

CHAPTER 69**(SB 176)**

AN ACT relating to caregivers.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 405.023 is amended to read as follows:

- (1) The Cabinet for Health and Family Services shall create a centralized statewide service program that provides information and referrals through a statewide toll-free telephone number to grandparents **and other caregivers** who are caring for **minors who are not their biological children**~~[minor grandchildren]~~.
- (2) The program shall provide information on a wide variety of services, including but not limited to:
 - (a) Kentucky Transitional Assistance Program;
 - (b) **Health care**~~[Medical coverage]~~ and services, including the Kentucky Children's Health Insurance Program;
 - (c) Educational services;
 - (d) Child care;
 - (e) Child support;
 - (f) Support groups;
 - (g) Housing assistance;
 - (h) Legal services; and
 - (i) Respite care for low-income kinship caregivers.
- (3) The cabinet may coordinate this program with the KyCARES Program.
- (4) This program shall be known as the KinCare Support Program.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 405 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

- (a) **"Cabinet" means the Cabinet for Health and Family Services;**
- (b) **"Caregiver" means an adult person with whom a minor resides, including a grandparent, step-grandparent, stepparent, aunt, uncle, or any other adult relative of the minor;**
- (c) **"De facto custodian" has the same meaning as defined in KRS 403.270;**
- (d) **"Department" means the Department of Education;**
- (e) **"Health care provider" means any licensed medical, surgical, dental, psychological, or osteopathic practitioner; nurse practitioner; occupational, physical, or speech therapist; hospital; public or private health clinic; or their agents or employees; and**
- (f) **"Health care treatment":**
 1. **Means any necessary medical and dental examination, diagnostic procedure, and treatment, including but not limited to hospitalization, developmental screening, mental health screening and treatment, preventive care, immunizations recommended by the federal Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices, well-child care, blood testing, and occupational, physical, and speech and language therapies; and**
 2. **Does not mean any procedure to terminate a pregnancy, pregnancy determination testing, HIV or AIDS testing, controlled substance testing, or any other testing for which a separate court order or informed consent is required under other applicable law.**

- (2) *The caregiver shall create an affidavit establishing the caregiver's ability to authorize health care treatment for a minor and to make school-related decisions for a minor. The affidavit shall include but not be limited to the following information:*
- (a) *The name and address of the caregiver;*
 - (b) *The caregiver's relationship to the minor to whom the affidavit applies;*
 - (c) *A statement that the caregiver is over the age of eighteen (18);*
 - (d) *The name and date of birth of the minor to whom the affidavit applies;*
 - (e) *A statement that the minor resides in the caregiver's home;*
 - (f) *A statement that the caregiver shall be allowed to authorize the provision of health care treatment to the minor, or to withhold such authorization;*
 - (g) *A statement that the caregiver shall be the person responsible for enrolling the minor in school and acting as the minor's legal contact with the school for the purposes of making decisions on enrollment, attendance, extracurricular activities, discipline, and all other school-related activities;*
 - (h) *A statement identifying the minor's parents, de facto custodian, guardian, or legal custodian and describing the caregiver's relationship to the parents, de facto custodian, guardian, or legal custodian;*
 - (i) *A statement that no other party has legal standing in custody issues for the minor other than those parties identified in paragraph (h) of this subsection;*
 - (j) *The dated signatures of the minor's parents, de facto custodian, guardian, or legal custodian indicating their approval of the caregiver's ability to authorize the provision of health care treatment to the minor and to make school-related decisions for the minor. If a parent or parents, de facto custodian, guardian, or legal custodian are unavailable to sign the affidavit, the affidavit shall include a statement describing the circumstances of their unavailability and a statement of the caregiver's reasonable efforts to locate them;*
 - (k) *The dated signature of the caregiver;*
 - (l) *A statement that acknowledges that a person making false statements in the affidavit shall be subject to criminal penalties;*
 - (m) *A statement that acknowledges that execution of the affidavit does not confer upon the caregiver the status of a de facto custodian, guardian, or legal custodian of the minor; and*
 - (n) *A statement that acknowledges the requirement for the caregiver to notify any health care provider or school to which the affidavit was presented if the minor ceases to reside with the caregiver or the affidavit is revoked by the minor's parent or parents, de facto custodian, guardian, legal custodian, or caregiver.*
- (3) *The health care authorization portion of the affidavit described in subsection (2) of this section shall be valid for one (1) year and may be renewed annually thereafter unless it is revoked by the minor's parent or parents, de facto custodian, guardian, legal custodian, or caregiver, or if the minor no longer resides with the caregiver. Execution or revocation of the health care authorization portion of the affidavit shall not operate as a complete execution or revocation of the entire affidavit.*
- (4) *The education authorization portion of the affidavit described in subsection (2) of this section shall be valid for one (1) year and may be renewed annually thereafter unless it is revoked by the minor's parent or parents, de facto custodian, guardian, legal custodian, or caregiver, or if the minor no longer resides with the caregiver. Execution or revocation of the education authorization portion of the affidavit shall not operate as a complete execution or revocation of the entire affidavit.*
- (5) *A caregiver may authorize the provision of health care treatment or may refuse the provision of health care treatment to a minor residing with the caregiver if the caregiver presents to a health care provider a duly executed affidavit as described in subsection (2) of this section.*
- (6) *The decision of a caregiver to authorize or refuse health care treatment for a minor shall be superseded by a decision of a parent, de facto custodian, guardian, or legal custodian of the minor.*

- (7) *A health care provider shall honor a caregiver's authorization to provide health care treatment to a minor, or the caregiver's decision to withhold such authorization, if the caregiver presents to the provider a duly executed affidavit described in subsection (2) of this section. A health care provider shall refuse to honor the caregiver's decision to seek or refuse health care treatment if the provider has actual knowledge that a parent, de facto custodian, legal custodian, or guardian has made a superseding decision to authorize or refuse health care treatment for the minor. The provisions of this subsection shall not be construed to prohibit a health care provider from providing health care treatment for a condition that, left untreated, could reasonably be expected to substantially threaten the health or life of the minor.*
- (8) *A person who relies in good faith on a duly executed affidavit as described in subsection (2) of this section in providing or refusing health care treatment shall:*
- (a) *Be under no obligation to undertake further investigation into the circumstances forming the basis of the caregiver's authorization to the provision or refusal of health care treatment; and*
 - (b) *Not be subject to criminal or civil liability or professional disciplinary action because of that reliance.*
- (9) *The provisions of this section shall not be construed to relieve any health care provider from liability for negligence in the provision of health care treatment.*
- (10) *An affidavit described in subsection (2) of this section may be revoked by the minor's parent, de facto custodian, guardian, legal custodian, or caregiver, and shall be revoked if the minor to whom it applies ceases to reside with the caregiver. If an affidavit is revoked, the caregiver shall give written notice of revocation to any health care provider to which the affidavit was presented for the purpose of obtaining health care for the minor.*
- (11) *A person who knowingly makes a false statement in an affidavit described in subsection (2) of this section shall be guilty of a Class A misdemeanor.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "caregiver" has the same meaning as provided in subsection (1) of Section 2 of this Act.*
- (2) (a) *A caregiver may be authorized to make school-related decisions for a minor residing in the caregiver's home, including but not limited to decisions concerning enrollment, attendance, extra-curricular activities, discipline, special education and related services, and other school-related activities, if the caregiver presents to the school a duly executed affidavit as described in subsection (2) of Section 2 of this Act.*
- (b) *A school shall honor a caregiver's authority to make school-related decisions for a minor residing in the caregiver's home if the caregiver presents the school with a duly executed affidavit as described in subsection (2) of Section 2 of this Act. The affidavit shall be valid in the school district in which the caregiver resides, but a school official charged with the responsibility of enrolling a minor shall not honor the affidavit if the official has reasonable grounds to believe that the affidavit is presented solely for the purpose of enrolling the minor in a school for the purpose of:*
1. *Access to athletics programs, or*
 2. *Circumventing the school assignment, attendance, or boundaries policies of the school district to gain access to curricula, services, or programs unique to a particular school and not offered at other schools the minor would be eligible to attend.*
- (3) *A school-related decision made by a caregiver under the affidavit described in subsection (2) of Section 2 of this Act shall be superseded by a decision of a parent, de facto custodian as defined in KRS 403.270, guardian, or legal custodian of the minor. A school official shall refuse to honor a caregiver's decision if he or she has actual knowledge that a parent, de facto custodian as defined in KRS 403.270, guardian, or legal custodian has made a school-related decision superseding the decision of a caregiver.*
- (4) *A person who relies in good faith on a duly executed affidavit as described in subsection (2) of Section 2 of this Act shall be under no obligation to undertake further investigation into the circumstances forming the basis of the caregiver's authority to make school-related decisions for the minor to whom the affidavit applies.*

- (5) *A person who relies in good faith on a duly executed affidavit as described in subsection (2) of Section 2 of this Act in honoring a school-related decision of a caregiver shall not be subject to criminal or civil liability because of that reliance.*
- (6) *An affidavit described in subsection (2) of Section 2 of this Act may be revoked by the minor's parent, de facto custodian, guardian, legal custodian, or caregiver, and shall be revoked if the minor to whom it applies ceases to reside with the caregiver. If an affidavit is revoked, the caregiver shall give written notice of revocation to any school to which the affidavit was presented for the purposes of enrolling the minor and establishing the caregiver's authority to make school-related decisions for the minor.*
- (7) *The provisions of this section shall not supersede the provisions of:*
 - (a) *The Individuals with Disabilities Education Act, 20 U.S.C. secs. 1400 et seq., and its accompanying regulations at 34 C.F.R. pts. 300 et seq.;*
 - (b) *Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. secs. 705(20) and 794 to 794b, and its accompanying regulations at 34 C.F.R. pts. 104 et seq.; and*
 - (c) *The Family Educational and Privacy Rights Act, 20 U.S.C. sec. 1232g, and its accompanying regulations at 34 C.F.R. pts. 99 et seq.*
- (8) *A person who knowingly makes a false statement in an affidavit described in subsection (2) of Section 2 of this Act shall be guilty of a Class A misdemeanor as required under subsection (11) of Section 2 of this Act.*

Signed by Governor April 9, 2014.