A bill for an act

relating to children; authorizing relative caretaker consent to certain matters affecting a child; providing a relative caretaker consent authorization form; proposing coding for new law in Minnesota Statutes, chapter 257C.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[257C.09] RELATIVE CARETAKER CONSENT AUTHORIZATION.**

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "Qualified relative" means an adult related to the child by blood or marriage including a grandfather, grandmother, step-grandparent, brother, sister, half-brother, half-sister, stepbrother, stepsister, uncle, aunt, first cousin or first cousin once removed, nephew, niece, person of preceding generation as denoted by prefixes of "great," "great-great," or "great-great-great," or a spouse of any person named in the above groups even after the marriage ends by death or divorce.

(c) "School-related medical care" means medical care required by the state or a local unit of government as a condition of school enrollment.

Subd. 2. **Authorization; conditions.** A relative caretaker of a child who has voluntarily been given custody of the child by a parent or legal custodian of the child has the same authority as a custodial parent of the child to exercise care, physical custody, and control of the child including authority to enroll the child in school, to discuss with the school district the child's educational progress, to consent to all school-related matters regarding the child, and to consent to medical, dental, and psychological treatment for the child if:

(1) the child is residing with the relative caregiver on a full-time basis;

(2) the relative caregiver is unable to contact the parent following the voluntary leaving of the child with the relative or the parent refuses to regain custody of the child after a written request by the relative to do so;

(3) no adequate provision, such as the appointment of a guardian ad litem or execution of a delegation of power, has otherwise been made for the care of the child; and

(4) a relative caregiver authorization affidavit is completed in compliance with this section.

Subd. 3. **Rights of parent or guardian; custody.** This declaration does not affect the rights of the child's parents or legal guardian regarding the care, custody, and control of the child, and does not mean that the caregiver has legal custody of the child.

Subd. 4. **Contravening decision by parent or custodian.** The decision of a relative caregiver to consent to or refuse medical, dental, or psychological health care or educational services for a child is superceded by any contravening decision of a parent or a person having legal custody of the child, if the decision of the parent or legal custodian does not jeopardize the life, health, safety, or welfare of the child.

Subd. 5. **Notice of negation, reversal, or disapproval.** A parent, guardian, or custodian may negate, reverse, or disapprove a caregiver's action or decision only by delivering written notice of negation, reversal, or disapproval to the caregiver and the person responding to the caregiver's action or decision in reliance on the authorization affidavit. The act to negate, reverse, or disapprove the action or decision, regardless of whether it is effective, terminates the authorization affidavit.

Subd. 6. **Termination of authority.** An executed relative caregiver authorization affidavit becomes invalid on the occurrence of one of the following:

(1) one year following the date the affidavit is notarized;

(2) the child ceases to reside with the relative;

(3) the parent, guardian, or custodian of the child who is the subject of the affidavit acts, in accordance with this section, to negate, reverse, or otherwise disapprove an action or decision of the relative who signed the affidavit with respect to the child;

(4) the affidavit is terminated by court order;

(5) the death of the child who is the subject of the affidavit; or

(6) the death of the relative who executed the affidavit.

Subd. 7. **Notice of termination.** When the relative caregiver authorization affidavit terminates pursuant to any of the conditions in subdivision 6, the relative shall notify, in writing, the school district in which the child attends school, the child's health care providers, and any other person or entity that has such an ongoing relationship with the child or relative that the person or entity would reasonably rely on the affidavit unless

notified of its termination. The relative shall make the notification not later than one week after the date the affidavit terminates.

Subd. 8. **Good faith reliance.** (a) A person who acts in good faith reliance on a properly executed relative caregiver's authorization affidavit and who has no actual knowledge of facts contrary to those stated in the affidavit, is not subject to criminal prosecution, civil liability, or professional disciplinary action for any action which would have been proper if the facts had been as the person believed them to be. This subdivision applies even if medical or educational services are rendered to a child in contravention of the wishes of the parent or legal custodian of that child. However, the person rendering the services must not have actual knowledge of the wishes of the parent or legal custodian.

(b) This subdivision does not provide immunity from civil liability, criminal prosecution, or professional disciplinary action to any person for actions that are wanton, reckless, or inconsistent with the ordinary standard of care required by anyone acting in the same capacity as the person.

(c) A person who relies upon a relative caregiver's authorization affidavit is under no duty to make further inquiry or investigation.

Subd. 9. **Limits on consent authorization.** (a) Nothing in this section grants authority for HIV/AIDS testing, controlled substance testing, or any other testing for which separate court order or informed consent as provided by law is required.

(b) Nothing in this section grants authority to the relative caregiver to consent to the marriage or adoption of the child.

Subd. 10. **Notarization; validity of copy.** A relative caregiver consent authorization affidavit is effective only if the caregiver relative signs it under oath before a notary public. A clear photographic copy of the affidavit complete in compliance with this section is sufficient in any instance in which an educational or health care provider requires an original.

Subd. 11. **Warning required.** A relative caregiver consent authorization affidavit is invalid unless it contains, in not less than ten-point boldface type, the following warning statement: "WARNING: Do not sign this form if any of the statements above are incorrect, or you will be committing a crime punishable by a fine, imprisonment, or both."

Subd. 12. **Form.** A relative caregiver consent authorization affidavit must be in substantially the following form.

Completion, signing, and notarization of this affidavit is sufficient to authorize the relative signing to exercise care, physical custody, and control of the child who is its subject, including authority to enroll the child in school, to discuss with the school district

the child's educational progress, to consent to all school-related matters regarding the child, and to consent to medical, dental, or psychological treatment for the child.

CARETAKER AUTHORIZATION AFFIDAVIT

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

1. Name of child:
2. Child's date and year of birth:
3. Child's Social Security number: (optional)
4. My name:
5. My home address:
6. ____ I am a qualified relative of the child (see below for a definition of "qualified relative").
7. My date and year of birth:
8. My Minnesota driver's license number or identification card number:
9. To my knowledge, the mother, _____ (name) has custody of the child.
   To my knowledge, the father, _____ (name) has custody of the child.
10. Check the following if true (all must be checked for this affidavit to apply):
    ____ the child is now residing with me on a full-time basis.
    ____ I am unable to locate or contact the mother of the child at this time to notify that parent of my intended authorization.
    ____ I am unable to locate or contact the father of the child at this time to notify that parent of my intended authorization.
    ____ No adequate provision, such as appointment of a guardian ad litem or delegation of power, has been made for the care of the child.

WARNING: Do not sign this form if any of the statements above are incorrect, or you will be committing a crime punishable by a fine, imprisonment, or both.

I declare under penalty of perjury under the laws of the State of Minnesota that the foregoing is true and correct.

Dated: _____ Signed: _____

_____

(Signature and seal of notary public)

NOTICES:

1. This declaration does not affect the rights of the minor's parents or legal guardian regarding the care, custody, and control of the minor, and does not mean that the caregiver has legal custody of the minor.

2. This affidavit is executed when it is completed, signed by a relative, and notarized by a Minnesota notary public.

3. No person who acts in good faith reliance on a properly executed relative caregiver's authorization affidavit, having no actual knowledge of facts contrary to those stated in the affidavit, shall be subject to criminal prosecution or civil liability,

or to professional disciplinary action, for any action which would have been proper if the facts had been as he/she believed them to be. This paragraph shall apply even if medical or educational services are rendered to a child in contravention of the wishes of the parent or legal custodian of that child. However, the person rendering the services must not have actual knowledge of the wishes of the parent or legal custodian.

4. This does not provide immunity from civil liability or criminal prosecution, or to professional disciplinary action to any person for actions that are wanton, reckless, or inconsistent with the ordinary standard of care required by anyone acting in the same capacity as the person.

5. A person who relies upon a relative caregiver's authorization affidavit is under no duty to make further inquiry or investigation.

6. An executed relative caregiver authorization affidavit shall terminate on the occurrence of whichever of the following comes first:

A. one year elapses following the date the affidavit is notarized;

B. the child ceased to reside with the relative;

C. the parent, guardian, or custodian of the child who is the subject of the affidavit acts, in accordance with Minnesota Statutes, section ....., to negate, reverse, or otherwise disapprove an action or decision of the relative who signed the affidavit with respect to the child;

D. the affidavit is terminated by court order;

E. the death of the child who is the subject of the affidavit; or

F. the death of the relative who executed the affidavit.

7. The decision of a relative caregiver to consent to or refuse medical, dental, or psychological health care or educational services for a child shall be superceded by any contravening decision of a parent or a person having legal custody of the child, provided the decision of the legal custodian does not jeopardize the life, health, safety, or welfare of the child. A parent, guardian, or custodian may negate, reverse, or disapprove a caregiver's action or decision only by delivering written notice of negation, reversal, or disapproval to the caregiver and the person responding to the caregiver's action or decision in reliance on the authorization affidavit. The act to negate, reverse, or disapprove the action or decision, regardless of whether it is effective, terminates the authorization affidavit.

TO CAREGIVERS:

1. "Qualified relative" means an adult related to the child by blood or marriage including a grandfather, grandmother, step-grandparent, brother, sister, half-brother,

half-sister, stepbrother, stepsister, uncle, aunt, first cousin or first cousin once removed, nephew, niece, person of preceding generation as denoted by prefixes of "great," "great-great," or "great-great-great," or a spouse of any person named in the above groups even after the marriage ends by death or divorce.

2. When the relative caregiver authorization affidavit terminates pursuant to any of the above conditions, the relative shall notify, in writing, the school district in which the child attends school, the child's health care providers, and any other person or entity that has an ongoing relationship with the child or relative such that the person or entity would reasonably rely on the affidavit unless notified of its termination. The relative shall make the notification not later than one week after the date the affidavit terminates.

TO SCHOOL OFFICIALS:

1. Subject to Minnesota Statutes, section 124D.03 (Enrollment Options Program), this affidavit, properly completed and notarized, authorizes the child to attend school in the district in which the relative who signed this affidavit resides and the relative is authorized to provide consent in all school-related matters and to discuss with the school district the child's educational progress.

2. This affidavit does not preclude the parent, guardian, or custodian of the child from having access to all school records pertinent to the child.

TO HEALTH CARE PROVIDERS:

1. No person who acts in good faith reliance on a properly executed relative caregiver's authorization affidavit, having no actual knowledge of facts contrary to those stated in the affidavit, shall be subject to criminal prosecution or civil liability, or to professional disciplinary action, for any action which would have been proper if the facts had been as he/she believed them to be. This paragraph shall apply even if medical services are rendered to a child in contravention of the wishes of the parent or legal custodian of that child. However, the person rendering the services must not have actual knowledge of the wishes of the parent or legal custodian.

2. This does not provide immunity from civil liability or criminal prosecution, or to professional disciplinary action to any person for actions that are wanton, reckless, or inconsistent with the ordinary standard of care required by anyone acting the same capacity as the person.

3. A person who relies upon a relative caregiver's authorization affidavit is under no duty to make further inquiry or investigation.

4. This affidavit does not confer dependency for health care coverage purposes for which the child was not already eligible.