

By: Representative Eubanks

To: Judiciary A

HOUSE BILL NO. 1293

1 AN ACT TO AMEND SECTION 93-31-3, MISSISSIPPI CODE OF 1972, TO  
2 REVISE THE REQUIREMENT FOR FACILITATION OF A POWER OF ATTORNEY BY  
3 A CHILD WELFARE AGENCY; AND FOR RELATED PURPOSES.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

5 **SECTION 1.** Section 93-31-3, Mississippi Code of 1972, is  
6 amended as follows:

7 93-31-3. (1) (a) A parent or legal custodian of a child,  
8 by means of a properly executed power of attorney as provided in  
9 Section 93-31-5, may delegate to another willing person or persons  
10 as attorney-in-fact any of the powers regarding the care and  
11 custody of the child other than the following:

12 (i) The power to consent to marriage or adoption  
13 of the child;

14 (ii) The performance or inducement of an abortion  
15 on or for the child; or

16 (iii) The termination of parental rights to the  
17 child.

18 (b) A delegation of powers under this section does not:



19 (i) Change or modify any parental or legal rights,  
20 obligations, or authority established by an existing court order;

21 (ii) Deprive any custodial or noncustodial parent  
22 or legal guardian of any parental or legal rights, obligations, or  
23 authority regarding the custody, visitation, or support of the  
24 child; or

25 (iii) Affect a court's ability to determine the  
26 best interests of a child.

27 (c) If both parents are living and have shared custody  
28 as a matter of law or under an existing court order, both parents  
29 must execute the power of attorney.

30 (d) A power of attorney under this chapter \* \* \* may be  
31 facilitated by either a child welfare agency that is licensed to  
32 place children for adoption and that is operating under the Safe  
33 Families for Children model or another charitable organization  
34 that is operating under the Safe Families for Children model. A  
35 full criminal history and child abuse and neglect background check  
36 must be conducted on any person who is not a grandparent, aunt,  
37 uncle, or sibling of the child if the person is:

38 (i) Designated or proposed to be designated as the  
39 attorney-in-fact; or

40 (ii) Is a person over the age of fifteen (15) who  
41 resides in the home of the designated attorney-in-fact.

42 (2) A power of attorney executed under this chapter shall  
43 not be used for the sole purposes of enrolling a child in a school



44 to participate in the academic or interscholastic athletic  
45 programs provided by that school or for any other unlawful  
46 purposes, except as may be permitted by the federal Every Student  
47 Succeeds Act (Public Law 114-95).

48 (3) The parent or legal custodian of the child has the  
49 authority to revoke or withdraw the power of attorney authorized  
50 by this section at any time. Upon the termination, expiration, or  
51 revocation of the power of attorney, the child must be returned to  
52 the custody of the parent or legal custodian as soon as reasonably  
53 possible.

54 (4) Until the authority expires or is revoked or withdrawn  
55 by the parent or legal custodian, the attorney-in-fact shall  
56 exercise parental or legal authority on a continuous basis without  
57 compensation for the duration of the power of attorney.

58 (5) The execution of a power of attorney by a parent or  
59 legal custodian does not, in the absence of other evidence,  
60 constitute abandonment, desertion, abuse, neglect, or any evidence  
61 of unfitness as a parent unless the parent or legal custodian  
62 fails to take custody of the child or execute a new power of  
63 attorney after the one-year time limit, or after a longer time  
64 period as allowed for a serving parent, has elapsed. Nothing in  
65 this subsection prevents the Department of Human Services or law  
66 enforcement from investigating allegations of abuse, abandonment,  
67 desertion, neglect or other mistreatment of a child.



68 (6) When the custody of a child is transferred by a power of  
69 attorney under this chapter, the child is not considered to have  
70 been placed in foster care and the attorney-in-fact will not be  
71 subject to any of the requirements or licensing regulations for  
72 foster care or other regulations relating to out-of-home care for  
73 children and will not be subject to any statutes or regulations  
74 dealing with the licensing or regulation of foster care homes.

75 (7) (a) "Serving parent" means a parent who is a member of  
76 the Armed Forces of the United States, including any reserve  
77 component thereof, or the National Oceanic and Atmospheric  
78 Administration Commissioned Officer Corps or the Public Health  
79 Service of the United States Department of Health and Human  
80 Services detailed by proper authority for duty with the Armed  
81 Forces of the United States, or who is required to enter or serve  
82 in the active military service of the United States under a call  
83 or order of the President of the United States or to serve on  
84 state active duty.

85 (b) A serving parent may delegate the powers designated  
86 in subsection (1) of this section for longer than one (1) year if  
87 on active-duty service or if scheduled to be on active-duty  
88 service. The term of delegation, however, may not exceed the term  
89 of active-duty service plus thirty (30) days.

90 **SECTION 2.** This act shall take effect and be in force from  
91 and after July 1, 2018.

