

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 532

AN ACT

To repeal sections 431.058, 431.061, and 431.062, RSMo,
and to enact in lieu thereof three new sections
relating to consent provided by relative caregivers.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Sections 431.058, 431.061, and 431.062, RSMo,
2 are repealed and three new sections enacted in lieu thereof, to
3 be known as sections 431.058, 431.061, and 431.062, to read as
4 follows:

5 431.058. 1. [As used in this section, the following terms
6 mean:

7 (1) "Child", a child less than eighteen years of age;

8 (2) "Health care provider", a person licensed to practice
9 medicine and surgery by the state board of registration for the
10 healing arts, a person who holds a temporary permit to practice
11 medicine and surgery issued by the state board of registration
12 for the healing arts, a person engaged in a postgraduate training
13 program in medicine and surgery approved by the state board of
14 registration for the healing arts, a medical care facility
15 licensed by the department of health and senior services, a
16 health maintenance organization issued a certificate of authority

1 by the director of the department of insurance, financial
2 institutions and professional registration, a licensed
3 professional nurse, a licensed practical nurse and a registered
4 physician's assistant. The term "health care provider" shall
5 also include the following entities: a professional corporation
6 organized pursuant to the professional corporation law of
7 Missouri by persons who are health care providers, a Missouri
8 limited liability company organized for the purpose of rendering
9 professional services by its members who are health care
10 providers, a partnership of persons who are health care providers
11 or a Missouri not-for-profit corporation organized for the
12 purpose of rendering professional services by persons who are
13 health care providers;

14 (3) "Parent":

15 (a) A child's parent by birth or adoption;

16 (b) A child's legal guardian; or

17 (c) Any person who under court order is authorized to give
18 consent for a child.

19 2. A parent may delegate in writing the parent's authority
20 to consent to the immunization of a child to another adult.

21 3. Subject to the provisions of subsections 3 to 6 of this
22 section, any adult may consent to the immunization of a child if
23 a parent is not reasonably available and the authority to consent
24 is not denied under subsection 4 of this section.

25 4. A person may not consent to the immunization of a child
26 under subsection 3 of this section if:

27 (1) The person has actual knowledge that the parent has
28 expressly refused to give consent to the immunization; or

1 (2) The parent has told the person that the person may not
2 consent to the immunization of the child or, in the case of a
3 written authorization, has withdrawn the authorization in
4 writing.

5 5. For purposes of this section, a parent is not reasonably
6 available if the location of the parent or legal guardian is
7 unknown and could not be ascertained, despite diligent searching.

8 6. A person authorized to consent to the immunization of a
9 child under the provisions of subsections 3 to 6 of this section
10 shall confirm in writing that the parent is not reasonably
11 available, and the written confirmation shall be included in the
12 child's medical record.

13 7. A grandparent, brother or sister, aunt or uncle or
14 stepparent of a child who is the primary caregiver of a child and
15 who may consent to the immunization of the child pursuant to the
16 provisions of subsection 2 of this section may delegate in
17 writing the authority to consent to immunization of the child to
18 another adult.

19 8. A health care provider may rely on a document from
20 another state, territory or country that contains substantially
21 the same information as is required in any immunization consent
22 rules and regulations of the department of health and senior
23 services if the document is presented for consent by a person as
24 authorized pursuant to the provisions of this section.

25 9. A person who consents to immunization of a child under
26 this section shall provide the health care provider with
27 sufficient and accurate health information about the child for
28 whom the consent is given and, if necessary, sufficient and

1 accurate health information about the child's family to enable
2 the person providing the consent and the health care provider to
3 determine adequately the risks and benefits inherent in the
4 proposed immunization and determine whether the immunization is
5 advisable.

6 10. The responsibility of a health care provider to provide
7 information to a person consenting to the immunization of a child
8 as provided by this section is the same as the health care
9 provider's responsibility to a parent.

10 11. Except for acts of willful misconduct or gross
11 negligence, a person who consents to the immunization of a child
12 as provided by this section shall not be liable for damages
13 arising from any such immunization administered by a person
14 authorized by law to administer immunizations in this state.] As
15 used in sections 431.058 to 431.062, the following terms shall
16 mean:

17 (1) "Adult", a person who is eighteen years of age or
18 older;

19 (2) "Child" or "minor", a person who is under eighteen
20 years of age;

21 (3) "Educational services", enrollment of a child in a
22 school to which the child has been or will be accepted for
23 attendance and participation in any school activities, including
24 extracurricular activities;

25 (4) "Health care provider", a person who is licensed,
26 certified, registered, or otherwise authorized by law in this
27 state to administer medical treatment in the practice of a health
28 care profession or at a health care facility, and includes a

1 health care facility;

2 (5) "Parent":

3 (a) A child's parent by birth or adoption;

4 (b) A child's legal guardian; or

5 (c) Any person who under court order is authorized to give
6 consent for a child;

7 (6) "Relative caregiver", a competent adult who is related
8 to a child by blood, marriage, or adoption who is not the parent
9 and who represents in the affidavit described under subsection 8
10 of this section that the child lives with the adult and that the
11 adult is responsible for the care of the child.

12 2. A relative caregiver acting pursuant to an affidavit
13 described under subsection 8 of this section may consent to the
14 medical treatment provided for under section 431.061 and for
15 educational services for a child that a child cannot otherwise
16 legally consent to if:

17 (1) The parent has delegated in writing the parent's
18 authority to consent to such medical treatment or educational
19 services; or

20 (2) After reasonable efforts have been made to obtain the
21 consent of the parent for the medical treatment or educational
22 services, the consent of the parent cannot be obtained.

23 3. The consent of a relative caregiver under this section
24 shall be superceded by any contravening decision of the parent,
25 provided the decision does not threaten the life, health, or
26 safety of the child.

27 4. If the child stops living with the relative caregiver,
28 the relative caregiver shall immediately notify any health care

1 provider or school that has been given the affidavit under this
2 section. The affidavit is invalid immediately upon receipt by
3 the health care provider or school of the notice under this
4 subsection.

5 5. An affidavit under this section expires one year after
6 the date it is given to the health care provider or school. If
7 the date the affidavit is given to a health care provider or
8 school is unknown, it shall expire one year after the date the
9 relative caregiver signs the affidavit.

10 6. Nothing in this section relieves a parent of liability
11 for payment for medical treatment or educational services
12 provided to a child pursuant to the valid consent of a relative
13 caregiver under this section.

14 7. Nothing in this section shall be construed to create a
15 cause of action against a relative caregiver who has complied
16 with the provisions of this section.

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

20 (1) The name of the child;

21 (2) The child's date of birth;

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

24 (4) The relationship of the relative caregiver to the
25 child;

26 (5) The driver's license or identification card number of
27 the relative caregiver;

28 (6) The contact information of the parent;

1 My name is, and I am of sound mind and am over
2 eighteen (18) years of age. My date of birth, address, contact
3 information, and driver's license or identification card numbers
4 are..... . I am competent to testify to the following
5 facts and matters:

6 I am a relative caregiver to (name of child),
7 whose date of birth is My relationship to the child
8 is..... . The above mentioned child is living with me
9 at..... (address) because of the following
10 (description of reasons why child lives with relative caregiver
11 and any attempts that the relative caregiver has made to advise
12 the parent of the relative caregiver's intent to consent to
13 medical treatment or educational services for the child, and any
14 response to the relative caregiver provided by the parent). The
15 contact information for the parent is (if
16 known).

17 (If applicable) Attached is a signed and dated delegation of
18 authority to me by the parent to consent to educational services
19 or medical treatment.

20 (If applicable) The reason why I am unable to contact the
21 parent to advise the parent of my intent to consent to medical
22 treatment or educational services for the child is
23

24 Affiant

25 In witness whereof I have hereunto subscribed my name and affixed
26 my official seal this day of, 20... .
27

28 (Signed)

1 (Seal)

2 431.061. 1. In addition to such other persons as may be so
3 authorized and empowered, any one of the following persons if
4 otherwise competent to contract, is authorized and empowered to
5 consent, either orally or otherwise, to any surgical, medical, or
6 other treatment or procedures, including immunizations, not
7 prohibited by law:

8 (1) Any adult eighteen years of age or older for himself;

9 (2) Any parent for his minor child in his legal custody;

10 (3) Any minor who has been lawfully married and any minor
11 parent or legal custodian of a child for himself, his child and
12 any child in his legal custody;

13 (4) Any minor for himself in case of:

14 (a) Pregnancy, but excluding abortions;

15 (b) Venereal disease;

16 (c) Drug or substance abuse including those referred to in
17 chapter 195;

18 (5) Any adult standing in loco parentis, whether serving
19 formally or not, for his minor charge in case of emergency as
20 defined in section 431.063;

21 (6) Any guardian of the person for his ward;

22 (7) [During the absence of a parent so authorized and
23 empowered, any adult for his minor brother or sister;

24 (8) During the absence of a parent so authorized and
25 empowered, any grandparent for his minor grandchild;

26 (9) "Absence" as used in (7) and (8) above shall mean
27 absent at a time when further delay occasioned by an attempt to
28 obtain a consent may jeopardize the life, health or limb of the

1 person affected, or may result in disfigurement or impairment of
2 faculties] Any relative caregiver of a minor child as provided
3 for under section 431.058.

4 2. [For purposes of consent to hospitalization or medical,
5 surgical or other treatment or procedures, a "minor" shall be
6 defined as any person under eighteen years of age and an "adult"
7 shall be defined as any person eighteen years of age or older.

8 3.] The provisions of sections 431.061 and 431.063 shall be
9 liberally construed, and all relationships set forth in
10 subsection 1 of this section shall include the adoptive and
11 step-relationship as well as the natural relationship and the
12 relationship by the half blood as well as by the whole blood.

13 [4.] 3. A consent by one person so authorized and empowered
14 shall be sufficient notwithstanding that there are other persons
15 so authorized and empowered or that such other persons shall
16 refuse or decline to consent or shall protest against the
17 proposed surgical, medical or other treatment or procedures.

18 [5.] 4. Any person acting in good faith and not having been
19 put on notice to the contrary shall be justified in relying on
20 the representations of any person purporting to give such
21 consent, including, but not limited to, his identity, his age,
22 his marital status, and his relationship to any other person for
23 whom the consent is purportedly given.

24 431.062. Whenever a minor is examined, treated,
25 hospitalized, or receives medical or surgical care under
26 subdivision (4) of subsection 1 of section 431.061:

27 (1) His consent shall not be subject to disaffirmance or
28 revocation because of minority;

1 (2) The parent, parents, [or] conservator, or relative
2 caregiver shall not be liable for payment for such care unless
3 the parent, parents, [or] conservator, or relative caregiver has
4 expressly agreed to pay for such care;

5 (3) A physician or surgeon may, with or without the consent
6 of the minor patient, advise the parent, parents, [or]
7 conservator, or relative caregiver of the examination, treatment,
8 hospitalization, medical and surgical care given or needed if the
9 physician or surgeon has reason to know the whereabouts of the
10 parent, parents, [or] conservator, or relative caregiver. Such
11 notification or disclosure shall not constitute libel or slander,
12 a violation of the right of privacy or a violation of the rule of
13 privileged communication. In the event that the minor is found
14 not to be pregnant or not afflicted with a venereal disease or
15 not suffering from drug or substance abuse, then no information
16 with respect to any appointment, examination, test or other
17 medical procedure shall be given to the parent, parents,
18 conservator, relative caregiver, or any other person.