

HOUSE BILL No. 1354

DIGEST OF INTRODUCED BILL

Citations Affected: IC 29-3-9; IC 31-27-1-1; IC 31-33-8-15.

Synopsis: Delegation of parental powers. Provides that a delegation of powers by a parent or guardian regarding the health care, support, custody, or property of the minor: (1) is not considered placing the minor in foster care; (2) does not subject any party to foster care licensing or rules; and (3) is not considered abandonment, abuse, or neglect, absent other evidence or unless the parent or guardian fails to contact the attorney-in-fact or execute a new power of attorney upon expiration of the original power of attorney. Permits a parent or guardian in active military service to delegate powers regarding the minor for a period not exceeding the parent's or guardian's term of active duty military service plus 30 days.

Effective: July 1, 2016.

Nisly

January 12, 2016, read first time and referred to Committee on Judiciary.



Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

HOUSE BILL No. 1354

A BILL FOR AN ACT to amend the Indiana Code concerning probate.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 29-3-9-1, AS AMENDED BY P.L.81-2015,
2 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2016]: Sec. 1. (a) Except as provided in subsection (b), by a
4 properly executed power of attorney, a parent of a minor or a guardian
5 (other than a temporary guardian) of a protected person may delegate
6 to another person **any powers regarding health care, support,**
7 **custody, or property of the minor or protected person for the**
8 **following periods:**
9 (1) Any period during which the care and custody of the minor or
10 protected person is entrusted to an institution furnishing care,
11 custody, education, or training. ~~or~~
12 (2) A period not exceeding twelve (12) months.
13 (3) **If the delegation is with regard to a minor, a period not**
14 **exceeding the parent's or guardian's term of active duty**
15 **military service plus thirty (30) days, if the parent or**
16 **guardian is on active duty as a member of any of the**
17 **following:**



1 (A) The United States Army, Navy, Air Force, Marine
2 Corps, Coast Guard, or their reserves.

3 (B) The commissioned corps of the Public Health Service.

4 (C) The commissioned corps of the National Oceanic and
5 Atmospheric Administration.

6 The power of attorney under this subdivision must state that
7 the parent or guardian is required to enter or serve in the
8 active military service of the United States and must include
9 the estimated beginning and ending dates of the active duty
10 service.

11 any powers regarding health care, support, custody, or property of the
12 minor or protected person. A delegation described in this subsection is
13 effective immediately unless otherwise stated in the power of attorney.

14 (b) A parent of a minor or a guardian of a protected person may not
15 delegate under subsection (a) the power to:

16 (1) consent to the marriage or adoption of a protected person who
17 is a minor; or

18 (2) petition the court to request the authority to petition for
19 dissolution of marriage, legal separation, or annulment of
20 marriage on behalf of a protected person as provided under
21 ~~IC 29-3-9-12.2~~ **section 12.2 of this chapter.**

22 (c) A person having a power of attorney executed under subsection
23 (a) has and shall exercise, for the period during which the power is
24 effective, all other authority of the parent or guardian respecting the
25 health care, support, custody, or property of the minor or protected
26 person except any authority expressly excluded in the written
27 instrument delegating the power. The parent or guardian remains
28 responsible for any act or omission of the person having the power of
29 attorney with respect to the affairs, property, and person of the minor
30 or protected person as though the power of attorney had never been
31 executed.

32 (d) Except as otherwise stated in the power of attorney delegating
33 powers under this section, a delegation of powers under this section
34 may be revoked **at any time** by a written instrument of revocation that:

35 (1) identifies the power of attorney revoked; and

36 (2) is signed by the:

37 (A) parent of a minor; or

38 (B) guardian of a protected person;

39 who executed the power of attorney.

40 SECTION 2. IC 29-3-9-1.2 IS ADDED TO THE INDIANA CODE
41 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
42 1, 2016]: **Sec. 1.2. (a) This section applies to a power of attorney**



1 executed under section 1 of this chapter.

2 (b) As used in this section, "delegation" means a delegation of
3 powers regarding health care, support, custody, or property of the
4 minor by a power of attorney under section 1 of this chapter.

5 (c) As used in this section, "department" means the department
6 of child services established by IC 31-25-1-1.

7 (d) A delegation does not result in any party being subject to
8 any statute or rule concerning the licensing or regulation of:

9 (1) a foster family home (as defined in IC 31-9-2-46.9);

10 (2) a child placing agency (as defined in IC 31-9-2-17.5);

11 (3) a child caring institution (as defined in IC 31-9-2-16.7); or

12 (4) any combination of subdivisions (1) through (3).

13 (e) A delegation may not:

14 (1) be considered placing the minor subject to the delegation
15 in foster care (as defined in IC 31-9-2-46.7); or

16 (2) subject any party to foster care (as defined in
17 IC 31-9-2-46.7) requirements or licensing rules.

18 (f) Except as provided in subsection (g), a foster family home
19 licensed under IC 31-27-4 may provide care and supervision on a
20 twenty-four (24) hour basis to a minor who is the subject of a
21 delegation. The department may not:

22 (1) require a surrender of; or

23 (2) revoke;

24 the license of the foster family home because the foster family is
25 providing care and supervision to the minor.

26 (g) A foster family home licensed under IC 31-27-4 may not
27 provide care and supervision on a twenty-four (24) hour basis to a
28 minor who is the subject of a delegation while also providing care
29 to a minor who is placed in the foster family home:

30 (1) by the department; or

31 (2) under a juvenile court order under the foster family
32 home's license.

33 (h) Except as otherwise provided in statute, the delegation shall
34 not, without other evidence, constitute abandonment, abuse, or
35 neglect of the minor by the parent or guardian, unless the parent
36 or guardian fails to:

37 (1) make contact with the attorney-in-fact; or

38 (2) execute a new power of attorney;

39 after the expiration or termination of the original power of
40 attorney.

41 SECTION 3. IC 31-27-1-1, AS ADDED BY P.L.145-2006,
42 SECTION 273, IS AMENDED TO READ AS FOLLOWS



1 [EFFECTIVE JULY 1, 2016]: Sec. 1. This article does not apply to the
2 following:

3 (1) A child caring institution, foster family home, group home, or
4 child placing agency licensed or operated by any of the following:

5 (A) Programs for children in kindergarten through grade 12
6 that are operated under the authority of the department of
7 education or that are operated with the assistance of the
8 department of education.

9 (B) The division of mental health and addiction.

10 (C) The state department of health.

11 (D) The department of correction.

12 (2) A person who has received a child for adoption.

13 (3) A county jail or detention center.

14 **(4) A delegation of powers regarding health care, support,**
15 **custody, or property of a minor by a power of attorney under**
16 **IC 29-3-9.**

17 SECTION 4. IC 31-33-8-15 IS ADDED TO THE INDIANA CODE
18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
19 1, 2016]: **Sec. 15. (a) During any investigation by the department**
20 **that does not result in an out of home placement of the child, the**
21 **department shall provide information to the parent, guardian, or**
22 **custodian of the child about community service programs that**
23 **provide:**

24 (1) respite care;

25 (2) voluntary guardianship; or

26 (3) other support services;

27 **for families in crisis.**

28 **(b) An obligation on the part of any government agency that**
29 **licenses or regulates foster care homes is not created by:**

30 (1) the department providing information or a referral; or

31 (2) a delegation.

32 **A parent, guardian, custodian, child, or attorney-in-fact may not**
33 **make any claim of liability against a government agency in**
34 **connection with a delegation (as defined in IC 29-3-9-1.2).**

