 13.26.020 is amended to read:

8 **Sec. 13.26.020. Delegation of powers over incapacitated person by parent**
9 **or guardian.** A parent or a guardian of **an adult** [A MINOR OR] incapacitated
10 person, by a properly executed power of attorney, may delegate to another person, for
11 a period not exceeding one year, any powers regarding care, custody, or property of
12 the **adult incapacitated person** [MINOR CHILD OR WARD, EXCEPT THE
13 POWER TO CONSENT TO MARRIAGE OR ADOPTION OF A MINOR WARD].

1 * **Sec. 2.** AS 13.26 is amended by adding a new section to read:

2 **Sec. 13.26.023. Delegation of powers over minor child.** (a) A parent or a
3 guardian of a minor child, by a properly executed power of attorney that is
4 substantially in the form provided in (f) of this section, may delegate to another person
5 one or more powers regarding the care or custody of the minor child, except the power
6 to consent to

7 (1) the marriage or adoption of the minor child;

8 (2) the performance or inducement of an abortion on or for the minor
9 child; or

10 (3) the termination of parental rights to the minor child.

11 (b) A parent or guardian of a minor child may revoke the power of attorney
12 made by the parent or guardian under (a) of this section at any time. A parent of a
13 minor child may revoke a power of attorney that another parent of the minor child has
14 made under (a) of this section. A guardian of a minor child may revoke a power of
15 attorney that another guardian of the minor child has made under (a) of this section. If
16 a parent or guardian revokes a power of attorney, the attorney-in-fact shall return the
17 minor child to the custody of the parent or the guardian as soon as reasonably possible
18 after the revocation.

19 (c) Except as provided in (d) of this section, a power of attorney under this
20 section is not effective for a period that exceeds one year. However, after a power of
21 attorney expires under this subsection, a parent or guardian may enter into a new
22 power of attorney.

23 (d) A power of attorney made by a military parent or guardian may be effective
24 for a period that exceeds one year if the military parent or guardian is on active duty,
25 but the power of attorney is not effective for a period that exceeds the length of the
26 active duty plus 30 days.

27 (e) Unless a parent or guardian revokes a power of attorney, the attorney-in-
28 fact shall exercise the power in the power of attorney without compensation for the
29 duration of the power of attorney.

30 (f) To designate an attorney-in-fact, a parent or guardian shall execute a power
31 of attorney that is in substantially the following form:

STATUTORY FORM FOR POWER OF ATTORNEY
TO DELEGATE THE POWERS OF A PARENT OR GUARDIAN

Section 1. I certify that I am the parent or guardian of

(Full name of minor child)

(Date of birth)

(Full name of minor child)

(Date of birth)

(Full name of minor child)

(Date of birth)

who is/are minor children.

Section 2. I designate _____ (Full name of attorney-in-fact), _____

(Street address, city, state, and zip code of attorney-in-fact)

(Home telephone of attorney-in-fact)

(Work telephone of attorney-in-fact)

as the attorney-in-fact of each minor child named above.

Section 3. I delegate to the attorney-in-fact all of my power and authority regarding the care and custody of each minor child named above, including the right to enroll the child in school, the right to inspect and obtain copies of education records and other records concerning the child, the right to attend school activities and other functions concerning the child, and the right to give or withhold any consent or waiver with respect to school activities, medical treatment, dental treatment, and other activity, function, or treatment that may concern the minor child. This delegation does not include the power or authority to consent to the marriage or adoption of the minor child, the performance or inducement of an abortion on or for the minor child, or the termination of parental rights to the minor child.

OR

Section 4. I delegate to my attorney-in-fact the following specific powers and responsibilities (write in):

Delegation under this section does not include the power or authority to consent to the marriage or adoption of the minor child, the performance or inducement of an abortion on or for the minor child, or the termination of parental rights to the minor child.

(If you complete Section 4, Section 3 does not apply).

Section 5. 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

Section 6. I am a military parent or guardian under AS 13.26.023(d). My active duty is scheduled to begin on _____, 20 ____, and is estimated to end on _____, 20 _____. I acknowledge that this power of attorney will not last more than one year, or the term of my active duty service plus 30 days, whichever period is longer.

By: _____

(Parent/guardian signature)

Section 7. I hereby accept my designation as attorney-in-fact for the minor child/children identified in this power of attorney.

(Attorney-in-fact signature)

State of _____

_____ Judicial District

ACKNOWLEDGMENT

Before me, the undersigned, a Notary Public, in and for the Judicial District and State identified above, on this ____ day of _____, 20 ____, personally appeared _____ (name of parent/guardian) and _____ (name of attorney-in-fact), to me known to be the persons who executed this power of attorney, and each acknowledged to me that each executed the same as the person's free and voluntary act and deed

for the uses and purposes set out in this power of attorney.

Witness my hand and official seal the day and year written above.

(Signature of notary public)

(Seal, if any)

(Title and rank)

My commission expires: _____

(g) A power of attorney does not change parental rights, legal rights, obligations, or other authority established by an existing court order, and does not deprive the parent or guardian of rights, obligations, or other authority relating to the custody, visitation, or support of the minor child.

(h) Except as otherwise determined under another statute, the execution of a power of attorney by a parent or guardian does not constitute abandonment, neglect, or abuse of the minor child or ward under AS 47.10.013 - 47.10.015, unless the parent or guardian fails, after the power of attorney terminates, to retake custody of the child and does not execute a new power of attorney.

(i) Under a power of attorney, a minor child is not considered to be in foster care, and the attorney-in-fact is not considered to be providing foster care for which a license is required under AS 47.32.

(j) In this section,

(1) "active duty" means military duties that are performed full time;

(2) "attorney-in-fact" means the individual to whom a parent or guardian gives a power under a power of attorney;

(3) "foster care" means care provided by a person for which a foster home license is required by AS 47.32;

(4) "guardian" means a natural person who is legally appointed the guardian of a minor child by the court under this chapter;

(5) "military parent or guardian" means a person who is a parent or guardian of a minor and who is a member of

(A) the armed forces of the United States;

(B) a reserve component of the armed forces of the United States;

(C) the National Oceanic and Atmospheric Administration Commissioned Officer Corps or the United States Public Health Service Commissioned Corps, if the member is

(i) assigned by proper authority to duty with the armed forces of the United States; or

(ii) required to serve on active duty with the armed forces of the United States under a call or order of the President of the United States, or to serve on active duty with the military forces of the state;

(6) "minor child" means a natural person who is under 18 years of age, including a stepchild or a grandchild, but not including a foster child;

(7) "parent" includes a stepparent or a grandparent, and a parent who is incarcerated for a criminal conviction, but not a foster parent;

(8) "power of attorney" means a power of attorney entered into under this section.

* **Sec. 3.** AS 25.23.060(c) is amended to read:

(c) A consent executed under this section is effective as a power of attorney under AS 13.26.023 [AS 13.26.020]. Unless the consent form provides otherwise, and regardless of whether the form names or identifies the adoptive parent, the consent delegates to the adoptive parent all powers that may be delegated under AS 13.26.023 [AS 13.26.020]. The power of attorney takes effect when the child is delivered to the adoptive parent, and remains in effect as long as the consent is in effect; but the power of attorney is not effective beyond one year, unless the court extends it for good cause. The power of attorney does not terminate on the death or disability of the person executing the consent, unless the consent form so states. This subsection may not be construed to alter the requirements of AS 47.70 (the Interstate Compact on the Placement of Children).

* **Sec. 4.** AS 25.23.060(c), as amended by sec. 1, ch. 93, SLA 2008, is amended to read:

(c) A consent executed under this section is effective as a power of attorney

under **AS 13.26.023** [AS 13.26.020]. Unless the consent form provides otherwise, and regardless of whether the form names or identifies the adoptive parent, the consent delegates to the adoptive parent all powers that may be delegated under **AS 13.26.023** [AS 13.26.020]. The power of attorney takes effect when the child is delivered to the adoptive parent, and remains in effect as long as the consent is in effect; but the power of attorney is not effective beyond one year, unless the court extends it for good cause. The power of attorney does not terminate on the death or disability of the person executing the consent, unless the consent form so states. This subsection may not be construed to alter the requirements of AS 47.70 (the Interstate Compact for the Placement of Children).

* **Sec. 5.** AS 47.10.086(a) is amended to read:

(a) Except as provided in (b), (c), and (g) of this section, the department shall make timely, reasonable efforts to provide family support services to the child and to the parents or guardian of the child that are designed to prevent out-of-home placement of the child or to enable the safe return of the child to the family home, when appropriate, if the child is in an out-of-home placement. The department's duty to make reasonable efforts under this subsection includes the duty to

(1) identify family support services that will assist the parent or guardian in remedying the conduct or conditions in the home that made the child a child in need of aid;

(2) actively offer the parent or guardian, and refer the parent or guardian to, the services identified under (1) of this subsection; the department shall refer the parent or guardian to, **and distribute to the parent or guardian information on,** community-based family support services whenever community-based services are available and desired by the parent or guardian; **the information may include the use of a power of attorney under AS 13.26.023 to select an individual to care for the child temporarily;** and

(3) document the department's actions that are taken under (1) and (2) of this subsection.

* **Sec. 6.** AS 47.32.020(a) is amended to read:

(a) An entity may not operate a facility described in AS 47.32.010(b) without

1 first obtaining a license under this chapter unless the entity is exempt under
2 regulations adopted under AS 47.32.030 **or is exempt under (c) of this section.**

3 * **Sec. 7.** AS 47.32.020 is amended by adding a new subsection to read:

4 (c) If a nonprofit organization operates a program that assists parents to find
5 temporary care for a child, the nonprofit organization is exempt from the licensing and
6 other requirements of this chapter when operating the program.

7 * **Sec. 8.** Section 4 of this Act takes effect on the effective date of sec. 1, ch. 93, SLA 2008.