



H.B. 178

126th General Assembly
(As Introduced)

**Reps. Reidelbach, McGregor, Wagner, C. Evans, Webster, Strahorn, Collier,
Raga, Chandler, Taylor**

BILL SUMMARY

- Expands who may be designated as a parent's, guardian's, or custodian's attorney in fact in regards to the care of a child to any person with whom a child lives.
- Expands who may execute a caretaker authorization affidavit to any qualified relative of a child.

CONTENT AND OPERATION

Power of attorney

Current law

Under current law, a parent, guardian, or custodian of a child may create a power of attorney granting any rights and responsibilities of the parent, guardian, or custodian regarding the care, custody, and control of the child, to a grandparent of the child with whom the child is residing.¹ Those rights and responsibilities

¹ *A parent, guardian, or custodian can create a power of attorney only in certain circumstances wherein the parent, guardian, or custodian is (1) seriously ill, (2) incarcerated or about to be incarcerated, (3) temporarily unable to provide financial support to the child, (4) temporarily unable to provide parental guidance to the child, (5) temporarily unable to provide adequate care or supervision of the child due to a physical or mental condition, (6) homeless or without a residence because that residence is destroyed or uninhabitable, (7) in, or about to enter, a residential substance abuse treatment program, or (8) the parent, guardian, or custodian believes it is in the best interest of the child. The parent may also create a power of attorney if the child's other parent is deceased. (R.C. 3109.53.)*

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

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. (R.C. 3109.52.)

The bill

The bill expands who may be designated as attorney in fact under the preceding power of attorney from a grandparent with whom the child resides to any person with whom the child resides. Those persons acting as attorney in fact maintain the same rights and responsibilities as grandparent attorneys in fact under current law. (R.C. 3109.52.) The bill also makes conforming amendments to relevant sections as a result of this expansion (R.C. 3109.53, 3109.54, 3109.59(A), 3109.60, 3109.74(A) and (C), 3109.76, 3109.77, 3313.64, 3313.649, and 3313.672).²

Caretaker authorization affidavit

Current law

Under current law, if a child is living with a grandparent who has made reasonable attempts to locate the child's parent, guardian, or custodian, but has been unable to do so, the grandparent may obtain authority to exercise care, physical custody, and control of the child through a caretaker authorization affidavit. This authority includes the ability to enroll the child in school and to consent to medical, psychological, or dental treatment for the child. The grandparent may also obtain authority to discuss with the school district the child's

"Guardian" means an individual granted authority by a probate court 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)).

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

² *These sections pertain to the form utilized to create the power of attorney, termination of the power of attorney, and the child's schooling.*

educational progress and to consent to all school-related matters regarding the child. (R.C. 3109.65.) Further, the affidavit does not affect the rights and responsibilities of the parent, guardian, or custodian concerning the custody of the child, allow the grandparent to consent to the marriage or adoption of the child, or grant legal custody to the grandparent (R.C. 3109.69).

Also, the grandparent may execute the caretaker authorization affidavit without contacting (1) the father, if paternity has not been established, (2) a parent who is prohibited from receiving a relocation notice as a result of a divorce, dissolution, legal separation, or annulment, if the child is the subject of a custody order, or (3) a parent whose parental rights who have been terminated by the juvenile court, if the child is the subject of a custody order. (R.C. 3109.65.)

The bill

The bill expands who may execute a caretaker authorization affidavit from a grandparent to any qualified relative who has made reasonable attempts to locate the child's parent, guardian, or custodian, but has been unable to do so (R.C. 3109.65(A)). The bill defines a "qualified relative" as any person over 18 years of age who is related to a child by blood, marriage, or marriage that has been legally terminated. A "qualified relative" does not include (1) a parent who has committed an act resulting in the child's having been adjudicated an abused or neglected child, (2) the residential parent and legal custodian of the child in cases where the parents are divorced or the marriage has been dissolved or annulled, (3) the child's guardian, or (4) the child's custodian. (R.C. 3109.64.) The bill also makes conforming amendments to relevant sections as a result of this expansion (R.C. 3109.66, 3109.67, 3109.69, 3109.70(A), (B), (C), and (F), 3109.71, 3109.74(A) and (C), 3109.76, 3109.77(C), 3313.64(A), 3313.649(B), and 3313.672(B)).³

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-06-05	p. 366

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³ *These sections pertain to the form utilized to execute the caretaker authorization affidavit, termination of the caretaker authorization affidavit, execution of a subsequent caretaker authorization affidavit, and the child's schooling.*