

SENATE BILL NO. 49

INTRODUCED BY J. ESP

BY REQUEST OF THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GRANTING TO A RELATIVE WHO IS A CARETAKER BUT NOT A PARENT OF A CHILD THE POWER TO ENROLL THE CHILD IN SCHOOL, DISCUSS CERTAIN SCHOOL-RELATED MATTERS, AND CONSENT TO SCHOOL-RELATED MEDICAL CARE UNDER CERTAIN CONDITIONS; PROVIDING FOR A CARETAKER RELATIVE EDUCATIONAL AUTHORIZATION AFFIDAVIT; PROVIDING FOR GOVERNMENTAL IMMUNITY; AMENDING SECTIONS 1-1-215, 20-5-321, 20-5-412, AND 20-5-420, AND 72-5-103; MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

~~WHEREAS, THE LEGISLATURE RECOGNIZES THAT THE RIGHTS OF PARENTS TO THE CUSTODY AND CONTROL OF A CHILD ARE BASED UPON LIBERTIES SECURED BY THE UNITED STATES AND MONTANA CONSTITUTIONS AND THAT A PARENT'S RIGHTS TO THAT CUSTODY AND CONTROL OF A CHILD ARE THEREFORE NORMALLY SUPREME TO THE INTERESTS OF OTHER PERSONS; AND~~

~~WHEREAS, THE LEGISLATURE ALSO RECOGNIZES A GROWING PHENOMENON IN WHICH ABSENT OR OTHERWISE UNAVAILABLE PARENTS HAVE TEMPORARILY SURRENDERED THE CUSTODY AND CARE OF THEIR CHILDREN TO A GRANDPARENT OR OTHER RELATIVE FOR LENGTHY PERIODS OF TIME; AND~~

~~WHEREAS, REGARDLESS OF THE PURPOSE OF THE ABSENCE, A CHILD WILLFULLY SURRENDERED TO A RELATIVE FOR AN EXTENDED TIME PERIOD STILL HAS THE SAME NEEDS AS A CHILD IN THE CARE OF ITS PARENTS; AND~~

~~WHEREAS, IN THIS SITUATION, A CARETAKER RELATIVE ASSUMES RESPONSIBILITIES FOR THE CHILD BUT HAS NO LEGAL RIGHT OF CONTROL OVER THE CHILD, A SITUATION THAT INTERFERES IN THE CARETAKER RELATIVE'S ABILITY TO PERFORM ROUTINE FUNCTIONS OF CHILD REARING, INCLUDING TENDING TO THE EDUCATIONAL AND EDUCATIONALLY RELATED MEDICAL NEEDS OF THE CHILD; AND~~

~~WHEREAS, IT IS THE PURPOSE OF THE LEGISLATURE IN THESE INSTANCES TO PROTECT THE RIGHTS OF A CHILD GRANTED BY ARTICLE II, SECTION 15, OF THE MONTANA CONSTITUTION BY GRANTING A CARETAKER RELATIVE LIMITED AUTHORITY FOR A CHILD LEFT IN THE RELATIVE'S CARE; AND~~

~~WHEREAS, IT IS THE INTENT OF THE LEGISLATURE THAT A CARETAKER RELATIVE GIVEN THE RESPONSIBILITY OF CARING FOR A CHILD WITH LITTLE OR NO WARNING AND WITHOUT ANY OTHER PROVISION HAVING BEEN MADE FOR THE CHILD'S CARE, SUCH AS THE APPOINTMENT OF A GUARDIAN OR THE PROVISION OF A POWER OF ATTORNEY, BE GRANTED~~



1 ~~AUTHORITY TO ENROLL THE CHILD IN SCHOOL, DISCUSS WITH THE SCHOOL DISTRICT THE CHILD'S EDUCATIONAL PROGRESS,~~
 2 ~~AND CONSENT TO AN EDUCATIONAL SERVICE AND TO MEDICAL CARE FOR THE CHILD RELATED TO AN EDUCATIONAL SERVICE~~
 3 ~~WITHOUT SUPERSEDING ANY PARENTAL RIGHTS REGARDING THE CHILD; AND~~

4 ~~WHEREAS, [SECTIONS 1 AND 2] ARE NOT INTENDED TO AFFECT THE RIGHTS AND RESPONSIBILITIES OF A~~
 5 ~~PARENT, LEGAL GUARDIAN, OR OTHER CUSTODIAN REGARDING THE CHILD, DO NOT GRANT LEGAL CUSTODY OF THE CHILD~~
 6 ~~TO THE CARETAKER RELATIVE, AND DO NOT GRANT AUTHORITY TO THE CARETAKER RELATIVE TO CONSENT TO THE~~
 7 ~~MARRIAGE OR ADOPTION OF THE CHILD OR TO RECEIVE NOTICE OF A MEDICAL PROCEDURE, INCLUDING ABORTION, NOT~~
 8 ~~CONSENTED TO BY THE RELATIVE, IF NOTICE IS REQUIRED BY LAW, FOR THE CHILD EXCEPT AS EXPRESSLY PROVIDED IN~~
 9 ~~[SECTIONS 1 AND 2].~~

10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12

13 ~~NEW SECTION. Section 1. Purpose -- legislative intent -- parental rights -- definitions.~~ (1) The
 14 legislature recognizes that the rights of parents to the custody and control of a child are based upon liberties
 15 secured by the United States and Montana constitutions and that a parent's rights to that custody and control of
 16 a child are therefore normally supreme to the interests of other persons. The legislature also recognizes a
 17 growing phenomenon in which absent or otherwise unavailable parents have temporarily surrendered the custody
 18 and care of their children to a grandparent or other relative for lengthy periods of time. Regardless of the purpose
 19 of the absence, a child willfully surrendered to a relative for an extended time period still has the same needs as
 20 a child in the care of its parents. In this situation, a caretaker relative assumes responsibilities for the child but
 21 has no legal right of control over the child, a situation that interferes in the caretaker relative's ability to perform
 22 routine functions of child rearing, including tending to the educational and educationally related medical needs
 23 of the child. It is therefore the purpose of the legislature in these instances to protect the rights of a child granted
 24 by Article II, section 15, of the Montana constitution by granting a caretaker relative limited authority for a child
 25 left in the relative's care.

26 ~~(2) It is the intent of the legislature that a caretaker relative given the responsibility of caring for a child~~
 27 ~~with little or no warning and without any other provision having been made for the child's care, such as the~~
 28 ~~appointment of a guardian or the provision of a power of attorney, be granted authority to enroll the child in~~
 29 ~~school, discuss with the school district the child's educational progress, and consent to an educational service~~
 30 ~~and to medical care for the child related to an educational service without superseding any parental rights~~

1 regarding the child.

2 ~~———— (3) [Sections 2 and 3] and this section are not intended to affect the rights and responsibilities of a~~
3 ~~parent, legal guardian, or other custodian regarding the child, do not grant legal custody of the child to the~~
4 ~~caretaker relative, and do not grant authority to the caretaker relative to consent to the marriage or adoption of~~
5 ~~the child or to receive notice of a medical procedure, including abortion, not consented to by the relative, if notice~~
6 ~~is required by law, for the child except as expressly provided in this section.~~

7 ~~———— (4) For the purposes of [sections 2 and 3] and this section, the following definitions apply:~~

8 ~~———— (a) "Caretaker relative" or "relative" means an individual related by blood, marriage, or adoption by~~
9 ~~another individual to the child whose care is undertaken by the relative, but who is not a parent, foster parent,~~
10 ~~stepparent, or legal guardian of the child.~~

11 ~~———— (b) "Caretaker relative educational authorization affidavit" or "affidavit" means an affidavit completed in~~
12 ~~compliance with [section 3].~~

13 ~~———— (c) "Health care provider" means a person who provides medical care.~~

14 ~~———— (d) "Medical care" means care, by a health care provider for which parental consent is normally required,~~
15 ~~for the prevention, diagnosis, or treatment of a mental, physical, or dental injury or disease that is needed to~~
16 ~~prevent serious bodily harm or death to the child.~~

17 ~~———— (e) "Parent" means a biological or adoptive parent or other legal guardian of the child.~~

18

19 **NEW SECTION. SECTION 1. PURPOSE -- LEGISLATIVE INTENT -- PARENTAL RIGHTS -- DEFINITIONS. (1) THE**
20 **LEGISLATURE RECOGNIZES THAT THE RIGHTS OF PARENTS TO THE CUSTODY AND CONTROL OF A CHILD ARE BASED UPON**
21 **LIBERTIES SECURED BY THE UNITED STATES AND MONTANA CONSTITUTIONS AND THAT A PARENT'S RIGHTS TO THAT**
22 **CUSTODY AND CONTROL OF A CHILD ARE THEREFORE NORMALLY SUPREME TO THE INTERESTS OF OTHER PERSONS. THE**
23 **LEGISLATURE ALSO RECOGNIZES A GROWING PHENOMENON IN WHICH ABSENT OR OTHERWISE UNAVAILABLE PARENTS**
24 **HAVE TEMPORARILY SURRENDERED THE CUSTODY AND CARE OF THEIR CHILDREN TO A GRANDPARENT OR OTHER RELATIVE**
25 **FOR LENGTHY PERIODS OF TIME. REGARDLESS OF THE PURPOSE OF THE ABSENCE, A CHILD WILLFULLY SURRENDERED**
26 **TO A RELATIVE FOR AN EXTENDED TIME PERIOD STILL HAS THE SAME NEEDS AS A CHILD IN THE CARE OF ITS PARENTS. IN**
27 **THIS SITUATION, A CARETAKER RELATIVE ASSUMES RESPONSIBILITIES FOR THE CHILD BUT HAS NO LEGAL RIGHT OF**
28 **CONTROL OVER THE CHILD, A SITUATION THAT INTERFERES IN THE CARETAKER RELATIVE'S ABILITY TO PERFORM ROUTINE**
29 **FUNCTIONS OF CHILD REARING, INCLUDING TENDING TO THE EDUCATIONAL AND EDUCATIONALLY RELATED MEDICAL NEEDS**
30 **OF THE CHILD. IT IS THEREFORE THE PURPOSE OF THE LEGISLATURE IN THESE INSTANCES TO PROTECT THE RIGHTS OF**

1 A CHILD GRANTED BY ARTICLE II, SECTION 15, OF THE MONTANA CONSTITUTION BY GRANTING A CARETAKER RELATIVE
 2 LIMITED AUTHORITY FOR A CHILD LEFT IN THE RELATIVE'S CARE.

3 (2) IT IS THE INTENT OF THE LEGISLATURE THAT A CARETAKER RELATIVE GIVEN THE RESPONSIBILITY OF CARING
 4 FOR A CHILD WITH LITTLE OR NO WARNING AND WITHOUT ANY OTHER PROVISION HAVING BEEN MADE FOR THE CHILD'S
 5 CARE, SUCH AS THE APPOINTMENT OF A GUARDIAN OR THE PROVISION OF A POWER OF ATTORNEY, BE GRANTED
 6 AUTHORITY TO ENROLL THE CHILD IN SCHOOL, DISCUSS WITH THE SCHOOL DISTRICT THE CHILD'S EDUCATIONAL PROGRESS,
 7 AND CONSENT TO AN EDUCATIONAL SERVICE AND TO MEDICAL CARE FOR THE CHILD RELATED TO AN EDUCATIONAL SERVICE
 8 WITHOUT SUPERSEDING ANY PARENTAL RIGHTS REGARDING THE CHILD.

9 (3) [SECTIONS 2 AND 3] AND THIS SECTION ARE NOT INTENDED TO AFFECT THE RIGHTS AND RESPONSIBILITIES
 10 OF A PARENT, LEGAL GUARDIAN, OR OTHER CUSTODIAN REGARDING THE CHILD, DO NOT GRANT LEGAL CUSTODY OF THE
 11 CHILD TO THE CARETAKER RELATIVE, AND DO NOT GRANT AUTHORITY TO THE CARETAKER RELATIVE TO CONSENT TO THE
 12 MARRIAGE OR ADOPTION OF THE CHILD OR TO RECEIVE NOTICE OF A MEDICAL PROCEDURE, INCLUDING ABORTION, NOT
 13 CONSENTED TO BY THE RELATIVE, IF NOTICE IS REQUIRED BY LAW, FOR THE CHILD EXCEPT AS EXPRESSLY PROVIDED IN
 14 THIS SECTION.

15 (4) FOR THE PURPOSES OF [SECTIONS 2 AND 3] AND THIS SECTION, THE FOLLOWING DEFINITIONS APPLY:

16 (A) "CARETAKER RELATIVE" OR "RELATIVE" MEANS AN INDIVIDUAL RELATED BY BLOOD, MARRIAGE, OR ADOPTION
 17 BY ANOTHER INDIVIDUAL TO THE CHILD WHOSE CARE IS UNDERTAKEN BY THE RELATIVE, BUT WHO IS NOT A PARENT,
 18 FOSTER PARENT, STEPPARENT, OR LEGAL GUARDIAN OF THE CHILD.

19 (B) "CARETAKER RELATIVE EDUCATIONAL AUTHORIZATION AFFIDAVIT" OR "AFFIDAVIT" MEANS AN AFFIDAVIT
 20 COMPLETED IN COMPLIANCE WITH [SECTION 3].

21 (C) "HEALTH CARE PROVIDER" MEANS A PERSON WHO PROVIDES MEDICAL CARE.

22 (D) "MEDICAL CARE" MEANS CARE, BY A HEALTH CARE PROVIDER FOR WHICH PARENTAL CONSENT IS NORMALLY
 23 REQUIRED, FOR THE PREVENTION, DIAGNOSIS, OR TREATMENT OF A MENTAL, PHYSICAL, OR DENTAL INJURY OR DISEASE.

24 (E) "PARENT" MEANS A BIOLOGICAL PARENT, ADOPTIVE PARENT, OR OTHER LEGAL GUARDIAN OF THE CHILD
 25 WHOSE PARENTAL RIGHTS HAVE NOT BEEN TERMINATED.

26

27 NEW SECTION. Section 2. Enrollment by caretaker relative -- residency -- affidavit. (1) A caretaker
 28 relative of a child who has voluntarily been given custody of the child by a parent of the child may, IN ACCORDANCE
 29 WITH THIS SECTION, enroll the child in school, using the rules of residence provided in 1-1-215, if:

30 (a) in leaving the child with the caretaker relative, the parent expressed no definite time period in which

1 the parent would return for the child;

2 (b) the child is residing with the caretaker relative on a full-time basis;

3 (c) the caretaker relative is unable to contact EITHER OF the parent PARENTS following the voluntary
4 leaving of the child with the relative or the parent ~~refuses~~ OR PARENTS WHOM THE RELATIVE IS ABLE TO CONTACT
5 REFUSE to regain custody of the child after a written OR ORAL request by the relative to do so;

6 (d) no adequate provision, such as the appointment of a guardian ad litem or execution of a power of
7 attorney, has otherwise been made for the educational needs of the child; and

8 (e) a caretaker relative educational authorization affidavit is completed in compliance with [section 3 ~~2~~
9 3].

10 (2) A CARETAKER RELATIVE OF A CHILD WHO HAS VOLUNTARILY BEEN GIVEN CUSTODY OF THE CHILD BY A PARENT
11 OF THE CHILD MAY NOT ENROLL THE CHILD IN SCHOOL, WITHOUT THE SCHOOL'S PERMISSION, IF:

12 ~~—— (A) UNLESS THE CHILD'S RESIDENCY WITH THE CARETAKER RELATIVE IS PRIMARILY FOR THE PURPOSE OF:~~

13 ~~(i)(A) ATTENDING A PARTICULAR SCHOOL; OR~~

14 ~~(ii)(B) PARTICIPATING IN ATHLETICS AT A PARTICULAR SCHOOL; OR~~

15 ~~—— (iii) TAKING ADVANTAGE OF SPECIAL SERVICES OR PROGRAMS OFFERED AT A PARTICULAR SCHOOL; OR~~

16 ~~—— (B) THE CHILD IS CURRENTLY SUBJECT TO AN EXPULSION OR SUSPENSION AT THE CHILD'S PREVIOUS SCHOOL.~~

17 (3) IF THE CHILD WAS SUBJECT TO FORMAL DISCIPLINARY ACTION, INCLUDING SUSPENSION OR EXPULSION, AT
18 THE CHILD'S PREVIOUS SCHOOL, THE SCHOOL IN WHICH THE CHILD IS TO BE ENROLLED MAY REQUIRE THE CHILD TO
19 COMPLY WITH A BEHAVIOR CONTRACT AS A CONDITION OF ENROLLMENT.

20 ~~(2)(3)(4)~~ (4) The school district may require additional reasonable evidence that the caretaker relative lives
21 at the address provided in the affidavit.

22 (4) FOR THE PURPOSES OF [SECTION 2] AND THIS SECTION, THE FOLLOWING DEFINITIONS APPLY:

23 ~~—— (A) "CARETAKER RELATIVE" OR "RELATIVE" MEANS AN INDIVIDUAL RELATED BY BLOOD, MARRIAGE, OR ADOPTION~~
24 ~~BY ANOTHER INDIVIDUAL TO THE CHILD WHOSE CARE IS UNDERTAKEN BY THE RELATIVE, BUT WHO IS NOT A PARENT,~~
25 ~~FOSTER PARENT, STEPPARENT, OR LEGAL GUARDIAN OF THE CHILD.~~

26 ~~—— (B) "CARETAKER RELATIVE EDUCATIONAL AUTHORIZATION AFFIDAVIT" OR "AFFIDAVIT" MEANS AN AFFIDAVIT~~
27 ~~COMPLETED IN COMPLIANCE WITH [SECTION 2].~~

28 ~~—— (C) "HEALTH CARE PROVIDER" MEANS A PERSON WHO PROVIDES MEDICAL CARE.~~

29 ~~—— (D) "MEDICAL CARE" MEANS CARE, BY A HEALTH CARE PROVIDER FOR WHICH PARENTAL CONSENT IS NORMALLY~~
30 ~~REQUIRED, FOR THE PREVENTION, DIAGNOSIS, OR TREATMENT OF A MENTAL, PHYSICAL, OR DENTAL INJURY OR DISEASE~~

1 ~~WHEN CARE IS NEEDED TO PREVENT SERIOUS BODILY HARM OR DEATH TO THE CHILD.~~

2 ~~———— (E) "PARENT" MEANS A BIOLOGICAL OR ADOPTIVE PARENT OR OTHER LEGAL GUARDIAN OF THE CHILD.~~

3

4 NEW SECTION. **Section 3. Caretaker relative educational authorization affidavit -- use -- immunity**

5 **-- format.** (1) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the
6 child has the same authority as a custodial parent of the child to discuss with an educator the educational
7 progress of the child, consent to an educational service, and consent to medical care related to an educational
8 service for the child for which parental consent is usually required if a caretaker relative educational authorization
9 affidavit is completed in compliance with this section.

10 (2) An affidavit is effective only if it is signed by the caretaker relative, under oath, before a notary public.
11 A clear photographic copy of an affidavit completed in compliance with this section is sufficient in any instance
12 in which an original is required by a school official or health care provider.

13 (3) Unless parental rights have been judicially terminated or unless the ability to give legal consent for
14 the child to receive an educational service and any medical care related to the educational service for which
15 parental consent is usually required has been granted to the caretaker relative pursuant to 40-4-211 and
16 40-4-228, a decision by a parent of the child communicated to a school official, a health care provider, or both,
17 regarding the child supersedes a conflicting decision by a caretaker relative made pursuant to an affidavit
18 completed in compliance with this section. However, a decision by a parent does not supersede a decision by
19 a relative pursuant to an affidavit completed in compliance with this section if the decision by the parent
20 endangers the life of the child. A school official or health care provider may require reasonable proof of
21 authenticity of a decision by a parent intended to supersede a decision by a caretaker relative.

22 (4) (a) A [public or] private entity or individual who acts in good faith reliance on a caretaker relative
23 educational authorization affidavit completed in compliance with this section who has no actual knowledge of facts
24 contrary to those indicated in the affidavit is not subject to civil liability or criminal prosecution or to a professional
25 disciplinary procedure for an action that would have been proper if the facts had been as the entity or individual
26 believed them to be.

27 (b) This subsection (4) applies even if an educational service or educationally related medical care, or
28 both, are provided to a child against the wishes of a parent of that child if the person rendering the service does
29 not have actual knowledge of the parent's wishes.

30 (5) A person who relies on an affidavit completed in compliance with this section has no obligation to

1 make further inquiry or investigation.

2 (6) An affidavit completed in compliance with this section is effective for the earlier of:

3 (a) ~~6 months~~ THE END OF THE FIRST SCHOOL YEAR AFTER DELIVERY OF THE AFFIDAVIT TO A SCHOOL DISTRICT;

4 (b) until it has been revoked by the caretaker relative; or

5 (c) until the child no longer resides with the caretaker relative.

6 (7) If the child ceases to live with the caretaker relative or the caretaker relative revokes the affidavit,
7 the caretaker relative shall provide written notice of that fact to all persons to whom the caretaker relative has
8 given the affidavit or to whom the caretaker relative has caused the affidavit to be given.

9 (8) This section does not relieve a person from a violation of other law, and this section does not affect
10 the rights of a child's parent except as provided in this section.

11 ~~(9) A caretaker relative completing an affidavit in compliance with this section shall send a copy of the~~
12 ~~affidavit to the local and state offices of the department of public health and human services. The department shall~~
13 ~~treat the affidavit as an allegation of abandonment of the child.~~

14 ~~(10)~~(9) A caretaker relative educational authorization affidavit is invalid unless it is written in substantially
15 the following form and contains the warning provided for in paragraph 5 of the format below:

16 CARETAKER RELATIVE'S

17 EDUCATIONAL AUTHORIZATION AFFIDAVIT

18 Use of this affidavit is authorized by [this section].

19 1. INSTRUCTIONS: The completion and signing of the affidavit before a notary public are sufficient to
20 authorize educational enrollment and services and school-related medical care for the named child. Please print
21 clearly.

22 The child named below lives in my home, and I am 18 years of age or older.

23 a. Name of child:

24 b. Child's date of birth:

25 c. My name (caretaker relative):

26 d. My home address:

27 e. My relationship to the child (the caretaker relative must be an individual related by blood, marriage,
28 or adoption by another individual to the child whose care is undertaken by the caretaker relative, but who is not
29 a parent, foster parent, stepparent, or legal guardian of the child):

30 2. I hereby certify that this affidavit is not being used for the purpose of circumventing school residency

1 laws, to take advantage of a particular academic program or athletic activity, TO CIRCUMVENT A DISCIPLINARY ACTION
2 OF A PREVIOUS SCHOOL, or for an otherwise unlawful purpose.

3 3. My date and year of birth:

4 4. Check the following if true (all must be checked for this affidavit to apply):

5 A parent of the child identified in paragraph 1a of this affidavit has left the child with me and has expressed
6 no definite time period when the parent will return for the child.

7 The child is now residing with me on a full-time basis.

8 I am unable to locate or contact the ~~parent~~ PARENTS of the child at this time to notify ~~that parent~~ THE PARENTS
9 of my intended authorization, or the ~~parent refuses~~ PARENTS REFUSE to regain custody of the child even though
10 I have asked in writing that the ~~parent~~ PARENTS do so.

11 No adequate provision, such as appointment of a guardian ad litem or execution of a power of attorney, has
12 been made for enrollment of the child in school, other educational services, or educationally related medical
13 services.

14 5. WARNING: DO NOT SIGN THIS FORM IF ANY OF THE STATEMENTS ABOVE ARE INCORRECT,
15 OR YOU WILL BE COMMITTING A CRIME PUNISHABLE BY A FINE, IMPRISONMENT, OR BOTH.

16 6. I declare under penalty of false swearing under the laws of Montana that the foregoing is true and
17 correct.

18 Signed this __ day of _____, 20__.

19 _____

20 (Signature of caretaker relative)

21 _____

22 (Signature, county, state, and seal of notary public)

23 7. NOTICES:

24 a. Completion of this affidavit does not affect the rights of the child's ~~parent~~ PARENTS or legal guardian
25 regarding the care, custody, and control of the child and does not mean that the caretaker relative has legal
26 custody of the child.

27 b. A person who relies on this affidavit has no obligation to make any further inquiry or investigation.

28 c. This affidavit is not valid for more than 6 months after the date on which it is signed by the caretaker
29 relative.

30 8. ADDITIONAL INFORMATION:



1 a. TO CARETAKER RELATIVES:

2 If the child stops living with you, you shall notify anyone to whom you have given this affidavit, as well as anyone
3 who received the affidavit from someone else.

4 b. TO [PUBLIC AND] PRIVATE SCHOOL OFFICIALS AND [PUBLIC AND] PRIVATE HEALTH CARE
5 PROVIDERS:

6 (1). A [public or] private school official [or a public school district official] may require additional
7 reasonable evidence that the caretaker relative lives at the address provided in item 1d of the affidavit form.

8 (2). A [public or] private entity or individual who acts in good faith reliance upon a caretaker relative
9 educational authorization affidavit to enroll a child in school or to provide educational services or educationally
10 related medical care, or both, without actual knowledge of facts contrary to those indicated in the affidavit, is not
11 subject to criminal prosecution or civil liability to any person, or subject to any professional disciplinary action, for
12 reliance on an affidavit completed in compliance with [this section].

13

14 **Section 4.** Section 1-1-215, MCA, is amended to read:

15 **"1-1-215. Residence -- rules for determining.** Every person has, in law, a residence. In determining
16 the place of residence, the following rules are to be observed:

17 (1) It is the place where a person remains when not called elsewhere for labor or other special or
18 temporary purpose and to which the person returns in seasons of repose.

19 (2) There may ~~only~~ be only one residence. If a person claims a residence within Montana for any
20 purpose, then that location is the person's residence for all purposes unless there is a specific statutory exception.

21 (3) A residence cannot be lost until another is gained.

22 (4) The residence of ~~a minor's parents or, if one of them is deceased or they do not share the same~~
23 ~~residence, the residence of the parent having legal custody or, if neither parent has legal custody, the residence~~
24 ~~of the parent with whom the minor customarily resides is the residence of the~~ an unmarried minor. ~~In is:~~

25 (a) the residence of a minor's parents;

26 (b) if one of the parents is ~~diseased~~ DECEASED or the parents do not share the same residence, the
27 residence of the parent having legal custody;

28 (c) if neither parent has legal custody, the residence of the parent with whom the minor customarily
29 resides; or

30 (d) if the conditions in [section 2 + 2] are met, the LAST-KNOWN residence of a caretaker relative, as

1 ~~defined in [section 1]~~ THE PARENT WITH WHOM THE MINOR NORMALLY RESIDED IMMEDIATELY PRIOR TO RESIDING WITH
 2 THE CARETAKER RELATIVE.

3 (5) In the case of a controversy, the district court may declare which parental residence is the residence
 4 of an unmarried minor.

5 ~~(5)(6)~~ The Except as provided in [sections 1 through 3 AND 2 THROUGH 3], the residence of an unmarried
 6 minor who has a parent living cannot be changed by either the minor's own act or that of the minor's guardian.

7 ~~(6)(7)~~ The residence can be changed only by the union of act and intent."
 8

9 **SECTION 5. SECTION 20-5-321, MCA, IS AMENDED TO READ:**

10 **"20-5-321. Attendance with mandatory approval -- tuition and transportation.** (1) An out-of-district
 11 attendance agreement that allows a child to enroll in and attend a school in a Montana school district that is
 12 outside of the child's district of residence or in a public school district of a state or province that is adjacent to the
 13 county of the child's residence is mandatory whenever:

14 (a) the child resides closer to the school that the child wishes to attend and more than 3 miles from the
 15 school the child would attend in the resident district and the resident district does not provide transportation; or

16 (b) (i) the child resides in a location where, because of geographic conditions between the child's home
 17 and the school that the child would attend within the district of residence, it is impractical to attend school in the
 18 district of residence, as determined by the county transportation committee based on the following criteria:

19 (A) the length of time that is in excess of the 1-hour limit for each bus trip for an elementary child as
 20 authorized under 20-10-121;

21 (B) whether distance traveled is greater than 40 miles one way from the child's home to school on a dirt
 22 road or greater than a total of 60 miles one way from the child's home to school in the district of residence over
 23 the shortest passable route; or

24 (C) whether the condition of the road or existence of a geographic barrier, such as a river or mountain
 25 pass, causes a hazard that prohibits safe travel between the home and school.

26 (ii) The decision of the county transportation committee is subject to appeal to the superintendent of
 27 public instruction, as provided in 20-3-107, but the decision must be considered as final for the purpose of the
 28 payment of tuition under 20-5-324(5)(a)(ii) until a decision is issued by the superintendent of public instruction.
 29 The superintendent of public instruction may review and rule upon a decision of the county transportation
 30 committee without an appeal being filed.

1 (c) the child is a member of a family that is required to send another child outside of the elementary
2 district to attend high school and the child of elementary age may more conveniently attend an elementary school
3 where the high school is located, provided that the child resides more than 3 miles from an elementary school
4 in the resident district or that the parent is required to move to the elementary district where the high school is
5 located to enroll another child in high school. A child enrolled in an elementary school pursuant to this subsection
6 (1)(c) may continue to attend the elementary school after the other child has left the high school.

7 (d) the child is under the protective care of a state agency or has been adjudicated to be a youth in need
8 of intervention or a delinquent youth, as defined in 41-5-103; ~~or~~

9 (e) the child is required to attend school outside of the district of residence as the result of a placement
10 in foster care or a group home licensed by the state; or

11 (f) the child is residing with a caretaker relative who wants to enroll the child pursuant to [section 2].

12 (2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have a child
13 attend a school under the provisions of this section, the parent or guardian, agency, or court shall complete an
14 out-of-district attendance agreement in consultation with an appropriate official of the district that the child will
15 attend.

16 (b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for tuition
17 and transportation as provided in 20-5-323 and Title 20, chapter 10.

18 (c) (i) The trustees of the district of choice may waive any or all of the tuition rate. The trustees of the
19 district of choice may waive the tuition for all students whose tuition is required to be paid by one type of entity
20 and may charge tuition for all students whose tuition is required to be paid by another type of entity. However,
21 any waiver of tuition must be applied equally to all students whose tuition is paid by the same type of entity.

22 (ii) As used in this subsection (2)(c), "entity" means a parent, a guardian, the trustees of the district of
23 residence, or a state agency.

24 (3) Except as provided in subsection (4), the trustees of the resident district and the trustees of the
25 district of attendance shall approve the out-of-district attendance agreement. The trustees of the district of
26 attendance shall:

27 (a) notify the county superintendent of schools of the county of the child's residence of the approval of
28 the agreement within 10 days; and

29 (b) submit the agreement for a student attending under the provisions of subsection (1)(d) or (1)(e) to
30 the superintendent of public instruction for approval for payment under 20-5-324.

1 (4) Unless the child is a child with a disability who resides in the district, the trustees of the district where
 2 the school to be attended is located may disapprove an out-of-district attendance agreement whenever they find
 3 that, because of insufficient room and overcrowding, the accreditation of the school would be adversely affected
 4 by the acceptance of the child."

5

6 **Section 6.** Section 20-5-412, MCA, is amended to read:

7 **"20-5-412. Definition -- parent-designated adult -- administration of glucagon -- training.** (1) As
 8 used in 20-5-413 and this section, "parent-designated adult" means a school district employee, selected by a
 9 parent, an individual who has executed a caretaker relative educational authorization affidavit pursuant to [section
 10 3 2 3], or a guardian of a diabetic student, who voluntarily agrees to administer glucagon to the student.

11 (2) A parent, an individual who has executed a caretaker relative educational authorization affidavit
 12 pursuant to [section 3 2 3], or a guardian of a diabetic student may designate an adult to administer glucagon to
 13 the student as provided in subsection (3). Written proof of the designation by a parent, an individual who has
 14 executed a caretaker relative educational authorization affidavit pursuant to [section 3 2 3], or a guardian and
 15 acceptance of the designation by the parent-designated adult must be filed with the school district.

16 (3) A parent-designated adult may administer glucagon to a diabetic student in an emergency situation.
 17 The glucagon must be provided by the parent, an individual who has executed a caretaker relative educational
 18 authorization affidavit pursuant to [section 3 2 3], or a guardian of the student.

19 (4) A parent-designated adult must be trained in recognizing hypoglycemia and the proper method of
 20 administering glucagon. Training must be provided by a health care professional, as defined in 33-36-103, or a
 21 recognized expert in diabetic care selected by the parent, an individual who has executed a caretaker relative
 22 educational authorization affidavit pursuant to [section 3 2 3], or a guardian. Written documentation of the training
 23 received by the parent-designated adult must be filed with the school district."

24

25 **Section 7.** Section 20-5-420, MCA, is amended to read:

26 **"20-5-420. Self-administration of asthma medication.** (1) As used in this section, the following
 27 definitions apply:

28 (a) "Anaphylaxis" means a systemic allergic reaction that can be fatal in a short time period and is also
 29 known as anaphylactic shock.

30 (b) "Asthma" means a chronic disorder or condition of the lungs that requires lifetime, ongoing, medical

1 intervention.

2 (c) "Medication" means a medicine, including inhaled bronchodilators, inhaled corticosteroids, and
3 autoinjectable epinephrine, prescribed by a licensed physician as defined in 37-3-102, a physician assistant who
4 has been authorized to prescribe asthma medications as provided in 37-20-404, or an advanced practice
5 registered nurse with prescriptive authority as provided in 37-8-202(5).

6 (d) "Self-administration" means a pupil's discretionary use of the asthma medication prescribed for the
7 pupil.

8 (2) A school, whether public or nonpublic, shall permit the self-administration of medication by a pupil
9 with asthma if the parents or guardians of the pupil provide to the school:

10 (a) written authorization, acknowledging and agreeing to the liability provisions in subsection (4), for the
11 self-administration of medication;

12 (b) a written statement from the pupil's physician, physician assistant, or advanced practice registered
13 nurse containing the following information:

14 (i) the name and purpose of the medication;

15 (ii) the prescribed dosage; and

16 (iii) the time or times at which or the special circumstances under which the medication is to be
17 administered;

18 (c) documentation that the pupil has demonstrated to the health care practitioner and the school nurse,
19 if available, the skill level necessary to administer the medication as prescribed; and

20 (d) documentation that the pupil's physician, physician assistant, or advanced practice registered nurse
21 has formulated a written treatment plan for managing asthma or anaphylaxis episodes of the pupil and for
22 medication use by the pupil during school hours.

23 (3) The information provided by the parents or guardians must be kept on file in the office of the school
24 nurse or, in the absence of a school nurse, the school's administrator.

25 (4) The school district or nonpublic school and its employees and agents are not liable as a result of any
26 injury arising from the self-administration of medication by the pupil unless an act or omission is the result of gross
27 negligence, willful and wanton conduct, or an intentional tort. The parents or guardians of the pupil must be given
28 a written notice and sign a statement acknowledging that the school district or nonpublic school may not incur
29 liability as a result of any injury arising from the self-administration of medication by the pupil and that the parents
30 or guardians shall indemnify and hold harmless the school district or nonpublic school and its employees and

1 agents against any claims, except a claim based on an act or omission that is the result of gross negligence,
2 willful and wanton conduct, or an intentional tort.

3 (5) The permission for self-administration of medication is effective for the school year for which it is
4 granted and must be renewed each subsequent school year or, if the medication dosage, frequency of
5 administration, or other conditions change, upon fulfillment of the requirements of this section.

6 (6) If the requirements of this section are fulfilled, a pupil with asthma may possess and use the pupil's
7 medication:

8 (a) while in school;

9 (b) while at a school-sponsored activity;

10 (c) while under the supervision of school personnel;

11 (d) before or after normal school activities, such as while in before-school or after-school care on
12 school-operated property; or

13 (e) while in transit to or from school or school-sponsored activities.

14 (7) If provided by the parent, an individual who has executed a caretaker relative educational
15 authorization affidavit pursuant to [section 3 2 3], or a guardian and in accordance with documents provided by
16 the pupil's physician, physician assistant, or advanced practice registered nurse, backup medication must be kept
17 at a pupil's school in a predetermined location or locations to which the pupil has access in the event of an
18 asthma or anaphylaxis emergency.

19 (8) Youth correctional facilities are exempt from this section and shall adopt policies related to access
20 and use of asthma medications."

21

22 ~~Section 6. Section 72-5-103, MCA, is amended to read:~~

23 ~~"72-5-103. Delegation of powers by parent or guardian. (1) (a) A Subject to subsection (1)(b), a~~
24 ~~parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate~~
25 ~~to another person, for a period not exceeding 6 months, any powers regarding care, custody, or property of the~~
26 ~~minor child or ward, including the power to consent to an educational service or to enroll a child in school, in~~
27 ~~which case the residence of the person to whom the power is granted is, with the consent of that person,~~
28 ~~considered to be the residence of the child.;~~

29 ~~(b) except A power of attorney may not delegate the power to consent to marriage or adoption of a minor~~
30 ~~ward.~~

- 1 ~~_____ (2) The 6-month limitation provided in subsection (1)(a) does not apply to:~~
2 ~~_____ (a) a member of the Montana national guard who serves for more than 180 continuous days on duty~~
3 ~~pursuant to Title 10 or 32 of the United States Code or on state active duty pursuant to Article VI, section 13, of~~
4 ~~the Montana constitution;~~
5 ~~_____ (b) a member of the active duty military forces of the United States; or~~
6 ~~_____ (c) a member of the federal reserves who serves for more than 180 continuous days on duty pursuant~~
7 ~~to Title 10 of the United States Code.~~
8 ~~_____ (3) As used in this section, "federal reserves" means the United States air force reserve, army reserve,~~
9 ~~navy reserve, marine corps reserve, or coast guard reserve."~~

10
11 NEW SECTION. Section 8. Codification instruction. [Sections 1 through 3 ~~AND 2 THROUGH 3~~] are
12 intended to be codified as an integral part of Title 20, chapter 5, and the provisions of Title 20, chapter 5, apply
13 to [sections 1 through 3 ~~AND 2 THROUGH 3~~].
14

15 NEW SECTION. Section 9. Two-thirds vote required -- contingent voidness. Because [section
16 ~~3(4)(a) 2(4)(A) 3(4)(A)~~] limits governmental liability, Article II, section 18, of the Montana constitution requires a
17 vote of two-thirds of the members of each house of the legislature for passage. If [this act] is not approved by
18 at least two-thirds of the members of each house of the legislature, then the bracketed language in [section
19 ~~3(4)(a) 2(4)(A) 3(4)(A)~~] and the bracketed language in the notice to school officials and health care providers in
20 part 8b of [section ~~3(10) 2(9) 3(9)~~] is void.
21

22 NEW SECTION. SECTION 10. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE JULY 1, 2007.
23

24 NEW SECTION. Section 11. Applicability. [This act] applies to a caretaker relative to whom a minor
25 is given by a parent, ~~all as defined in [section 1], after October~~ ON OR AFTER JULY 1, 2007, for care by the relative.
26

- END -