

SECOND REGULAR SESSION

SENATE BILL NO. 532

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR NASHEED.

Pre-filed December 1, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

4160S.01I

AN ACT

To repeal sections 431.058 and 431.061, RSMo, and to enact in lieu thereof two new sections relating to medical and educational consent laws.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 431.058 and 431.061, RSMo, are repealed and two new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

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

- 2 (1) "Child", a child less than eighteen years of age;
- 3 (2) "Health care provider", a person licensed to practice medicine and
4 surgery by the state board of registration for the healing arts, a person who holds
5 a temporary permit to practice medicine and surgery issued by the state board
6 of registration for the healing arts, a person engaged in a postgraduate training
7 program in medicine and surgery approved by the state board of registration for
8 the healing arts, a medical care facility licensed by the department of health and
9 senior services, a health maintenance organization issued a certificate of
10 authority by the director of the department of insurance, financial institutions
11 and professional registration, a licensed professional nurse, a licensed practical
12 nurse and a registered physician's assistant. The term "health care provider"
13 shall also include the following entities: a professional corporation organized
14 pursuant to the professional corporation law of Missouri by persons who are
15 health care providers, a Missouri limited liability company organized for the
16 purpose of rendering professional services by its members who are health care
17 providers, a partnership of persons who are health care providers or a Missouri
18 not-for-profit corporation organized for the purpose of rendering professional

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 services by persons who are health care providers;

20 (3) "Parent":

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

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

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

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

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

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

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

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

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

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

44 7. A grandparent, brother or sister, aunt or uncle or stepparent of a child
45 who is the primary caregiver of a child and who may consent to the immunization
46 of the child pursuant to the provisions of subsection 2 of this section may delegate
47 in writing the authority to consent to immunization of the child to another adult.

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

53 9. A person who consents to immunization of a child under this section
54 shall provide the health care provider with sufficient and accurate health

55 information about the child for whom the consent is given and, if necessary,
56 sufficient and accurate health information about the child's family to enable the
57 person providing the consent and the health care provider to determine
58 adequately the risks and benefits inherent in the proposed immunization and
59 determine whether the immunization is advisable.

60 10. The responsibility of a health care provider to provide information to
61 a person consenting to the immunization of a child as provided by this section is
62 the same as the health care provider's responsibility to a parent.

63 11. Except for acts of willful misconduct or gross negligence, a person who
64 consents to the immunization of a child as provided by this section shall not be
65 liable for damages arising from any such immunization administered by a person
66 authorized by law to administer immunizations in this state.] **As used in this**
67 **section and section 431.061, the following terms shall mean:**

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

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

71 (3) "Educational services", enrollment of a child in a school to
72 which the child has been or will be accepted for attendance and
73 participation in any school activities, including extracurricular
74 activities;

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

79 (5) "Parent":

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

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

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

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

89 2. A relative caregiver acting pursuant to an affidavit described
90 under subsection 7 of this section may consent to the medical treatment
91 provided for under section 431.061 and for educational services for a

92 child that a child cannot otherwise legally consent to if:

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

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

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

101 4. If the child stops living with the relative caregiver, the
102 relative caregiver shall immediately notify any health care provider or
103 school that has been given the affidavit under this section. The
104 affidavit is invalid immediately upon receipt by the health care
105 provider or school of the notice under this subsection.

106 5. An affidavit under this section expires one year after the date
107 it is given to the health care provider or school. If the date the
108 affidavit is given to a health care provider or school is unknown, it
109 shall expire one year after the date the relative caregiver signs the
110 affidavit.

111 6. Nothing in this section relieves a parent of liability for
112 payment for medical treatment or educational services provided to a
113 child pursuant to the valid consent of a relative caregiver under this
114 section.

115 7. A relative caregiver affidavit given to a health care provider
116 or school is invalid unless it is signed and contains, at a minimum, the
117 following information:

118 (1) The name of the child;

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

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

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

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

125 (6) The contact information of the parent;

126 (7) A description of any attempts that the relative caregiver has
127 made to advise the parent of the relative caregiver's intent to consent
128 to medical treatment or educational services for the child, and of any

129 response to the relative caregiver provided by the parent;

130 (8) If applicable, a signed and dated delegation of authority to
131 the relative caregiver by the parent to consent to educational services
132 or medical treatment;

133 (9) If applicable, the reason why the relative caregiver is unable
134 to contact the parent to advise the parent of the relative caregiver's
135 intent to consent to medical treatment or educational services for the
136 child;

137 (10) The date the relative caregiver signed the affidavit; and

138 (11) A declaration under penalty of perjury that the named child
139 lives with the relative caregiver, that the relative caregiver is a
140 competent adult and eighteen years of age or older and that the
141 information provided in the affidavit is true and correct.

142 8. The affidavit permitted by this section may be in form and
143 content substantially as follows:

144 THE STATE OF

145 COUNTY OF

146 AFFIDAVIT

147 Before me, the undersigned authority, personally appeared
148 (relative caregiver), who, being by me duly sworn, deposed as
149 follows:

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

154 I am a relative caregiver to (name of child), whose date of
155 birth is My relationship to the child is..... . The above
156 mentioned child is living with me at..... (address) because of the
157 following (description of reasons why child lives with relative
158 caregiver and any attempts that the relative caregiver has made to
159 advise the parent of the relative caregiver's intent to consent to
160 medical treatment or educational services for the child, and any
161 response to the relative caregiver provided by the parent). The contact
162 information for the parent is (if known).

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

166 (If applicable) The reason why I am unable to contact the parent
167 to advise the parent of my intent to consent to medical treatment or
168 educational services for the child is

169 Affiant

170 In witness whereof I have hereunto subscribed my name and affixed my
171 official seal this day of, 20... .

172

173 (Signed)

174 (Seal)

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

- 6 (1) Any adult eighteen years of age or older for himself;
- 7 (2) Any parent for his minor child in his legal custody;
- 8 (3) Any minor who has been lawfully married and any minor parent or
9 legal custodian of a child for himself, his child and any child in his legal custody;
- 10 (4) Any minor for himself in case of:
 - 11 (a) Pregnancy, but excluding abortions;
 - 12 (b) Venereal disease;
 - 13 (c) Drug or substance abuse including those referred to in chapter 195;
- 14 (5) Any adult standing in loco parentis, whether serving formally or not,
15 for his minor charge in case of emergency as defined in section 431.063;
- 16 (6) Any guardian of the person for his ward;
- 17 (7) [During the absence of a parent so authorized and empowered, any
18 adult for his minor brother or sister;
- 19 (8) During the absence of a parent so authorized and empowered, any
20 grandparent for his minor grandchild;
- 21 (9) "Absence" as used in (7) and (8) above shall mean absent at a time
22 when further delay occasioned by an attempt to obtain a consent may jeopardize
23 the life, health or limb of the person affected, or may result in disfigurement or
24 impairment of faculties] **Any relative caregiver of a minor child as**
25 **provided for under section 431.058.**

26 2. [For purposes of consent to hospitalization or medical, surgical or other
27 treatment or procedures, a "minor" shall be defined as any person under eighteen

28 years of age and an "adult" shall be defined as any person eighteen years of age
29 or older.

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

34 [4.] 3. A consent by one person so authorized and empowered shall be
35 sufficient notwithstanding that there are other persons so authorized and
36 empowered or that such other persons shall refuse or decline to consent or shall
37 protest against the proposed surgical, medical or other treatment or procedures.

38 [5.] 4. Any person acting in good faith and not having been put on notice
39 to the contrary shall be justified in relying on the representations of any person
40 purporting to give such consent, including, but not limited to, his identity, his
41 age, his marital status, and his relationship to any other person for whom the
42 consent is purportedly given.

✓
Bill

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