

House File 721 - Introduced

HOUSE FILE 721
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 134)

A BILL FOR

1 An Act relating to the temporary delegation of parental
2 authority by the parent, guardian, or legal custodian of a
3 child.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 633F.1 Definitions.

2 1. "Agent" means a person granted authority to act for a
3 parent, guardian, or legal custodian under a power of attorney
4 created under this chapter.

5 2. "Child" means a person under eighteen years of age.

6 3. "Power of attorney" means a writing that grants authority
7 to an agent to act in the place of a parent, guardian, or legal
8 custodian regarding the care or custody of a child.

9 Sec. 2. NEW SECTION. 633F.2 Power of attorney — temporary
10 delegation of parental authority.

11 1. A parent, guardian, or legal custodian of a child, by a
12 properly executed power of attorney, may delegate to another
13 person any authority regarding the care or custody of the child
14 except for any of the following powers:

15 a. The power to consent to the child's marriage.

16 b. The power to consent to the child's adoption.

17 c. The power to consent to the performance or inducement of
18 an abortion on or for the child.

19 d. The power to consent to the termination of the parental
20 rights of a parent of the child.

21 e. The power to transfer the power of attorney to another
22 person unless the other person is designated as a successor
23 agent in the power of attorney.

24 2. A power of attorney executed under this chapter must be
25 signed by all parents, guardians, and legal custodians. The
26 power of attorney must be acknowledged before a notary public
27 or other individual authorized by law to take acknowledgments.
28 An agent named in the power of attorney shall not notarize the
29 principal's signature. An acknowledged signature on a power of
30 attorney is presumed to be genuine.

31 3. A parent, guardian, or legal custodian of the child shall
32 have the authority to revoke or terminate a power of attorney
33 created under this chapter at any time by giving notice of the
34 revocation in writing to the agent.

35 4. A power of attorney created under this chapter shall be

1 for a period of time not to exceed three months. A parent,
2 guardian, or legal custodian of the child may execute a new
3 power of attorney for an additional period of three months, but
4 in no case shall a power of attorney created under this chapter
5 be valid for more than six months. If a parent, guardian, or
6 legal custodian revokes or terminates the power of attorney,
7 the child shall be returned to the care and custody of the
8 parent, guardian, or legal custodian within twenty-four hours
9 of the date of the revocation or termination.

10 5. An agent shall exercise parental or legal authority on a
11 continuous basis without compensation for the duration of the
12 power of attorney and shall not be considered to be a foster
13 parent subject to licensure by the department of human services
14 pursuant to chapter 237.

15 6. A power of attorney executed under this chapter by a
16 parent, guardian, or legal custodian shall not constitute
17 abandonment, abuse, or neglect of the child under chapter 232
18 by the parent, guardian, or legal custodian unless the parent,
19 guardian, or legal custodian fails to take custody of the child
20 upon the expiration of the power of attorney.

21 7. A power of attorney executed under this chapter by a
22 parent, guardian, or legal custodian shall not be valid if the
23 purpose is to avoid the filing of a child in need of assistance
24 petition.

25 8. This chapter shall not apply to a power of attorney
26 created pursuant to section 598C.204.

27 **Sec. 3. NEW SECTION. 633F.3 Power of attorney temporary**
28 **delegation of parental authority — form.**

29 A document substantially in the following form may be used
30 to create a power of attorney temporary delegation of parental
31 authority that has the meaning and effect prescribed by this
32 chapter:

33 **POWER OF ATTORNEY TEMPORARY DELEGATION OF PARENTAL AUTHORITY**
34 **FORM**

35 **1. POWER OF ATTORNEY**

1 This power of attorney authorizes another person (your
2 agent) to make decisions concerning your child or children for
3 you (the principal). Your agent will be able to make decisions
4 and act with respect to your child or children. The meaning
5 of authority over the child or children listed on this form
6 is explained in the Power of Attorney temporary delegation of
7 parental authority, Iowa Code chapter 633F. This power of
8 attorney does not grant the agent the power to consent to a
9 child's marriage or adoption, to the performance or inducement
10 of an abortion on or for a child, or to the termination of
11 parental rights of a parent of a child or to the transfer of the
12 power of attorney to a person other than to a person designated
13 as a successor agent in this power of attorney.

14 You should select someone you trust to serve as your agent.

15 Your agent is not entitled to compensation unless you state
16 otherwise in the optional Special Instructions.

17 This form provides for designation of one agent. If you
18 wish to name more than one agent, you may name a coagent in the
19 optional Special Instructions. Coagents must act by majority
20 rule unless you provide otherwise in the optional Special
21 Instructions.

22 If your agent is unable or unwilling to act for you, your
23 power of attorney will end unless you have named a successor
24 agent. You may also name a second successor agent.

25 This power of attorney becomes effective immediately upon
26 signature and acknowledgment unless you state otherwise in the
27 optional Special Instructions.

28 If you have questions about this power of attorney or the
29 authority you are granting to your agent, you should seek legal
30 advice before signing this form.

31 DESIGNATION OF AGENT

32 I _____ (name of principal) name the
33 following person as my agent:

34 Name of Agent _____

35 Agent's Address _____

1 Agent's Telephone Number _____

2 DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

3 If my agent is unable or unwilling to act for me, I name as
4 my successor agent:

5 Name of Successor Agent _____

6 Successor Agent's Address _____

7 Successor Agent's Telephone Number _____

8 If my successor agent is unable or unwilling to act for me, I
9 name as my second successor agent:

10 Name of Second Successor Agent _____

11 Second Successor Agent's Address _____

12 Second Successor Agent's Telephone Number _____

13 GRANT OF GENERAL AUTHORITY

14 I grant my agent and any successor agent general authority to
15 act for me with respect to my child or my children as defined
16 in the Power of Attorney Temporary Delegation of Parental
17 Authority, Iowa Code chapter 633F.

18 SPECIAL INSTRUCTIONS

19 You may give special instructions including the name and
20 date of birth of the child on the following lines:

21 _____
22 _____
23 _____
24 _____
25 _____
26 _____
27 _____
28 _____
29 _____
30 _____
31 _____
32 _____.

33 EFFECTIVE DATE

34 This power of attorney is effective immediately upon
35 signature and acknowledgment unless I have stated otherwise in

1 the optional Special Instructions.

2 RELIANCE ON THIS POWER OF ATTORNEY

3 Any person, including my agent, may rely upon the validity of
4 this power of attorney or a copy of it unless that person knows
5 it has terminated or is invalid.

6 SIGNATURE AND ACKNOWLEDGMENT

7 _____
8 Your Signature Date

9 _____
10 Your Name Printed

11 _____
12 _____

13 Your Address
14 _____

15 Your Telephone Number
16 State of _____

17 County of _____

18 This document was acknowledged before me on _____
19 (date), by _____ (name of principal)
20 _____ (Seal, if any)

21 Signature of Notary
22 My commission expires _____

23 This document prepared by
24 _____
25 _____

26 2. IMPORTANT INFORMATION FOR AGENT

27 AGENT'S DUTIES

28 When you accept the authority granted under this power of
29 attorney, a special legal relationship is created between the
30 principal and you. This relationship imposes upon you legal
31 duties that continue until you resign or the power of attorney
32 is terminated or revoked. You must do all of the following:

33 Act in good faith.

34 Do nothing beyond the authority granted in this power of
35 attorney.

1 Disclose your identity as an agent whenever you act for the
2 principal by writing or printing the name of the principal and
3 signing your own name as agent in the following manner:

4 _____ (principal's name) by
5 _____ (your signature) as Agent

6 Unless the Special Instructions in this power of attorney
7 state otherwise, you must also do all of the following:

8 Act loyally for the child's or children's and principal's
9 benefit.

10 Avoid conflicts that would impair your ability to act in the
11 child or children's and principal's best interest.

12 Act with care, competence, and diligence.

13 TERMINATION OF AGENT'S AUTHORITY

14 You must stop acting on behalf of the principal if you learn
15 of any event that terminates this power of attorney or your
16 authority under this power of attorney. Events that terminate
17 a power of attorney or your authority to act under a power of
18 attorney include any of the following:

19 The principal's revocation of the power of attorney or your
20 authority.

21 The occurrence of a termination event stated in the power of
22 attorney.

23 The purpose of the power of attorney is fully accomplished.

24 The time period specified in the power of attorney has
25 expired.

26 The three-month time period permitted under Iowa Code
27 chapter 633F has expired.

28 The three-month extension time period permitted under Iowa
29 Code chapter 633F has expired.

30 LIABILITY OF AGENT

31 The meaning of the authority granted to you is defined in the
32 Power of Attorney Temporary Delegation of parental authority,
33 Iowa Code chapter 633F. If you violate the Power of Attorney
34 Temporary Delegation of parental authority, Iowa Code chapter
35 633F, or act outside the authority granted, you may be liable

1 for any damages caused by your violation.

2 If there is anything about this document or your duties that
3 you do not understand, you should seek legal advice.

4 Sec. 4. NEW SECTION. 633F.4 Agent's certification —
5 optional form.

6 The following optional form may be used by an agent to
7 certify facts concerning a power of attorney:

8 IOWA STATUTORY POWER OF ATTORNEY TEMPORARY DELEGATION OF
9 PARENTAL AUTHORITY AGENT'S CERTIFICATION FORM
10 AGENT'S CERTIFICATION OF VALIDITY OF POWER OF ATTORNEY AND
11 AGENT'S AUTHORITY

12 State of _____

13 County of _____

14 I, _____ (name of agent), certify
15 under penalty of perjury that _____
16 (name of principal) granted me authority as an agent
17 or successor agent in a power of attorney dated
18 _____.

19 I further certify all of the following to my knowledge:

20 The principal is alive and has not revoked the power of
21 attorney or the Power of Attorney and my authority to act under
22 the Power of Attorney have not terminated.

23 If the power of attorney was drafted to become effective
24 upon the happening of an event or contingency, the event or
25 contingency has occurred.

26 If I was named as a successor agent, the prior agent is no
27 longer able or willing to serve.

28 _____
29 _____
30 _____.

31 (Insert other relevant statements)

32 SIGNATURE AND ACKNOWLEDGMENT

33 _____

34 Agent's Signature

Date

35 _____

1 Agent's Name Printed

2 _____

3 _____

4 Agent's Address

5 _____

6 Agent's Telephone Number

7 This document was acknowledged before me on _____

8 (date), by _____ (name of agent)

9 _____ (Seal, if any)

10 Signature of Notary

11 My commission expires _____

12 This document prepared by

13 _____

14 _____

15 EXPLANATION

16 The inclusion of this explanation does not constitute agreement with
17 the explanation's substance by the members of the general assembly.

18 This bill relates to the temporary delegation of parental
19 authority by the parent, guardian, or legal custodian of a
20 child.

21 The bill provides that a parent, guardian, or legal
22 custodian of a child, by a properly executed power of attorney,
23 may delegate to another person any powers regarding the care
24 or custody of the child except the power to consent to the
25 child's marriage, the power to consent to the child's adoption,
26 the power to consent to the performance or inducement of an
27 abortion on or for the child, the power to consent to the
28 termination of the parental rights of a parent of the child,
29 and the power to transfer the power of attorney to another
30 person unless the other person is designated as a successor
31 agent in the power of attorney. A power of attorney executed
32 under the bill must be signed by all parents, guardians, and
33 legal custodians of a child and must be properly acknowledged
34 by a notary. A parent, guardian, or legal custodian shall
35 have the authority to revoke or terminate a power of attorney

1 created under the bill at any time.

2 A power of attorney created under the bill shall be for
3 a period of time not to exceed three months. The parent,
4 guardian, or legal custodian of the child may execute a new
5 power of attorney for an additional period of three months, but
6 a power of attorney created under the bill cannot exceed six
7 months. If the parent, guardian, or legal custodian revokes or
8 terminates the power of attorney, the child shall be returned
9 to the care and custody of the parent, guardian, or legal
10 custodian within 24 hours of the date of the revocation or
11 termination.

12 An agent (person granted authority to act for a parent,
13 guardian, or legal custodian under a power of attorney
14 created in the bill) is required to exercise parental or legal
15 authority on a continuous basis without compensation for the
16 duration of the power of attorney and shall not be considered
17 to be a foster parent subject to licensure by the department
18 of human services pursuant to Code chapter 237 (child foster
19 care facilities). A power of attorney executed under the bill
20 by a parent, guardian, or legal custodian shall not constitute
21 abandonment, abuse, or neglect of the child under Code chapter
22 232 by the parent, guardian, or legal custodian unless the
23 parent, guardian, or legal custodian fails to take custody of
24 the child or to execute a subsequent power of attorney upon the
25 expiration of the power of attorney.

26 A power of attorney created under the bill is not valid
27 if the purpose is to avoid the filing of a child in need of
28 assistance petition.

29 The bill does not apply to a power of attorney created
30 pursuant to Code section 598C.204 (power of attorney under the
31 uniform deployed parents custody and visitation Act).

32 The bill provides a form for a temporary delegation of a
33 parental authority power of attorney.