



Robin M. Nichols

Bill Analysis
Legislative Service Commission

H.B. 130

125th General Assembly
(As Introduced)

**Reps. Reidelbach, Hagan, McGregor, Kearns, Faber, Otterman, Grendell,
Williams, S. Patton, Cirelli, Allen, 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 and to consent to medical care for the child.
- Provides that a military power of attorney executed under federal law to grant authority over the care, custody, and control of a child is considered a power of attorney under the bill.
- Establishes procedures and forms for executing a power of attorney or 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.
- 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.
- Permits a parent, guardian, or custodian to take action to negate or reverse any decision made by a person granted authority over a child pursuant to a caretaker authorization affidavit.
- Provides for termination, and 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 athletic programs or academic programs provided by a specific school or school district.
- Requires specified persons to make written referrals to a public children services agency (PCSA) if the person determines that the power of attorney or caretaker authorization affidavit is not consistent with the child's best interest.
- Requires a PCSA, on receipt of a written referral, to investigate the referral and issue its findings in a written assessment report, which must be distributed to specified persons and entities.
- Requires the Department of Job and Family Services to adopt rules regarding the conduct of assessments and the preparation and issuance of assessment reports.

TABLE OF CONTENTS

Introduction	3
Power of attorney.....	4
Creation	4
Form requirements	5
Execution by parent	5
Notice to parent	6
Termination.....	6
Immunity	6
Military power of attorney	7
Caretaker authorization affidavit	7
Caring for a child through caretaker authorization affidavit	7
Execution of affidavit	8
Termination.....	8
Negation, reversal, or disapproval of qualified relative's actions	9
Immunity	9
Filing of documents.....	9
Limitations	10

When execution of a power of attorney or caretaker authorization affidavit is not permitted	10
One power of attorney or caretaker authorization affidavit	11
Purpose restriction.....	12
Child support.....	13
Where the child may attend school	13
Referral of a power of attorney or caretaker authorization affidavit	13
Assessment of a power of attorney or caretaker authorization affidavit	14
Effect of assessment report findings	15
Rulemaking authority	15
Documents provided to school	15
Application of school suspension law	16

CONTENT AND OPERATION

Introduction

The bill establishes two new ways to provide authority to a person other than the parent, guardian, or custodian of a child, to exercise care, custody, and control over a child who resides with the person. It permits the execution of a power of attorney or a caretaker authorization affidavit that provide certain persons 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 caretaker authorization affidavit

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

"Child" means "a person under 18 years of age." (R.C. 3109.51(A).)

"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." (R.C. 3109.51(C).)

"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. (R.C. 2151.011(B)(45), not in the bill; see also R.C. 3109.51(C).)

"Custodian" means "an individual with legal custody of a child." (R.C. 3109.51(B).)

"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

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

(R.C. 3109.52)

The bill permits the parent, guardian, or custodian of a child to create a power of attorney that grants certain of the parent, guardian, or custodian's rights and responsibilities regarding the care, custody, and control of the child to a person with whom the child is residing. Those rights and responsibilities include the ability to enroll the child in school and the authority to consent to medical, psychological, or dental treatment for the child. The power of attorney also grants the authority to obtain the child's educational and behavioral information from the school district and to consent to all school-related matters regarding the child. The person to whom the authority is granted becomes the "attorney in fact."

The power of attorney may not grant authority to consent to the marriage or adoption of the child. Further, it does not affect the rights of the parent, guardian, or custodian in any future proceeding concerning the custody or allocation of parental rights and responsibilities for the care of the child. The power of attorney does not grant legal custody to the attorney in fact.

A parent, guardian, or custodian can create a power of attorney only in certain circumstances, including cases involving the serious illness or incarceration of the parent, guardian, or custodian. The other situations in which a power of attorney may be executed are (1) when the parent, guardian, or custodian is about to be incarcerated, temporarily unable to provide financial support or

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 the rights and responsibilities personally unless otherwise authorized by the Revised Code or the court. (R.C. 2151.011(B)(19), not in the bill; see R.C. 3109.51(D).)

² *Under the bill, a "qualified relative" is any person over 18 years of age who is related to a child by blood, 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. (R.C. 3109.64.)*

parental guidance, temporarily unable to provide adequate care and supervision due to a physical or mental condition, homeless or without residence because the current residence is destroyed or uninhabitable, or in or about to enter a residential treatment program for substance abuse, (2) when the parent, guardian, or custodian has a well-founded belief that it is in the child's best interest, or (3) when a public children services agency requests or recommends in writing that one be executed.

If one parent is deceased, the other may execute a power of attorney for any reason.

Form requirements

(R.C. 3109.53 and 3109.54)

The bill provides that to create a power of attorney, a parent, guardian, or custodian must use a form identical in form and content to the one provided in the bill.³ It must be signed by both the parent, guardian, or custodian granting it and the person designated as the attorney in fact. The signatures must be notarized. The child's social security number is not required to appear on the power of attorney for it to be effective.

Execution by parent

(R.C. 3109.56 and 3109.57)

The bill provides that if the parents are married to each other and are living as husband and wife a power of attorney must be executed by both parents. Likewise, if the child is the subject of a shared parenting order the power of attorney must be executed by both parents. In all other cases, the power of attorney may be executed only by one of the following persons: (1) the parent who is the residential parent and legal custodian of the child,⁴ or (2) in cases in which there is no order designating a parent as the residential parent and legal custodian of the child, or the Revised Code provision governing custody of children born to unmarried females does not apply, the parent with whom the child resides the majority of the school year.

³ *The power of attorney form is set forth in the **COMMENT** section of this analysis.*

⁴ *This is determined either by court order or by the Revised Code provision governing custody of children born to unmarried females. (R.C. 3109.56(B)(1).)*

Notice to parent

(R.C. 3109.55)

Anyone who creates a power of attorney pursuant to the bill must send notice of that fact to the parent of the child who (1) is not the residential parent and legal custodian of the child and (2) is not prohibited from receiving notice of relocation under Ohio law.⁵ The notice must be sent by certified mail not later than five days after the power of attorney is created. The notice must include the name and address of the person designated as the attorney in fact.

Termination

(R.C. 3109.59 and 3109.60)

The power of attorney terminates on the occurrence of whichever of the following events occurs first: (1) one year elapses following the date it is notarized, (2) written revocation by the person who created it, (3) the child ceases to reside with the person designated as the attorney in fact, (4) it is terminated by court order, or (5) the issuance of an assessment report that determines the power of attorney is not consistent with the child's best interest. When a power of attorney terminates, the attorney in fact is required to provide written notification to all of the following: the school district in which the child attends school, the child's health care providers, the child's health insurance coverage provider, the public children services agency (PCSA) with which it was filed, the nonresidential parent who is not the legal custodian and who is required to be given notice of the creation of the power of attorney, and any other person or entity that has an ongoing relationship with the child or attorney in fact such that the person or entity would reasonably rely on the power of attorney unless notified of the termination. The attorney in fact must make the notifications not later than one week after the date of the termination.

Immunity

(R.C. 3109.61)

The bill provides that a person who, in good faith, relies on or takes action in reliance on a power of attorney created under the bill is immune from any criminal or civil liability for injury, death, or loss to persons or property that might otherwise be incurred or imposed solely as a result of the person's reliance or action. Similarly, the person is not subject to any disciplinary action from an entity that licenses or issues a certificate to the person. Any medical,

⁵ See *R.C. 3109.051*.

psychological, or dental treatment provided to a child in reliance on the 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. The bill provides that the immunity does not apply regarding actions that are wanton, reckless, or inconsistent with the ordinary standard of care required to be exercised by anyone acting in the same capacity.⁶

Military power of attorney

(R.C. 3109.62)

The bill provides that a military power of attorney executed pursuant to federal law that grants a person's rights and responsibilities regarding the care, custody, and control of the person's child, including the ability to enroll the child in school and to consent to medical, psychological, or dental treatment for the child must be considered a power of attorney created under the bill, as long as the military power of attorney remains in effect.⁷

Caretaker authorization affidavit

Caring for a child through caretaker authorization affidavit

(R.C. 3109.65)

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. This authority includes the ability to enroll the child in school and to consent to medical, psychological, or dental treatment for

⁶ "Wanton" means "[u]nreasonably or maliciously risking harm while being utterly indifferent to the consequences." (*Black's Law Dictionary 1576 (7th ed. 1999).*)

"Reckless" means "[c]haracterized by the creation of a substantial and unjustifiable risk of harm to others and by a conscious (and sometimes deliberate) disregard for or indifference to that risk; heedless; rash. Reckless conduct is much more than negligence: it is a gross deviation from what a reasonable person would do." (*Black's Law Dictionary 1276 (7th ed. 1999).*)

⁷ Section 574(a) of the National Defense Authorization Act for Fiscal Year 1994, 10 U.S.C. 1044b.

the child.⁸ The qualified relative may obtain this authority by executing the caretaker authorization affidavit form provided in the bill.⁹

Execution of affidavit

(R.C. 3109.67 and 3109.69)

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 medical, psychological, or dental treatment for the child. 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

(R.C. 3109.70 and 3109.71)

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, (3) the parent, guardian, or custodian of the child acts in accordance with the bill to negate, reverse, or otherwise disapprove an action or decision of the qualified relative who signed the affidavit with respect to the child, or (4) the affidavit is terminated by court order. When an affidavit terminates, the qualified relative must notify, in writing, the school district in which the child attends school, the child's health care providers, the child's health insurance coverage provider, the public children services agency in which the affidavit was filed, and any other person or entity that has an ongoing relationship with the child or qualified relative such that the person or entity would reasonably rely on the affidavit unless notified of the termination. The qualified relative must make the notifications not later than one week after the date the affidavit terminates.

⁸ Also included are the authority to discuss the child's educational progress with the school district and the ability to consent to all school related matters regarding the child.

⁹ The caretaker authorization affidavit must be identical in both form and content to the one provided in the bill. That affidavit is set forth in the **COMMENT** portion of this analysis.

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

(R.C. 3109.72)

The bill provides that the parent, guardian, or custodian of a child may negate, reverse, or otherwise disapprove any action taken or decision made pursuant to a caretaker authorization affidavit unless it would jeopardize the life, health, or safety of the child. To do so, written notice of the negation, reversal, or disapproval must be delivered to the caretaker and the person responding to the caretaker's action or decision in reliance on the affidavit. The act to negate, reverse, or disapprove the action or decision, regardless of whether it is effective, terminates the affidavit.

Immunity

(R.C. 3109.73)

The bill provides that a person who, in good faith, relies on or takes action in reliance on a caretaker authorization affidavit is immune from criminal or civil liability for injury, death, or loss to persons or property that might otherwise be incurred or imposed solely as a result of the reliance or action. Further, 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 an affidavit 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. The bill does not provide immunity from civil or criminal liability to any person for actions that are wanton, reckless, or inconsistent with the ordinary standard of care required to be exercised by anyone acting in the same capacity.

Filing of documents

(R.C. 3109.75 and 3109.76)

A person who creates a power of attorney or executes a caretaker authorization affidavit authorized by the bill must file the document with the PCSA of the county in which the attorney in fact or qualified relative resides. A power of attorney must be accompanied by a receipt showing that the notice of creation of the power of attorney was sent by certified mail to the parent who is not the residential parent and legal custodian. The required documents must be filed with the appropriate PCSA not later than five days after the creation of the

power of attorney or execution of the affidavit. On request of specified persons, the PCSA must verify the filing of a power of attorney or caretaker affidavit.¹⁰

Limitations

When execution of a power of attorney or caretaker authorization affidavit is not permitted

(R.C. 3109.58 and 3109.68)

The bill provides that a power of attorney or caretaker authorization affidavit created under the bill may not be executed while any of the following proceedings are pending regarding the child:

(1) A proceeding for the appointment of a guardian for, or the adoption of, the child;

(2) A juvenile proceeding in which one of the following applies: (a) the temporary, permanent, or legal custody of the child or the placement of the child in a planned permanent living arrangement has been requested, (b) the child is the subject of an *ex parte* emergency custody order and no shelter care hearing has been held regarding the child, or (c) the child is the subject of a temporary custody order;¹¹

¹⁰ *The bill requires the PCSA to verify the filing of these documents to (1) the person in charge of admissions of a school or (2) any of the following persons who are required to report suspected child abuse or neglect: an attorney; physician; dentist; podiatrist; practitioner of massage therapy, cosmetic therapy, naprapathy, or mechanotherapy; nurse; other health care professionals; psychologist or school psychologist; marriage and family therapist; speech pathologist or audiologist; coroner; administrator or employee of a child day-care center, residential camp or child day camp, or certified child care agency or other public or private children services agency; school teacher, employee, or authority; person engaged in social work or the practice of professional counseling; agent of a county humane society; or person rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion. (R.C. 3109.76; R.C. 2151.421 and 4731.15, not in the bill.)*

¹¹ *"Temporary custody" means "legal custody of a child who is removed from the child's home, which custody may be terminated at any time at the discretion of the court or, if the legal custody is granted in an agreement for temporary custody, by the person who executed the agreement." (R.C. 2151.011(B)(52), not in the bill.)*

"Permanent custody" means "a legal status that vests in a public children services agency or a private child placing agency, all parental rights, duties, and obligations, including the right to consent to adoption, and divests the natural parents or adoptive

(3) A proceeding for divorce, dissolution, legal separation, annulment, or allocation of parental rights and responsibilities regarding the child.

One power of attorney or caretaker authorization affidavit

(R.C. 3109.77, 3109.78, and 3109.81)

The bill provides that only one power of attorney or caretaker authorization affidavit may be in effect for a child at any time.

If a second or subsequent power of attorney or caretaker affidavit is created or executed under the bill, the person who creates the power of attorney or executes the affidavit must file it with the juvenile court of the county in which the attorney in fact or qualified relative resides. The juvenile court must schedule a hearing to determine whether the power of attorney or affidavit is in the child's best interest.

The hearing must be held within ten days after the affidavit or power of attorney is filed with the court. The parties may present evidence at the hearing, and may be represented by counsel. Notice of the date, time, and location of the hearing must be provided to all of the parties.

If the court concludes that the power of attorney is in the child's best interest, it shall remain in effect until otherwise terminated by: (1) court order, (2) written revocation by the person who created it, (3) the termination of the child's residency with the attorney in fact, or (4) the passage of one year following the notarization of the power of attorney. Similarly, if the court determines that a caretaker affidavit is in the best interest of the child, it will remain in effect until: (1) one year elapses following the notarization of the affidavit, (2) the termination of the child's residency with the qualified relative, (3) the negation, reversal, or

parents of all parental rights, privileges, and obligations, including all residual rights and obligations." (R.C. 2151.011(B)(30), not in the bill.)

"Planned permanent living arrangement" means an order of a juvenile court that gives legal custody of a child to a public children services agency or a private child placing agency without the termination of parental rights, and permits the agency to make an appropriate placement of the child and enter into a written agreement with a foster care provider or with another person or agency with whom the child is placed. (R.C. 2151.011(B)(36), not in the bill.)

"Shelter care" means "the temporary care of children in physically unrestricted facilities, pending court adjudication or disposition." (Ohio Rules of Juvenile Procedure 2 (Anderson 2002), not in the bill.)

disapproval of an action or decision of the qualified relative by the parent, guardian, or custodian of the child, or (4) a court order terminates it.

If the court determines that the power of attorney or affidavit is not in the best interest of the child, it shall issue an order terminating the document and ordering that the child be returned to the parent, guardian, or custodian. If the parent, guardian, or custodian cannot be located, the court must treat the filing of the power of attorney or affidavit as a complaint that the child is a dependent child.¹²

Purpose restriction

(R.C. 3109.79)

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 a school or school district so that the child may participate in the interscholastic

¹² A "dependent child" is

. . . any child:

(A) *Who is homeless or destitute or without adequate parental care, through no fault of the child's parents, guardian, or custodian;*

(B) *Who lacks adequate parental care by reason of the mental or physical condition of the child's parents, guardian, or custodian;*

(C) *Whose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child's guardianship;*

(D) *To whom both of the following apply:*

(1) *The child is residing in a household in which a parent, guardian, custodian, or other member of the household committed an act that was the basis for an adjudication that a sibling of the child or any other child who resides in the household is an abused, neglected, or dependent child.*

(2) *Because of the circumstances surrounding the abuse, neglect, or dependency of the sibling or other child and the other conditions in the household of the child, the child is in danger of being abused or neglected by that parent, guardian, custodian, or member of the household.*

(R.C. 2151.04, not in the bill.)

athletic programs or academic programs provided such a power of attorney or affidavit is void as of the date of its creation or execution.

Child support

(R.C. 3109.80)

A power of attorney or caretaker affidavit created or executed pursuant to the bill does not affect enforcement of a child support order unless a child support enforcement agency or court, as appropriate, issues an order providing otherwise.

Where the child may attend school

(R.C. 3313.64)

Under current law, a child must be admitted to the schools of the school district in which the child's parent resides. Current law defines "parent" to include either parent, unless the parents are legally separated or their marriage has been terminated, in which case, "parent" means the parent who is the residential parent and legal custodian of the child.¹³ The bill amends the definition of "parent" to provide that when a child is the subject of a power of attorney executed under the bill, "parent" means the attorney in fact under the power of attorney and when a child is the subject of a caretaker authorization affidavit, "parent" means the qualified relative under the affidavit. Therefore, the child may attend school in the district in which the attorney in fact or qualified relative resides, unless a determination is made, as discussed below, that the power of attorney or caretaker affidavit is not in the child's best interest.

Referral of a power of attorney or caretaker authorization affidavit

(R.C. 3313.649, 3313.6410, and 3313.6413)

The bill provides that when an attorney in fact or qualified relative seeks to enroll the child in a school in the school district in which the attorney in fact or qualified relative resides, the person in charge of admissions must determine whether the power of attorney or affidavit is in the child's best interest. If it is

¹³ *When a child is in the legal custody of a government agency or a person other than the child's natural or adoptive parent, "parent" means the parent with residual rights and responsibilities. When a child is in the permanent custody of a government agency or a person other than the child's natural or adoptive parent, "parent" means the parent who was divested of parental rights and responsibilities for the care of the child and the right to have the child live with the parent and be the legal custodian of the child and all residual parental rights, privileges, and responsibilities.*

determined that the power of attorney or affidavit is not in the child's best interest, a written referral must be made to the public children services agency (PCSA) of the county in which the attorney in fact or qualified relative resides. The referral must state that the person believes the power of attorney or affidavit is not consistent with the child's best interest and the specific facts and concerns supporting the belief. The determination and referral must be made on the day that the attorney in fact or qualified relative seeks the enrollment. Similarly, if a person who is a mandatory reporter of child abuse or neglect under Ohio law determines that the power of attorney or caretaker affidavit is not in the child's best interest, a written referral must be made to the PCSA of the county in which the attorney in fact or qualified relative resides.¹⁴ This referral must contain the same information as the one made by the head of school admissions and the name, address, and telephone number of the person making the referral.

The bill provides that if a referral is made, the child is not entitled to attend school in the school district from which the referral was made until the assessment report is issued. The bill further specifies that until the report is issued, a child who is the subject of a power of attorney is entitled to attend school in the district of the parent, guardian, or custodian who executed the power of attorney. A child who is the subject of a caretaker authorization affidavit is similarly entitled to attend school in the district in which the child's parent, guardian, or custodian last resided.

Assessment of a power of attorney or caretaker authorization affidavit

(R.C. 3313.6411, 3313.6412, 3313.6414, and 3313.6415)

On receipt of a referral described above, the bill requires the PCSA to conduct an assessment to determine if the power of attorney or caretaker authorization affidavit is consistent with the child's best interests. The assessment must include an investigation of the safety of the home of the attorney in fact or qualified relative as well as the ability of the attorney in fact or qualified relative to adequately care for the child. The assessment must be completed not later than 14 days after receipt of the referral.

The bill provides that on completion of the assessment, the PCSA must issue a written assessment report. This report must contain the results of the assessment as well as the conclusion regarding whether the power of attorney or caretaker authorization affidavit is consistent with the best interests of the child. The bill requires the PCSA to distribute the assessment report as follows: (1) if

¹⁴ *The mandatory reporters are listed in R.C. 2151.421(A)(1)(b), not in the bill. They are listed in footnote 10 as persons who must report suspected child abuse or neglect.*

the referral was made by the person in charge of admissions, to the school district from which the referral was made, (2) if the referral was made by a mandatory reporter of child abuse or neglect, to that person, (3) if the referral was regarding a power of attorney, to the person who executed it and the attorney in fact, and (4) if the referral was made regarding a caretaker authorization affidavit, to the qualified relative.

Effect of assessment report findings

If an assessment report finds that the power of attorney is not consistent with the best interest of the child, it shall terminate as of the date of the issuance of the report. On termination, the person who executed the power of attorney resumes the care, custody, and control of the child. If that person cannot be located or cannot resume the care, custody, or control of the child, the PCSA that issued the report must file a complaint alleging that the child is a dependent child. Likewise, if an assessment report finds that the caretaker authorization affidavit is not consistent with the child's best interests, the affidavit terminates and the PCSA must file a complaint.

If the report finds that the power of attorney or caretaker authorization affidavit is consistent with the child's best interest and there are no other reasons to exclude the child, the child may attend the schools of the school district in which the attorney in fact or qualified relative resides.

Rulemaking authority

The bill requires the Department of Job and Family Services to adopt rules governing the conduct of assessments and preparation and issuance of assessment reports. The rules are to include guidelines for assessing home safety and determining the ability of the attorney in fact or qualified relative to care for the child.

Documents provided to school

(R.C. 3313.672)

Under current law, at the time of initial entry to a public or nonpublic school, a pupil must present the following to the person in charge of admission: any records given the pupil by the school the pupil most recently attended; a certified copy of an order or decree, or modification of such an order or decree governing custody of the child; and a birth certificate or comparable certificate for the child. The bill includes as one of the items to be provided on initial entry into school a copy of a power of attorney or caretaker authorization affidavit, if either has been executed with respect to the child. The bill also requires that whenever a

power of attorney or caretaker affidavit is executed under the bill that pertains to a pupil in a public or nonpublic school, the attorney in fact or qualified relative must notify the school of the power of attorney by providing the person in charge of admission with a copy of the power of attorney or affidavit.

Application of school suspension law

(R.C. 3313.66)

Under current law, any school district, after offering an opportunity for a hearing, may temporarily deny admittance to any pupil if (1) the pupil has been suspended from school under Ohio law and the period of the suspension has not expired or (2) the pupil has been expelled from school under Ohio law and the period of expulsion has not expired. Current law also provides that any school district, after opportunity for a hearing, may temporarily deny admittance to any pupil if the pupil has been expelled or otherwise removed for disciplinary purposes from a public school in another state and the period of expulsion or removal has not expired.

The bill clarifies that the above provisions are applicable to a child who is the subject of a power of attorney or caretaker authorization affidavit.

COMMENT

1. The Power of Attorney form provided by the bill is as follows:

"POWER OF ATTORNEY

I, the undersigned, residing at _____, in the county of _____, state of _____, hereby appoint _____, residing at _____, in the county of _____, in the state of Ohio, with whom the child of whom I am the parent, guardian, or custodian is residing, my attorney in fact to exercise any and all of my rights and responsibilities regarding the care, custody, and control of the child, _____, born _____, having social security number (optional) _____, except my authority to consent to marriage or adoption of the child _____, and to perform all acts necessary in the execution of the rights and responsibilities hereby granted, as fully as I might do if personally present. The rights I am transferring under this power of attorney include the ability to enroll the child in school, to obtain from the school district educational and behavioral information about the child, to consent to all school-related matters regarding the child, and to consent to medical, psychological, or dental treatment for the child. This transfer does not affect my rights in any future proceedings concerning the custody of the child or the allocation of the parental rights and responsibilities for the care of the child and

does not give the attorney in fact legal custody of the child. This transfer does not terminate my right to have regular contact with the child.

I hereby certify that I am transferring the rights and responsibilities designated in this power of attorney because one of the following circumstances exists: (1) I am: (a) Seriously ill, incarcerated or about to be incarcerated; (b) Temporarily unable to provide financial support or parental guidance to the child; (c) Temporarily unable to provide adequate care and supervision of the child because of the parent's, guardian's, or custodian's physical or mental condition; (d) Homeless or without a residence because the current residence is destroyed or otherwise uninhabitable; or (e) In or about to enter a residential treatment program for substance abuse; (2) I am a parent of the child, the child's other parent is deceased, and I have authority to execute the power of attorney; (3) I have a well-founded belief that the power of attorney is in the child's best interest; or (4) A public children services agency has requested or recommended in writing that I execute the power of attorney.

I hereby certify that I am not transferring my rights and responsibilities regarding the child for the purpose of enrolling the child in a school or school district so that the child may participate in the academic or interscholastic athletic programs provided by that school or district.

This POWER OF ATTORNEY is valid until the occurrence of whichever of the following events occurs first: (1) one year elapses following the date this POWER OF ATTORNEY is notarized; (2) I revoke this POWER OF ATTORNEY in writing; (3) the child ceases to reside with the person designated as attorney in fact; or (4) this POWER OF ATTORNEY is terminated by court order or pursuant to section 3313.6413 of the Revised Code on a determination that the power of attorney is not consistent with the child's best interest.

WARNING: DO NOT EXECUTE THIS POWER OF ATTORNEY IF ANY STATEMENT MADE IN THIS INSTRUMENT IS UNTRUE. FALSIFICATION IS A CRIME.

Witness my hand this ___ day of _____, ____

Parent/Custodian/Guardian's signature

Person designated as attorney in fact



State of Ohio)

) ss:

County of _____)

Subscribed, sworn to, and acknowledged before me this ___ day of _____, _____

Notary Public

Notices:

1. A power of attorney may be executed only if one of the following circumstances exists: (1) The parent, guardian, or custodian of the child is: (a) Seriously ill, incarcerated or about to be incarcerated; (b) Temporarily unable to provide financial support or parental guidance to the child; (c) Temporarily unable to provide adequate care and supervision of the child because of the parent's, guardian's, or custodian's physical or mental condition; (d) Homeless or without a residence because the current residence is destroyed or otherwise uninhabitable; or (e) In or about to enter a residential treatment program for substance abuse; (2) One of the child's parents is deceased and the other parent, with authority to do so, seeks to execute a power of attorney; (3) The parent, guardian, or custodian has a well-founded belief that the power of attorney is in the child's best interest; or (4) A public children services agency has requested or recommended in writing that this power of attorney be executed.
2. The signatures of the parent, guardian, or custodian of the child and the attorney in fact must be notarized by an Ohio notary public.
3. A parent, guardian, or custodian who creates a power of attorney must notify the parent of the child who is not the residential parent and legal custodian of the child and who is not prohibited from receiving a notice of relocation in accordance with section 3109.051 of the Revised Code of the creation of the power of attorney. The notice must be sent by certified mail not later than five days after the power of attorney is created and must state the name and address of the person designated as the attorney in fact.
4. A parent, guardian, or custodian who creates a power of attorney must file it with the public children services agency of the county in which



the attorney in fact resides. The power of attorney must be filed not later than five days after the date it is created and be accompanied by a receipt showing that the notice of creation of the power of attorney was sent to the parent who is not the residential parent and legal custodian by certified mail.

5. A parent, guardian, or custodian who creates a second or subsequent power of attorney regarding a child who is the subject of a prior power of attorney must file the power of attorney with the juvenile court of the county in which the attorney in fact resides. On filing, the juvenile court will schedule a hearing to determine whether the power of attorney is in the child's best interest.
6. This power of attorney does not affect the rights of the child's parents, guardian, or custodian regarding any future proceedings concerning the custody of the child or the allocation of the parental rights and responsibilities for the care of the child and does not give the attorney in fact legal custody of the child.
7. A person or entity that relies on this power of attorney, in good faith, has no obligation to make any further inquiry or investigation.
8. This power of attorney terminates on the occurrence of whichever of the following occurs first: (1) one year elapses following the date the power of attorney is notarized; (2) the power of attorney is revoked in writing by the person who created it; (3) the child ceases to live with the attorney in fact; or (4) the power of attorney is terminated by court order or pursuant to section 3313.6413 of the Revised Code on a determination that the power of attorney is not consistent with the child's best interest.

On termination of this power of attorney, the person who served as the attorney in fact shall notify, in writing, any schools, health care providers, or health insurance coverage provider with which the child has been involved through the person who served as the attorney in fact. The person who served as the attorney in fact shall also notify, in writing, any other person or entity that has an ongoing relationship with the child or person who served as the attorney in fact such that the other person or entity would reasonably rely on the power of attorney unless notified of the termination. On termination of this power of attorney, the person who served as attorney in fact shall notify, in writing, the public children services agency in which the power of attorney was filed after its creation and the parent who is not the residential parent and legal custodian of the child who is required to be given notice of its

creation. The person who served as the attorney in fact shall make the notifications not later than one week after the date the power of attorney terminates. Notification of the school at which the person who served as the attorney in fact sought to enroll the child is not required if the power of attorney terminated pursuant to section 3313.6413 of the Revised Code.

Additional information:

To the attorney in fact:

If the child stops living with you, you are required to notify, in writing, any school, health care provider, or health care insurance provider to which you have given this power of attorney. You are also required to notify, in writing, any other person or entity that has an ongoing relationship with you or the child such that the person or entity would reasonably rely on the power of attorney unless notified. The notification must be made not later than one week after the child stops living with you.

To school officials:

1. Except as provided in sections 3313.649 to 3313.6415 of the Revised Code, this power of attorney, properly completed and notarized, authorizes the child in question to attend school in the district in which the attorney in fact resides and the attorney in fact is authorized to provide consent in all school-related matters and to obtain from the school district educational and behavioral information about the child. This power of attorney does not preclude the parent, guardian, or custodian of the child from having access to all school records pertinent to the child.
2. The school district may require additional reasonable evidence that the attorney in fact lives in the school district.
3. A school district or school official that reasonably and in good faith relies on this power of attorney has no obligation to make any further inquiry or investigation.

To health care providers:

1. A person or entity that acts in good faith reliance on a power of attorney to provide medical, psychological, or dental treatment, without actual knowledge of facts contrary to those stated in the power of attorney, is not subject to criminal liability or to civil liability to any person or

entity, and is not subject to professional disciplinary action, solely for such reliance if the power of attorney is completed and the signatures of the parent, guardian, or custodian of the child and the attorney in fact are notarized.

2. The decision of an attorney in fact, based on a power of attorney, shall be honored by a health care facility or practitioner, school district, or school official."

2. The Caretaker Affidavit authorized by the bill is presented below:

"CARETAKER AUTHORIZATION AFFIDAVIT

Use of this affidavit is authorized by sections 3109.64 to 3109.73 of the Ohio Revised Code.

Completion of items 1-7 and the signing and notarization of this affidavit 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, to discuss with the school district the child's educational progress, to consent to all school-related matters regarding the child, and to consent to medical, psychological, or dental treatment for the child.

The child named below lives in my home, I am 18 years of age or older, and I am a qualified relative (see definition below).

1. Name of child:
2. Child's date and year of birth:
3. Child's social security number (optional):
4. My name:
5. My home address:
6. My date and year of birth:
7. My Ohio driver's license number or identification card number:
8. Despite having made reasonable attempts, I am unable to locate or unable to contact the child's parent, guardian, or custodian.



9. I hereby certify that this affidavit is not being executed for the purpose of enrolling the child in a school or school district so that the child may participate in the academic or interscholastic athletic programs provided by that school or district.

WARNING: DO NOT SIGN THIS FORM IF ANY OF THE ABOVE STATEMENTS ARE INCORRECT. FALSIFICATION IS A CRIME.

I declare that the foregoing is true and correct:

Signed: _____ Date: _____

Qualified Relative

State of Ohio)

) ss:

County of _____)

Subscribed, sworn to, and acknowledged before me this _____ day of _____, _____

Notary Public

Notices:

1. The qualified relative's signature must be notarized by an Ohio notary public.
2. The qualified relative who executed this affidavit must file it with the public children services agency of the county in which the qualified relative resides not later than five days after the date it is executed.
3. A qualified relative who executes a second or subsequent caretaker authorization affidavit regarding a child who is the subject of a prior caretaker authorization affidavit must file the affidavit with the juvenile court of the county in which the qualified relative resides. On filing, the juvenile court will schedule a hearing to determine whether the caretaker authorization affidavit is in the child's best interest.
4. This 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.



5. A person or entity that relies on this affidavit, in good faith, has no obligation to make any further inquiry or investigation.
6. This 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 live with the qualified relative who signs this form; (3) 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 this affidavit; or (4) the affidavit is terminated by court order.

A parent, guardian, or custodian may negate, reverse, or disapprove a qualified relative's action or decision only by delivering written notice of negation, reversal, or disapproval to the qualified relative and the person acting on the qualified relative's action or decision in reliance on this affidavit.

On termination of this affidavit, the qualified relative who signed this affidavit shall notify, in writing, any schools, health care providers, or health insurance coverage provider with which the child has been involved through the qualified relative. The qualified relative shall also notify, in writing, any other person or entity that has an ongoing relationship with the child or caretaker such that the person or entity would reasonably rely on the affidavit unless notified of the termination. On termination of this affidavit, the qualified relative shall notify, in writing, the public children services agency in which the affidavit was filed after its creation. The qualified relative shall make the notifications not later than one week after the date the affidavit terminates.

7. 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, unless the decision of the parent, guardian, or custodian would jeopardize the life, health, or safety of the child.

Additional information:

To caretakers:

1. "Qualified relative," for the purposes of this affidavit, means 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 the persons specified in this definition.



- "Qualified relative" does not include: (1) a parent of the child who has committed an act resulting in the child being adjudicated an abused or neglected child; (2) 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; (3) the child's guardian; or (4) the child's custodian.
2. If the child stops living with you, you are required to notify, in writing, any school, health care provider, or health care insurance provider to which you have given this affidavit. You are also required to notify, in writing, any other person or entity that has an ongoing relationship with you or the child such that the person or entity would reasonably rely on the affidavit unless notified. The notifications must be made not later than one week after the child stops living with you.
 3. If you do not have the information requested in item 7 (Ohio driver's license or identification card), provide another form of identification such as your social security number or medicaid number.

To school officials:

1. This affidavit, properly completed and notarized, authorizes the child in question to attend school in the district in which the qualified relative who signed this affidavit resides and the qualified relative is authorized to provide consent in all school-related matters and to discuss with the school district the child's educational progress. This affidavit does not preclude the parent, guardian, or custodian of the child from having access to all school records pertinent to the child.
2. The school district may require additional reasonable evidence that the qualified relative lives at the address provided in item 5.
3. A school district or school official that reasonably and in good faith relies on this affidavit has no obligation to make any further inquiry or investigation.
4. 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 this affidavit constitutes termination of this affidavit. A parent, guardian, or custodian may negate, reverse, or disapprove a qualified relative's action or decision only by delivering written notice of negation, reversal, or disapproval to the qualified relative and the person acting on the qualified relative's action or decision in reliance on this affidavit.

To health care providers:

1. A person or entity that acts in good faith reliance on a CARETAKER AUTHORIZATION AFFIDAVIT to provide medical, psychological, or dental treatment, without actual knowledge of facts contrary to those stated in the affidavit, is not subject to criminal liability or to civil liability to any person or entity, and is not subject to professional disciplinary action, solely for such reliance if the applicable portions of the form are completed and the qualified relative's signature is notarized.
2. The decision of a qualified relative, based on a CARETAKER AUTHORIZATION AFFIDAVIT, shall 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 of a child has made a contravening decision to consent to or to refuse medical treatment for the child.
3. 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 this affidavit constitutes termination of this affidavit. A parent, guardian, or custodian may negate, reverse, or disapprove a qualified relative's action or decision only by delivering written notice of negation, reversal, or disapproval to the qualified relative and the person acting on the qualified relative's action or decision in reliance on this affidavit."

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-18-03	p. 259

H0130-I-125.doc/jc

