

ACT 208

S.B. NO. 40

A Bill for an Act Relating to Caregiver Consent.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 577, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§577- **Affidavit of caregiver consent for minor’s health care.** (a) Except for children placed under the custody of the department of human services, pursuant to proceedings under chapter 587, a caregiver who possesses and presents a notarized affidavit of caregiver consent for a minor’s health care under subsection (b) may consent on behalf of a minor to primary and preventive medical and dental care and diagnostic testing, and other medically necessary health care and treatment. Examination and treatment shall be prescribed by or under the supervision of a physician, advanced practice nurse, dentist, or mental health professional licensed to practice in the State.

(b) An affidavit of caregiver consent for a minor’s health care shall include the following:

- (1) The caregiver’s name and current home address;
- (2) The caregiver’s birthdate;
- (3) The number of the caregiver’s Hawaii driver’s license or state identification card;
- (4) The relationship of the caregiver to the minor;
- (5) The minor’s name;
- (6) The minor’s birthdate;
- (7) The length of time the minor has resided with the caregiver;
- (8) The caregiver’s signature under oath affirming the truth of the matter asserted in the affidavit;
- (9) The signature of the minor’s parent, guardian, or legal custodian consenting to the caregiver’s authority over the minor’s health care; provided that the signature of the minor’s parent, guardian, or legal custodian shall not be necessary if the affidavit states that the caregiver has been unable to obtain the signature of the minor’s parent, guardian, or legal custodian, and includes a statement by the caregiver documenting the attempts to obtain the signature of the minor’s parent, guardian, or legal custodian; and
- (10) A statement, as follows:

“General Notices:

This declaration does not affect the rights of the minor’s parent, guardian, or legal custodian regarding the care, custody, and control of the minor, other than with respect to health care, and does not give the caregiver legal custody of the minor.

The minor’s parent or legal custodian may at any time rescind this affidavit of caregiver consent for a minor’s health care by providing written notification of the rescission to the appropriate health care professional.

A person who relies in good faith on this affidavit of caregiver consent for a minor’s health care has no obligation to conduct any further inquiry or investigation and shall not be subject to civil or criminal liability or to professional disciplinary action because of that reliance.”

(c) The affidavit of caregiver consent for a minor's health care shall be superseded by written notification from the minor's parent, guardian, or legal custodian to the health care professionals providing services to the minor that the affidavit has been rescinded.

(d) Any person who relies in good faith on the affidavit of caregiver consent for a minor's health care shall:

- (1) Have no obligation to conduct any further inquiry or investigation; and
- (2) Not be subject to civil or criminal liability or to professional disciplinary action because of such reliance.

(e) The consent authorized by this section shall not be applicable for purposes of the Individuals with Disabilities Education Act (20 U.S.C. section 1400 et seq.) or section 504 of the Rehabilitation Act of 1973 (29 U.S.C. section 791).

(f) The caregiver consent for a minor's health care is a separate document and shall serve a purpose distinct from the affidavit for caregiver consent under section 302A-482.

(g) As used in this section, "caregiver" means any person who is at least eighteen years of age and:

- (1) Is related by blood, marriage, or adoption to the minor, including a person who is entitled to an award of custody pursuant to section 571-46(2), but who is not the legal custodian or guardian of the minor;
or
- (2) Has resided with the minor continuously during the immediately preceding period of six months or more."

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved July 8, 2005.)

Note

1. Edited pursuant to HRS §23G-16.5.