

Senate Bill 601

Sponsored by Senator MONNES ANDERSON, Representative TOMEI

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Authorizes relative caregiver with whom minor child lives to consent to medical treatment and educational services for minor child if consent of legal parent or guardian cannot be obtained after reasonable efforts. Specifies required information in relative caregiver affidavit. Provides that affidavit expires after one year. Relieves health care provider and school of criminal and civil liability for medical treatment or educational services provided in good faith.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to relative caregiver authority; and declaring an emergency.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. The Legislative Assembly finds that:**

5 (1) **Current economic and cultural circumstances are such that relatives of minor chil-**
6 **dren are playing an increasing role in ensuring the health, safety and education of minor**
7 **children who, for many reasons, cannot live with and are not being cared for by their parents**
8 **or guardians, and for whom legal proceedings have not been initiated or undertaken to es-**
9 **tablish legal guardianships or placements under the laws of this state.**

10 (2) **Relatives of minor children are frequently asked, with minimal notice, to provide**
11 **housing and health care, and to make educational decisions, for minor children who are left**
12 **in their care.**

13 (3) **Relative caregivers frequently face barriers to obtaining necessary and appropriate**
14 **medical treatment and educational services for minor children left in their care.**

15 (4) **These barriers pose a significant challenge to relative caregivers in dealing with**
16 **health care providers and schools, and pose a substantial threat to the health, safety and**
17 **welfare of minor children in this state.**

18 (5) **It is necessary to provide legal authority for relative caregivers to access necessary**
19 **and appropriate medical treatment and educational services for minor children who are left**
20 **in the relative caregivers' care and who are without legal parents or guardians who can**
21 **otherwise provide for them.**

22 **SECTION 2. As used in sections 1 to 4 of this 2013 Act:**

23 (1) **"Educational services" means enrollment of a minor child in a school to which the**
24 **minor child has been or will be accepted for attendance and participation in any school ac-**
25 **tivities, including extracurricular activities.**

26 (2) **"Health care facility" means any facility that provides medical treatment.**

27 (3) **"Health care provider" means a person who is licensed, certified, registered or oth-**
28 **erwise authorized by law in this state to administer medical treatment in the practice of a**
29 **health care profession or at a health care facility, and includes a health care facility.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (4) "Medical treatment" means developmental screening, mental health screening and
2 treatment, ordinary and necessary medical, dental and optical examination and treatment
3 and preventive care including ordinary immunizations, tuberculin testing and well-child care,
4 and includes the examination for and treatment of any injury, symptom, disease or pathology
5 that is, in the judgment of the treating health care provider, reasonably necessary.

6 (5) "Legal parent or guardian" means the parent or guardian of a minor child, a person
7 with rights established under ORS 109.119 or a person to whom powers have been delegated
8 under ORS 109.056.

9 (6) "Relative caregiver" means a competent adult who is 18 years of age or older, who is
10 related to a minor child by blood, marriage or adoption, who is not the legal parent or
11 guardian and who represents in the affidavit described in section 4 of this 2013 Act that the
12 minor child lives with the adult and that the adult is responsible for the care of the minor
13 child.

14 **SECTION 3.** (1) A relative caregiver acting pursuant to an affidavit under section 4 of
15 this 2013 Act may consent to medical treatment and educational services for a minor child
16 that a minor child cannot otherwise legally consent to if, after reasonable efforts have been
17 made to obtain the consent of the legal parent or guardian to the treatment or services, the
18 consent of the legal parent or guardian cannot be obtained.

19 (2) A relative caregiver providing consent under this section is liable to the health care
20 provider or school for payment for any medical treatment or educational services provided
21 to a minor child pursuant to the consent.

22 (3) The consent of a relative caregiver under this section shall be superseded by any
23 contravening decision of the legal parent or guardian, provided the decision does not
24 threaten the life, health or safety of the minor child.

25 (4) If the minor child stops living with the relative caregiver, the relative caregiver shall
26 immediately notify any health care provider or school that has been given an affidavit under
27 section 4 of this 2013 Act. The affidavit is invalid immediately upon receipt by the health care
28 provider or school of the notice under this subsection.

29 (5) An affidavit under section 4 of this 2013 Act expires one year after the date it is given
30 to a health care provider or school by a relative caregiver. If the date the affidavit is given
31 to a health care provider or school is unknown or uncertain, it shall expire one year after
32 the date the relative caregiver signs the affidavit.

33 (6)(a) A health care provider or school may, but is not required to, rely on the repres-
34 entations or affidavit of a person claiming to be a relative caregiver if the health care pro-
35 vider or school does not have actual notice of the falsity of any of the statements or
36 documentation made or provided by the person claiming to be a relative caregiver.

37 (b) Upon receipt of a valid affidavit as described in section 4 of this 2013 Act, a health
38 care provider or school may, but is not required to, request documentation of a person's
39 claimed status as a relative caregiver and of attempts made to obtain the consent of the legal
40 parent or guardian.

41 (7) A health care provider or school that in good faith provides medical treatment or
42 educational services to a minor child pursuant to the valid consent of a relative caregiver
43 under this section is not subject to criminal liability, civil liability or professional disciplinary
44 action for providing the medical treatment or educational services. This subsection applies
45 even if the health care provider or school provides medical treatment or educational services

1 to a minor child in contravention of the legal parent's or guardian's wishes or desires, as
2 long as the health care provider or school has no actual knowledge of the wishes or desires
3 of the legal parent or guardian, or if the wishes or desires of the legal parent or guardian
4 would jeopardize the life, health or safety of the minor child.

5 (8) Nothing in this section relieves a legal parent or guardian of liability for payment for
6 medical treatment or educational services provided to a minor child pursuant to the valid
7 consent of a relative caregiver under this section.

8 **SECTION 4.** A relative caregiver affidavit given to a health care provider or school is
9 invalid unless it is signed and contains, at a minimum, the following information:

10 (1) The name of the minor child;

11 (2) The minor child's date of birth;

12 (3) The relative caregiver's name and date of birth and the address at which the relative
13 caregiver lives with the minor child;

14 (4) The relationship of the relative caregiver to the minor child;

15 (5) The Oregon driver license or identification card number of the relative caregiver;

16 (6) The contact information of the legal parent or guardian;

17 (7) A description of any attempts that the relative caregiver has made to advise the legal
18 parent or guardian of the relative caregiver's intent to consent to medical treatment or ed-
19 ucational services for the minor child, and of any response to the relative caregiver provided
20 by the legal parent or guardian;

21 (8) If applicable, the reason why the relative caregiver is unable to contact the legal
22 parent or guardian to advise the legal parent or guardian of the relative caregiver's intent
23 to consent to medical treatment or educational services for the minor child;

24 (9) The date the relative caregiver signed the affidavit; and

25 (10) A declaration under penalty of perjury that the named minor child lives with the
26 relative caregiver, that the relative caregiver is a competent adult and 18 years of age or
27 older and that the information provided in the affidavit is true and correct.

28 **SECTION 5.** This 2013 Act being necessary for the immediate preservation of the public
29 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect
30 on its passage.

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