

HOUSE BILL 1766

By Dean

AN ACT to amend Tennessee Code Annotated, Title 34,
Chapter 6, relative to certain care for a minor child.

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

SECTION 1. Tennessee Code Annotated, Section 34-6-302(b), is amended by deleting the subsection in its entirety and by substituting instead the following as a new subsection (b):

(b) The power of attorney for care of the minor child shall be signed by the parent or legal guardian and acknowledged before a notary public or two (2) witnesses who shall sign and date their signatures concurrently and in each other's presence.

SECTION 2. Tennessee Code Annotated, Title 34, Chapter 6, is amended by adding the following as a new part 4:

34-6-401.

(a) As used in this part:

(1) "Health care" means surgical, medical, or dental care, immunizations, and mental health care that is not prohibited by law and that is under the supervision of and suggested, recommended, prescribed, or directed by a physician, dentist, mental health professional, or other healthcare professional licensed to practice in this state; and

(2) "In loco parentis" means "in the place of a parent" and refers to the legal responsibility taken by a person or organization to assume some of the functions and responsibilities of a parent or legal guardian.

36-4-402

(a)

(1) Informed consent for health care for an unemancipated minor child may be obtained from persons with authority to consent, including the appointed guardian or legal custodian, or the individual to whom the minor's custodial parent or legal guardian has given a signed authorization to make health care decisions through a military power of attorney or a limited power of attorney for the care of such minor child.

(2)

(A) In the absence or unavailability of the individuals listed in subdivision (a)(1), the following persons may stand in loco parentis for purposes of making health care decisions for an unemancipated minor in order of priority:

(i) The noncustodial parent, if not under an order of protection related to the child;

(ii) A maternal grandparent;

(iii) A paternal grandparent; or

(iv) A competent adult.

(B) A person standing in loco parentis shall sign an in loco parentis affidavit under penalty of perjury stating that the person has taken responsibility for the health care of the minor child.

(b) The decision of a person standing in loco parentis to make health care decisions for an unemancipated minor shall be superseded by a prior or subsequent, timely given, contravening decision of the minor's custodial parent, legal custodian, or legal guardian; provided, that the minor's life, health, welfare, or safety is not jeopardized.

(c)

(1) The parent, legal guardian, or legal custodian may, but is not required to, convey in loco parentis standing to another adult if there is no order of any court in effect from any jurisdiction that would prohibit the parent, legal guardian, or legal custodian from exercising that power. In no circumstances may a person stand in loco parentis or make health care decisions for an unemancipated minor if there is an order by any court in effect from any jurisdiction that would prohibit the person from doing so, or in the circumstances described in § 33-3-111.

(2) A person standing in loco parentis may make health care decisions for a person who is an unemancipated minor to undergo or receive health care and immunizations which are not prohibited by law and which are under the supervision of and suggested, recommended, prescribed, or directed by a physician, dentist, mental health professional, or other healthcare professional licensed to practice in this state.

(3) A person standing in loco parentis may also exercise existing parental rights to obtain medical records.

(d) Notwithstanding any other provision of this section, a person standing in loco parentis may not consent on behalf of an unemancipated minor to:

(1) Withholding or withdrawing life sustaining procedures;

(2) Abortion;

(3) Sterilization;

(4) Psychosurgery;

(5) Admission to a state mental health facility for a period of more than forty-five (45) days without a mental health proceeding or other court order; or

(6) Any mental health treatment for a minor sixteen (16) years old or older, pursuant to § 33-8-202.

(e) In loco parentis standing:

(1) Does not affect the rights and responsibilities of an unemancipated minor's parents or legal guardian or legal custodian regarding the care, custody, and control of the minor;

(2) Does not affect the rights of an unemancipated minor to make health care decisions in accordance with existing law; and

(3) Does not grant legal custody of the minor or authority to consent to the marriage or adoption of the minor.

(f) Except for acts of willful misconduct or gross negligence, a person standing in loco parentis who makes health care decisions for an unemancipated minor shall not be liable for damages arising from providing consent to such health care.

(g) A physician, dentist, mental health professional, or other healthcare professional or provider licensed to practice or operate in this state, who has no actual knowledge of facts contrary to those stated on an authorization affidavit and who relies on a written instrument that is consistent with the requirements of subsection (a) and provides health care to an unemancipated minor shall not incur civil liability, criminal culpability, or professional disciplinary action for treating an unemancipated minor without legal consent if a reasonable healthcare professional or provider would have relied on the written instrument under the same or similar circumstances. Nothing in this section requires a physician, dentist, mental health professional, or other healthcare professional or

provider to rely on a written instrument or to accept health care decisions from a person standing in loco parentis.

(h) An authorization affidavit does not confer dependency for health care coverage insurance purposes.

SECTION 3. This act shall take effect on July 1, 2014, the public welfare requiring it.