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SENATE DRS45215-LU-96 (02/11)

Short Title: Foster Care Family Act.

(Public)

Sponsors: Senators Barringer, Harrington, and Tucker (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ALIGN STATE LAW WITH FEDERAL LAW BY PROVIDING FOR THE SUPPORT OF HEALTHY DEVELOPMENT OF YOUTH IN FOSTER CARE THROUGH IMPLEMENTATION OF A REASONABLE AND PRUDENT PARENT STANDARD FOR DECISIONS MADE BY A FOSTER PARENT OR A DESIGNATED OFFICIAL FOR A CHILD CARE INSTITUTION AND REVISING TO THE JUVENILE CODE UNDER THE LAWS PERTAINING TO ABUSE, NEGLECT, AND DEPENDENCY REGARDING JUVENILE PLACEMENT; TO PROVIDE LIABILITY INSURANCE FOR FOSTER PARENTS; TO REDUCE BARRIERS TO OBTAINING A DRIVERS LICENSE FOR FOSTER CHILDREN BY DIRECTING THE NORTH CAROLINA REINSURANCE FACILITY TO MAKE AVAILABLE A NONOWNER AUTOMOBILE INSURANCE POLICY FOR FOSTER CHILDREN, BY PROVIDING THAT MINORS AGED SIXTEEN AND OVER IN THE CUSTODY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES ARE COMPETENT TO CONTRACT FOR AUTOMOBILE INSURANCE, BY SPECIFYING PERSONS OTHER THAN THE FOSTER PARENT WHO MAY SIGN FOR A FOSTER CHILD TO OBTAIN A LEARNER'S PERMIT OR PROVISIONAL DRIVERS LICENSE, AND BY CLARIFYING THAT FOSTER PARENTS DO NOT VIOLATE FINANCIAL RESPONSIBILITY REQUIREMENTS BY ALLOWING FOSTER CHILDREN WITH THEIR OWN INSURANCE COVERAGE TO OPERATE A VEHICLE OWNED BY THE FOSTER PARENT; AND TO REQUIRE THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO STUDY A MEDICAID WAIVER FOR CHILDREN WITH SERIOUS EMOTIONAL DISTURBANCE.

The General Assembly of North Carolina enacts:

PART I. SHORT TITLE

SECTION 1.1. This act shall be known and may be cited as the "Foster Care Family Act".

PART II. REASONABLE AND PRUDENT PARENTING STANDARD IN FOSTER CARE

SECTION 2.1. Part 1 of Article 1A of Chapter 131D of the General Statutes is amended by adding a new section to read:

"§ 131D-10.2A. Reasonable and prudent parenting standard.



1 (a) The reasonable and prudent parenting standard is characterized by careful and
2 sensible parental decisions that maintain a child's health, safety, and best interests while
3 encouraging the child's emotional and developmental growth.

4 (b) Every child care institution shall designate an on-site official who is authorized to
5 apply the reasonable and prudent parenting standard pursuant to this section.

6 (c) A caregiver, including the child's foster parent or the designated official at a child
7 care institution where the child is placed, must use the reasonable and prudent parenting
8 standard when determining whether to allow a child in foster care to participate in
9 extracurricular, enrichment, and social activities.

10 (d) A caregiver or a county department of social services with custody of or placement
11 authority over a child in foster care shall not be held liable for an act or omission of the child if
12 the caregiver or county department of social services is acting in accordance with the
13 reasonable and prudent parenting standard under this section.

14 (e) Unless otherwise ordered by a court with jurisdiction pursuant to G.S. 7B-200, a
15 caregiver exercising the reasonable and prudent parenting standard has the authority to provide
16 or withhold permission, without prior approval of the court or a county department of social
17 services, allowing a child in foster care, in the custody of a county department of social services
18 or under the placement authority of a county department of social services through a voluntary
19 placement agreement, to participate in normal childhood activities. Normal childhood activities
20 shall include, but are not limited to, extracurricular, enrichment, and social activities, and may
21 include overnight activities outside the direct supervision of the caregiver for periods of over 24
22 hours and up to 72 hours.

23 (f) Neither the caregiver nor the county department of social services with custody of
24 or placement authority over the child may be held liable for injuries to the child that occur as a
25 result of authorization provided in this section, unless the action or inaction of the caregiver or
26 county department of social services resulting in injury to the child is by willful or reckless
27 misconduct."

28 **SECTION 2.2.** G.S. 7B-505(b) reads as rewritten:

29 "(b) The court shall order the Department to make diligent efforts to notify relatives and
30 any custodial parents of the juvenile's siblings that the juvenile is in nonsecure custody and of
31 any hearings scheduled to occur pursuant to G.S. 7B-506, unless the court finds such
32 notification would be contrary to the best interests of the juvenile. In placing a juvenile in
33 nonsecure custody under this section, the court shall first consider whether a relative of the
34 juvenile is willing and able to provide proper care and supervision of the juvenile in a safe
35 home. If the court finds that the relative is willing and able to provide proper care and
36 supervision in a safe home, then the court shall order placement of the juvenile with the relative
37 unless the court finds that placement with the relative would be contrary to the best interests of
38 the juvenile."

39 **SECTION 2.3.** G.S. 7B-800.1(a)(4) reads as rewritten:

40 "(a) Prior to the adjudicatory hearing, the court shall consider the following:

41 ...

42 (4) Whether relatives or parents with custody of a sibling of the juvenile have
43 been identified and notified as potential resources for placement or support."

44 **SECTION 2.4.** G.S. 7B-901 reads as rewritten:

45 "**§ 7B-901. Dispositional hearing.**

46 The dispositional hearing shall take place immediately following the adjudicatory hearing
47 and shall be concluded within 30 days of the conclusion of the adjudicatory hearing. The
48 dispositional hearing may be informal and the court may consider written reports or other
49 evidence concerning the needs of the juvenile. The juvenile and the juvenile's parent, guardian,
50 or custodian shall have the right to present evidence, and they may advise the court concerning
51 the disposition they believe to be in the best interests of the juvenile. The court may consider

1 any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, including
2 testimony or evidence from any person who is not a party, that the court finds to be relevant,
3 reliable, and necessary to determine the needs of the juvenile and the most appropriate
4 disposition. The court may exclude the public from the hearing unless the juvenile moves that
5 the hearing be open, which motion shall be granted.

6 At the dispositional hearing, the court shall inquire as to the identity and location of any
7 missing parent and whether paternity is at issue. The court shall include findings of the efforts
8 undertaken to locate the missing parent and to serve that parent and efforts undertaken to
9 establish paternity when paternity is an issue. The order may provide for specific efforts in
10 determining the identity and location of any missing parent and specific efforts in establishing
11 paternity. The court shall also inquire about efforts made to identify and notify ~~relatives~~
12 relatives, including parents with custody of a sibling of the juvenile, as potential resources for
13 placement or support."

14 **SECTION 2.5.** Article 9 of Chapter 7B of the General Statutes is amended by
15 adding the following new sections to read:

16 **"§ 7B-903.1. Juvenile placed in custody of a county department of social services.**

17 (a) To the extent authorized by federal law, a county department of social services with
18 custody of a juvenile is authorized to make decisions about matters not addressed in this section
19 that are generally made by a juvenile's custodian, including, but not limited to, educational
20 decisions and consenting to the sharing of the juvenile's information. The county department of
21 social services may delegate any part of this authority to the juvenile's parent, foster parent, or
22 another individual.

23 (b) When a juvenile is in the custody or placement responsibility of a county
24 department of social services, the placement provider may, in accordance with
25 G.S. 131D-10.2A, provide or withhold permission, without prior approval of the court or
26 county department of social services, allowing a juvenile to participate in normal childhood
27 activities. If such authorization is not in the juvenile's best interest, the court shall set forth
28 alternative parameters for approving normal childhood activities.

29 **"§ 7B-912. Juveniles 14 years of age and older; Another Planned Permanent Living**
30 **Arrangement.**

31 (a) In addition to the permanency planning requirements under G.S. 7B-906.1, at every
32 permanency planning hearing for a juvenile in the custody of a county department of social
33 services who has attained the age of 14 years, the court shall inquire and make written findings
34 regarding each of the following:

35 (1) The services provided to assist the juvenile in making a transition to
36 adulthood.

37 (2) The steps the county department of social services is taking to ensure that
38 the foster family or other licensed placement provider follows the reasonable
39 and prudent parent standard as provided in G.S. 131D-10.2A.

40 (3) Whether the juvenile has regular opportunities to engage in age or
41 developmentally appropriate activities.

42 (b) At or before the last scheduled permanency planning hearing, but at least 90 days
43 before a juvenile attains 18 years of age, the court shall (i) inquire as to whether the juvenile
44 has a copy of the juvenile's birth certificate, Social Security card, health insurance information,
45 drivers license or other identification card, and any educational or medical records the juvenile
46 requests and (ii) determine the person or entity that should assist the juvenile in obtaining these
47 documents before the juvenile attains the age of 18 years.

48 (c) The plan of Another Planned Permanent Living Arrangement (APPLA) is only
49 available as a juvenile's primary permanent plan when the court concludes each of the
50 following:

51 (1) The juvenile is 16 or 17 years old.

- 1 (2) The county department of social services has made diligent efforts to place
2 the juvenile permanently with a parent or relative or in a guardianship or
3 adoptive placement.
- 4 (3) There are compelling reasons why it is not in the best interest of the juvenile
5 to be placed permanently with a parent or relative or in a guardianship or
6 adoptive placement.
- 7 (4) APPLA is the best permanency plan for the juvenile.
- 8 (d) When APPLA is the juvenile's permanent plan, the court shall, after questioning the
9 juvenile, make written findings addressing the juvenile's desired permanency outcome."

11 **PART III. LIABILITY INSURANCE FOR FOSTER PARENTS**

12 **SECTION 3.1.** Article 36 of Chapter 58 of the General Statutes is amended by
13 adding a new section to read:

14 "**§ 58-36-43. Development of policy form or endorsement for personal liability insurance**
15 **for foster parents.**

16 (a) The Rate Bureau shall develop an optional policy form or endorsement to be filed
17 with the Commissioner for approval no later than May 1, 2016, that provides liability insurance
18 for foster parents licensed under Article 1A of Chapter 131D of the General Statutes to provide
19 foster care in a family foster home or therapeutic foster home. The policy form or endorsement
20 shall provide coverage for all of the following:

- 21 (1) Acts or omissions of the foster parent while the parent is acting in his or her
22 capacity as a foster parent in a licensed family foster home or therapeutic
23 foster home licensed under Article 1A of Chapter 131D of the General
24 Statutes.
- 25 (2) Acts or omissions of a child who is placed in a licensed family foster home
26 or therapeutic foster home while the child is in the foster parent's care.
- 27 (b) Nothing in this section is intended to require that the liability insurance policy or
28 endorsement required by this section cover an act or omission of a foster parent of a child in a
29 family foster home or therapeutic foster home when the act or omission is not in compliance
30 with any written instructions received from the child placing agency or the Department of
31 Health and Human Services regarding specific care and supervision of the child."

33 **PART IV. REDUCE DRIVING BARRIERS FOR FOSTER CHILDREN**

34 **SECTION 4.1** G.S. 58-37-35(g) reads as rewritten:

35 "(g) Except as may be delegated specifically to others in the plan of operation or
36 reserved to the members, power and responsibility for the establishment and operation of the
37 Facility is vested in the Board of Governors, which power and responsibility include but is not
38 limited to the following:

- 39 ...
- 40 (13) To establish, with the approval of the Commissioner, a form of nonfleet
41 private passenger motor vehicle liability insurance providing named
42 nonowner coverage for a foster child in State custody. This policy shall meet
43 the following requirements:
- 44 a. It shall be available to any foster child who does not own a motor
45 vehicle. For purposes of this subdivision, "foster child" shall mean a
46 person placed into foster care, as that term is defined by
47 G.S. 131D-10.2, who is (i) a child between the ages of 16 and 18 or
48 (ii) between the ages of 18 and 21.
- 49 b. The policy shall apply only to the foster child.

- 1 c. The policy shall provide the minimum coverages specified under this
2 Chapter and Chapter 20 of the General Statutes in order to provide
3 the proof of financial responsibility required by G.S. 20-7(c1).
4 d. The policy shall cover the operation by the foster child of any
5 automobile furnished or available to the foster child for regular use.
6 e. The policy shall be portable if the foster child's placement for foster
7 care changes, as long as the placement is located in this State.
8 f. The rates charged by the Facility shall be the same as those provided
9 for a clean risk under subsection (l) of this section, for as long as the
10 foster child meets the criteria for classification as a clean risk under
11 that subsection. If the foster child no longer meets that criteria, the
12 Facility may charge the actuarially sound and self-supporting rate."

13 **SECTION 4.2.** Article 1 of Chapter 48A of the General Statutes is amended by
14 adding a new section to read:

15 "§ 48A-4. Certain minors competent to contract.

16 A minor who is 16 years of age or older and who is in the legal custody of the Department
17 of Health and Human Services, Division of Social Services, shall be qualified and competent to
18 contract for the purchase of an automobile insurance policy with the consent of the court with
19 continuing jurisdiction over the minor's placement under G.S. 7B-1000(b). The minor shall be
20 responsible for paying the costs of the insurance premiums and shall be liable for damages
21 caused by the minor's negligent operation of a motor vehicle. No State or local government
22 agency, foster parent, or entity providing services to the minor under contract or at the direction
23 of a State or local government agency shall be responsible for paying any insurance premiums
24 or liable for damages of any kind as a result of the operation of a motor vehicle by the minor."

25 **SECTION 4.3.** G.S. 20-11(i) reads as rewritten:

26 (i) Application. — An application for a permit or license authorized by this section
27 must be signed by both the applicant and another person. That person must be:

- 28 (1) The applicant's parent or guardian;
29 (2) A person approved by the applicant's parent or guardian; or
30 (3) A person approved by the Division.
31 (4) With respect to minors in the legal custody of the Department of Health and
32 Human Services, Division of Social Services, any of the following:
33 a. A guardian ad litem or attorney advocate appointed to advocate for
34 the minor.
35 b. A case manager or other type of case worker assigned to work with
36 the minor.
37 c. If no person listed in sub-subdivisions a. or b. of this subdivision is
38 available, the court with continuing jurisdiction over the minor's
39 placement under G.S. 7B-1000(b)."

40 **SECTION 4.4.** G.S. 20-309 is amended by adding a new subsection to read:

41 (a2) The owner of a motor vehicle who is a foster parent providing foster care to a
42 person between the ages of 16 and 21 shall not violate the requirements of this Article by
43 allowing the motor vehicle to be operated by the person if the person is covered by a nonowner
44 motor vehicle insurance policy issued by the North Carolina Reinsurance Facility as authorized
45 by G.S. 58-37-35(g)(13). Nothing in this section is intended to prevent a foster parent from
46 including a foster child on the parent's own motor vehicle insurance policy."

47
48 **PART V. STUDY MEDICAID WAIVER FOR CHILDREN WITH SERIOUS**
49 **EMOTIONAL DISTURBANCE (SED)**

50 **SECTION 5.1.(a)** The Department of Health and Human Services, Division of
51 Medical Assistance, shall design and draft, but not submit, a 1915(c) Medicaid waiver to serve

1 children with Serious Emotional Disturbance (SED) in home and community-based settings.
2 The Department may submit drafts of the waiver to the Centers for Medicare and Medicaid
3 Services (CMS) to solicit feedback but shall not submit the waiver for CMS approval until
4 authorized by the General Assembly.

5 **SECTION 5.1.(b)** The Department shall report the draft waiver, other findings, and
6 any other options or recommendations to best serve children with SED to the Joint Legislative
7 Oversight Committee on Health and Human Services by December 1, 2015. Specifically, the
8 report shall provide an in-depth analysis of the cost per slot, including an analysis of the
9 estimated number of waiver recipients who would be transitioned from a facility to a home and
10 community-based setting and the estimated number of waiver recipients who would avoid
11 placement in a facility.

12
13 **PART VI. EFFECTIVE DATE**

14 **SECTION 6.1.** Part 4 of this act becomes effective October 1, 2015. The remainder
15 of this act is effective when it becomes law.