H.B. 211

124th General Assembly
(As Introduced)

Reps. Reidelbach, Clancy

BILL SUMMARY

- Permits the execution of a power of attorney or caretaker authorization affidavit that provides certain persons with whom a child resides authority over the care, custody, and control of the child, including the ability to enroll the child in school in the district in which the person resides and to consent to medical care for the child.

- Establishes a form that may be used in executing a power of attorney; establishes a form that must be used when executing a caretaker authorization affidavit.

- Provides that execution of a power of attorney or caretaker authorization affidavit does not affect the rights and responsibilities of the parent, guardian, or custodian regarding the child, does not grant legal custody, and does not grant authority to consent to adoption or marriage of the child.

- Requires the parent, guardian, or custodian creating the power of attorney to include in it a statement that the grant of authority over the child is in the child's best interest.

- Permits a caretaker authorization affidavit to be executed only by a "qualified relative" and only if the parent, guardian, or custodian of the child cannot be located.

- Establishes processes for executing a power of attorney or caretaker authorization affidavit.

- Permits a parent, guardian, or custodian to take action to negate or reverse any decision made by a person granted authority over the child pursuant to a power of attorney or caretaker authorization affidavit.

- Provides for termination, and certain notifications that must be made on termination, of a power of attorney or caretaker authorization affidavit.

- Provides immunity from civil and criminal liability for all persons who, in good faith, rely on or take action in reliance on a power of attorney or caretaker authorization affidavit.

- Prohibits the creation of a power of attorney or execution of a caretaker authorization affidavit for the purpose of enrolling a child in school so the child may participate in interscholastic athletics or academic programs provided by a specific school.

- Provides that a child who is the subject of a power of attorney or caretaker authorization affidavit must be admitted to the schools of the district in which the child resides, if the child does not reside in the district in which the child's parents reside.

- Provides for the payment of tuition for the child who is the subject of a power of attorney or caretaker authorization affidavit.

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CONTENT AND OPERATION

Introduction

The bill establishes two new methods to provide authority to a person to exercise care, custody, and control over a child, if the child resides with the person and not the child's parent, guardian, or custodian. It permits the execution of a power of attorney or a caretaker authorization affidavit that provide certain persons with whom the child resides authority over the care, custody, and control of the child, including the ability to enroll the child in school in the district in which the person resides and to consent to medical care for the child. The power of attorney may be executed by the parent, guardian, or custodian of the child.[1] A

[1] *For the purposes of the bill, terms have the following meanings:*

"Child" means a person under 18 years of age.

"Guardian" means an individual granted authority by a probate court pursuant to Revised Code provisions governing guardians to exercise parental rights over a child to the extent provided in the court's order and subject to the residual parental rights, privileges, and responsibilities of the child's parents.

"Residual parental rights, privileges, and responsibilities" mean those rights, privileges, and responsibilities remaining with the natural parent after the transfer of legal custody of the child, including the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support.

"Custodian" means an individual with legal custody of a child.

"Legal custody" means a legal status that vests in the custodian the right to have physical care and control of the child and to determine where and with whom the child is to live, and the right and duty to protect, train, and discipline the child and to provide the child with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities. An individual granted legal custody must exercise

caretaker authorization affidavit may be executed by a qualified relative in situations in which the child's parents, guardian, or custodian cannot be located.[2]

Power of attorney

Creation

(Sec. 3109.52)

The bill provides that the parent, guardian, or custodian of a child may create a power of attorney that grants to a person with whom the child is residing any of the parent's, guardian's, or custodian's rights and responsibilities regarding the care, custody, and control of the child, including the ability to enroll the child in school and to consent to medical, psychological, or dental treatment for the child. The power of attorney may not grant authority to consent to the marriage or adoption of the child. The power of attorney does not affect the rights and responsibilities of the parent, guardian, or custodian regarding the child and does not grant legal custody to the attorney in fact.

Contents of the affidavit; form

(Secs. 3109.53 and 3109.531)

A power of attorney created under the act must contain all of the following: (a) the city, county, and state in which the parent, guardian, or custodian and person designated as the attorney in fact reside, (b) the name, birthdate, and social security number of the child, (c) a statement granting the person designated authority to exercise all rights and responsibilities the parent, guardian, or custodian has regarding the care, custody, and control of the child and to perform all acts necessary to exercising the authority, (d) a statement that the person creating the power of attorney believes it to be in the child's best interest, (e) a statement that the power of attorney does not terminate the rights and responsibilities of the parent, guardian, or custodian regarding the child; does not

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the rights and responsibilities personally unless otherwise authorized by the Revised Code or the court.

[2] *Under the bill, a "qualified relative" is any person over 18 years of age who is related to a child by consanguinity (blood relationship), marriage, or marriage that has been legally terminated. "Qualified relative" does not include: (a) a parent of the child who has committed an act resulting in the child being adjudicated an abused or neglected child, (b) the residential parent and legal custodian of the child, in cases in which the parents of the child are divorced or their marriage has been dissolved or annulled, (c) the child's guardian, or (d) the child's custodian.*

terminate the parent's, guardian's, or custodian's right to have contact with the child; and does not give the person designated as the attorney in fact the authority to consent to the marriage or adoption of the child, and (f) a statement that the power of attorney terminates on the occurrence of whichever of the following events occurs first: one year elapses following the date the power of attorney is notarized; the power of attorney is revoked in writing by the person who created it; or the child ceases to reside with the person designated as the attorney in fact.

A parent, guardian, or custodian may create a valid power of attorney if it contains all of the above information. The bill also establishes a power of attorney form that contains all the required statements and blanks for the needed information to be entered as described above.

Execution

(Sec. 3109.54)

Under the bill, the power of attorney must be signed by the parent, guardian, or custodian granting it and by the person designated as the attorney in fact. For the power of attorney to be effective, the signatures must be notarized.

Termination; notification of termination

(Secs. 3109.55 and 3109.56)

A power of attorney terminates on the occurrence of whichever of the following events occurs first: (a) one year elapses following the date the power of attorney is notarized, (b) the power of attorney is revoked in writing by the person who created it, or (c) the child ceases to reside with the person designated as the attorney in fact. When a power of attorney terminates, the person designated as the attorney in fact is required to notify the school district in which the child attends school, the child's health care providers, and the child's health insurance coverage provider.

Negation or reversal of attorney in fact actions

(Sec. 3109.57)

A person who creates a power of attorney may negate or reverse any action taken or decision made with respect to the child by the attorney in fact, unless the negation or reversal would jeopardize the life, health, or safety of the child. The act negating or reversing the action or decision does not, by itself, terminate the power of attorney.

Immunity

(Sec. 3109.58)

The bill provides that a person who, in good faith, relies on or takes action in reliance on a power of attorney created under it is immune from any criminal or civil liability for injury, death, or loss to persons or property that might otherwise be incurred or imposed as a result of the person's reliance or action. The person is not subject to any disciplinary action from an entity that licenses or certifies the person. Any medical, psychological, or dental treatment provided to a child in reliance on a power of attorney is to be considered to have been provided in good faith if the person providing the treatment had no actual knowledge of opposition by the parent, guardian, or custodian.

Caretaker authorization affidavit

Caring for a child through caretaker authorization affidavit

(Sec. 3109.61)

Under the bill, if a child is living with a qualified relative who has made reasonable attempts to locate the child's parent, guardian, or custodian but has been unable to do so, the qualified relative may obtain authority to exercise care, custody, and control of the child, including authority to enroll the child in school and to consent to emergency or routine medical or dental care and treatment for the child, including immunizations, annual examinations, and well-baby examinations. The qualified relative may obtain this authority by executing the caretaker authorization affidavit form provided in the bill.

Execution of affidavit; effect

(Secs. 3109.63 and 3109.64)

A caretaker authorization affidavit is executed when the affidavit form provided in the bill is completed, signed by a qualified relative, and notarized. Once the affidavit is executed, the qualified relative may exercise care, custody, and control of the child, including enrolling the child in school and consenting to emergency or routine medical and dental care and treatment for the child, including immunizations, annual examinations, and well-baby examinations. The affidavit does not affect the rights and responsibilities of the parent, guardian, or custodian regarding the child, does not grant legal custody to the qualified relative, and does not grant authority to the qualified relative to consent to the marriage or adoption of the child.

Termination; notification on termination

(Secs. 3109.65 and 3109.66)

An executed caretaker authorization affidavit terminates on the occurrence of whichever of the following occurs first: (1) one year elapses following the date the affidavit is notarized, (2) the child ceases to reside with the qualified relative, or (3) the parent, guardian, or custodian of the child who is the subject of the affidavit acts to negate, reverse, or otherwise disapprove an action or decision of the qualified relative who signed the affidavit with respect to the child. When an affidavit terminates, the qualified relative must notify the school district in which the child attends school, the child's health care providers, and the child's health insurance coverage provider.

Negation, reversal, or disapproval of qualified relative's actions

(Sec. 3109.67)

The bill provides that the parent, guardian, or custodian of a child may act to negate, reverse, or otherwise disapprove any action taken or decision made pursuant to a caretaker authorization affidavit unless negation, reversal, or disapproval would jeopardize the life, health, or safety of the child. The act to negate, reverse, or disapprove the action or decision, regardless of whether it is effective, terminates the affidavit.

Immunity

(Sec. 3109.68)

The bill provides that a person who, in good faith, relies on or takes action in reliance on an affidavit is immune from any criminal or civil liability for injury, death, or loss to persons or property that might otherwise be incurred or imposed as a result of the reliance or action. The person is also not subject to any disciplinary action from an entity that licenses or certifies the person. Any emergency or routine medical or dental care and treatment, including immunizations, annual examinations, and well-baby examinations, provided to a child in reliance on an affidavit with respect to the child is to be considered to have been provided in good faith if the person providing the treatment had no actual knowledge of opposition by the parent, guardian, or custodian.

Affidavit form; content

(Sec. 3109.62)

The bill creates a caretaker authorization affidavit. A qualified relative must execute an affidavit that is identical in form and content to the one in the bill to obtain authority to exercise care, custody, and control of the child, to the extent described above.

Statements concerning the child and qualified relative

The affidavit must contain the name of the child, the child's date and year of birth, and the child's social security number. The affidavit must also contain a statement that the child lives with the person executing the affidavit, that the person is 18 years old or older, that the person is a qualified relative, and that, despite having made reasonable attempts, the qualified relative is unable to locate or contact the child's parent, guardian, or custodian. The qualified relative's name, home address, date and year of birth, and Ohio driver's license number or identification card number must be given.

Warning statement

The affidavit is also to contain a warning statement in all capital letters notifying a person not to sign the form if any of the above information is incorrect and stating that falsification is a crime.

Statement of effect of execution of affidavit

The affidavit must state that completion, signature, and notarization of it is sufficient to authorize the person signing to exercise care, custody, and control of the child who is its subject, including authority to enroll the child in school and to consent to emergency or routine medical and dental care and treatment for the child, including immunizations, annual examinations, and well-baby examinations.

Notices

The affidavit must contain the following notices:

(1) That the qualified relative's signature must be notarized by an Ohio notary public.

(2) That the affidavit does not affect the rights of the child's parents, guardian, or custodian regarding the care, custody, and control of the child, and does not give the qualified relative legal custody of the child.

(3) That a person or entity that relies on the affidavit, in good faith, has no obligation to make any further inquiry or investigation.

(4) That the affidavit terminates on the occurrence of whichever of the following occurs first: (a) one year elapses following the date the affidavit is notarized, (b) the child ceases to live with the qualified relative who signs the form, or (c) the parent, guardian, or custodian of the child acts to negate, reverse, or otherwise disapprove an action or decision of the qualified relative who signed the affidavit. And that, on the termination of the affidavit, the qualified relative who signed the affidavit must notify any schools, health providers, or health insurance coverage provider with which the child has been involved through the caretaker.

(5) That the decision of a qualified relative to consent to or to refuse medical treatment or school enrollment for a child is superseded by a contrary decision of a parent, custodian, or guardian of the child.

Additional information

The affidavit must also contain the following information for caretakers, school officials, and health care providers:

To caretakers. The bill provides an expanded explanation of who is and who is not considered a qualified relative. A qualified relative is to be described as any person over the age of 18 who is related to the child, whether by blood, marriage, or marriage that has been terminated and includes any person related to the child and designated by one of the following terms: spouse, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, cousin, or any person denoted by the prefix "grand" or "great," or the spouse of any of those person described above. A qualified relative does not include a parent of the child who has committed an act resulting in the child being adjudicated an abused or neglected child; the residential parent and legal custodian of the child, in cases in which the parents of the child are divorced or their marriage has been dissolved or annulled; the child's guardian; or the child's custodian.

The caretaker is also to be notified in the affidavit that if the child stops living with the caretaker, the caretaker must notify any school, health care provider, or health care insurance provider to which the caretaker has given the affidavit. If the caretaker does not have an Ohio driver's license or identification card, the caretaker must provide another form of identification such as a social security number or Medicaid number.

To school officials. The affidavit is to state that it, properly completed and notarized, authorizes the child in question to attend school in the district in which the qualified relative who signed the affidavit resides and the qualified relative is authorized to provide consent in all school-related matters. The affidavit is also to provide that it does not preclude the parent, guardian, or custodian of the child from having access to all school records pertinent to the child. The affidavit is also to state that the school district may require additional reasonable evidence that the caretaker lives at the address provided in the affidavit. In addition, the affidavit is to provide that a school district or school official that reasonably and in good faith relies on the affidavit has no obligation to make any further inquiry or investigation. Finally, the affidavit is to notify school officials that the act of a parent, guardian, or custodian of the child to negate, reverse, or otherwise disapprove an action or decision of the qualified relative who signed the affidavit constitutes termination of the affidavit.

To health care providers. The affidavit must contain a statement providing that a person or entity that acts in good faith reliance on it to provide emergency or routine medical or dental care and treatment, including immunizations, annual examinations, and well-baby examinations, without actual knowledge of facts contrary to those stated in the affidavit, is not subject to criminal or civil liability to any person or entity, for that reliance if the applicable portions of the affidavit form are completed and the qualified relative's signature is notarized. The affidavit is also to state that the decision of a qualified relative, based on an affidavit, must be honored by a health care facility or practitioner, school district, or school official unless the health care facility or practitioner, or educational facility or official has actual knowledge that a parent, guardian, or custodian has made a contravening decision to consent to or to refuse medical treatment for the child. Finally, the affidavit is to state that the act of a parent, guardian, or custodian to negate, reverse, or otherwise disapprove an action or decision of the qualified relative who signed the affidavit constitutes termination of the affidavit.

Prohibition regarding execution of power of attorney or caretaker authorization affidavit

(Sec. 3109.69)

The bill provides that no person is permitted to create a power of attorney or execute an affidavit pursuant to the bill for the purpose of enrolling the child in school so that the child may participate in the interscholastic athletics or academic programs provided by the school.

Where the child may attend school

(Sec. 3313.64)

The bill provides that a child who does not reside in the district in which the child's parents reside must be admitted to the schools of the district in which the child resides if the child is the subject of a power of attorney or affidavit executed pursuant to the bill.

Tuition

(Sec. 3313.64)

If a child who is the subject of a power of attorney or caretaker authorization affidavit is admitted to school in a district in which the child's parents do not reside, tuition must be paid to the district admitting the child as follows:

(1) Unless the child is receiving special education under Ohio law, governing the education of handicapped children by one of the following: (a) the school district in which the child's parent resides, or (b) if the child's parent is not a resident of the state, the person with authority over the child pursuant to the power of attorney or affidavit.

(2) If the child is receiving special education, tuition must be paid in accordance with the laws governing special education, regardless of the power of attorney or affidavit.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-10-01	p. 301

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