

CHAPTER NO. 71

SENATE BILL NO. 526

By Trail, Burks

Substituted for: House Bill No. 573

By Fowlkes, Bunch, DuBois, Coleman, Fitzhugh, Yokley

AN ACT to amend Tennessee Code Annotated, Title 34, Chapter 6; Section 37-1-140 and Section 49-6-3001, relative to the care and education of minor children.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 34, Chapter 6, is amended by adding the following language as a new, appropriately designated part:

§ 34-6-301. This part shall be known and may be cited as the "Power of Attorney for Care of a Minor Child Act".

§ 34-6-302. A parent or parents of a minor child may delegate to any adult person residing in this state temporary care-giving authority regarding the minor child when hardship prevents the parent or parents from caring for the child. This authority may be delegated without the approval of a court by executing in writing a power of attorney for care of a minor child on a form provided by the Department of Children's Services. Hardships may include but are not limited to:

(1) The serious illness or incarceration of a parent or legal guardian;

(2) The physical or mental condition of the parent or legal guardian or the child is such that care and supervision of the child cannot be provided; or

(3) The loss or uninhabitability of the child's home as the result of a natural disaster.

The power of attorney for care of the minor child shall be signed and acknowledged before a notary public by the parent. For purposes of this part the term "parent" includes a legal guardian or legal custodian of the minor child.

§ 34-6-303. The instrument providing for the power of attorney shall be executed by both parents, if both parents are living and have legal custody of the minor child and shall state with specificity the details of the hardship preventing the parent from caring for the child. If only one (1) parent has legal custody of the minor child, then such parent shall execute the instrument. The other parent must consent in writing to the appointment in the instrument or the executing parent shall explain in the instrument why the consent cannot be obtained. If both parents do not execute the affidavit, then the executing parent shall send by certified mail, return receipt requested, to the other parent at the last known address, a copy of the instrument and a notice of the provisions of § 34-6-305.

§ 34-6-304. (a) Through the power of attorney for care of a minor child, the parent may authorize the caregiver to perform the following functions without limitation: enroll the child in school and extracurricular activities; obtain medical, dental and mental health treatment for the child; and provide for the child's food, lodging, housing, recreation and travel. Nothing contained in this section shall be construed to limit the power of the parent to grant additional powers to the caregiver.

(b) The caregiver shall have the right to enroll the minor child in the local education agency serving the area where the caregiver resides. The local education agency shall allow a caregiver with a properly executed power of attorney for care of a minor child to enroll the minor child but, prior to enrollment, may require documentation of the minor child's residence with a caregiver or documentation or other verification of the validity of the stated hardship. Except where limited by federal law, the caregiver shall be assigned the rights, duties and responsibilities that would otherwise be assigned to the parent, legal guardian or legal custodian pursuant to Title 49.

(c) Further, any adult accepting the power of attorney, as well as the parent, guardian, or other legal custodian, who enrolls a student in a school system while fraudulently representing the child's current residence or the parent's hardship or circumstances for issuing the power of attorney, is liable for restitution to the school district for an amount equal to the per pupil expenditure for the district in which the student is fraudulently enrolled. Restitution shall be cumulative for each year the child has been fraudulently enrolled in the system. Such restitution shall be payable to the school district and, when litigation is necessary to recover the restitution, the power of attorney, parent, guardian or other legal custodian shall be liable for the costs and fees, including attorney's fees, of the school district. Such an action for restitution shall be brought by or on behalf of the district in the circuit or chancery court in which the district is located within one (1) year of the date the fraudulent misrepresentation was discovered.

§ 34-6-305. The power of attorney does not provide legal custody to the caregiver; provided, if at any time the parent or legal guardian disagrees with the decision of the caregiver or chooses to make any healthcare or educational decisions for the minor child, the parent must revoke the power of attorney and provide the health care provider and local education agency either written documentation of the revocation or a court order appointing a legal guardian or legal custodian.

§ 34-6-306. The power of attorney for care of a minor child may be terminated by an instrument in writing signed by either parent with legal custody. The power of attorney for care of a minor child may also be terminated by any order of a court of competent jurisdiction that appoints a legal guardian or legal custodian.

§ 34-6-307. The decision of a caregiver to consent to or to refuse medical, dental or mental health care for a minor child shall be superseded by any contravening decision of the parent having legal custody of the minor child; provided, the decision of the parent does not jeopardize the life, health, or safety of the minor child. If at any time the parent or legal guardian disagrees with the decision of the caregiver or chooses to make any healthcare decisions for the minor child, then the parent must revoke the

power of attorney for care of a minor child and provide the health care provider written documentation of the revocation.

§ 34-6-308. No person, school official or health care provider who acts in good faith reliance on a power of attorney for care of a minor child to enroll the child in school or to provide medical, dental or mental health care, without actual knowledge of facts contrary to those authorized, is subject to criminal liability or to civil liability to any person, or is subject to professional disciplinary action, for such reliance. This section shall apply even if medical, dental, or mental health care is provided to a minor child or the child is enrolled in a school in contravention of the wishes of the parent with legal custody of the minor child, as long as the person, school official or health care provider has been provided a copy of an appropriately executed power of attorney for care of a minor child, and has not been provided written documentation that the parent has revoked the power of attorney for care of a minor child.

§ 34-6-309. If the minor child ceases to reside with the caregiver, then the caregiver shall notify any person, school or health care provider that has been provided the power of attorney for care of a minor child.

§ 34-6-310. A person who relies on the power of attorney for care of a minor child has no obligation to make any further inquiry or investigation. Nothing in this part shall relieve any individual from liability for violations of other provisions of law.

SECTION 2. Tennessee Code Annotated, Section 37-1-140, is amended by designating the current language as subsection (a), and by adding the following new subsection:

(b) As an alternative to a parent or guardian transferring legal custody pursuant to this section or as otherwise provided by law, a parent or guardian may temporarily provide for the care of a child by executing a power of attorney for care of minor child, pursuant to Title 34, Chapter 6, Part 3.

SECTION 3. Tennessee Code Annotated, Section 49-6-3001(c), is amended by adding the following language as a new, appropriately designated subdivision:

(6) Notwithstanding any other law to the contrary, a person designated as a caregiver with the power of attorney for care of a minor child pursuant to Title 34, Chapter 6, Part 3, shall have the right to enroll the minor child in the local education agency serving the area where the caregiver resides. The local education agency shall allow a caregiver with a properly executed power of attorney for care of a minor child, pursuant to Title 34, Chapter 6, Part 3, to enroll the minor child, but may require documentation of the minor child's residence with a caregiver and/or documentation or other verification of the validity of the stated hardship prior to enrollment. If the minor child ceases to reside with the caregiver, then the caregiver shall notify any person, school or health care provider that has been provided documentation of the power of attorney for care of a minor child. Except where limited by federal law, the caregiver shall be assigned the rights, duties and responsibilities that would otherwise be assigned to the parent, legal guardian or legal custodian pursuant to Title 49. If at any time the parent or legal guardian disagrees with the decision of the caregiver or chooses to make any educational decisions for the minor child, then the parent must revoke the power of attorney and provide the local education agency written documentation of the revocation.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: April 17, 2003


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 5th day of May 2003


PHIL BREDESEN, GOVERNOR