

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 955*

Short Title: Health Care Consent/Minor.

(Public)

Sponsors: Senators Marshall; Gulley, Daniel, and Ballance.

Referred to: Judiciary I.

April 22, 1993

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE A METHOD FOR PARENTS TO AUTHORIZE
CONSENT BY ANOTHER FOR HEALTH CARE FOR THE PARENTS' MINOR
CHILD.

The General Assembly of North Carolina enacts:

Section 1. Chapter 32A of the General Statutes is amended by adding the
following new Article to read:

"ARTICLE 4.

"CONSENT TO HEALTH CARE FOR MINOR.

"§ 32A-28. Purpose.

(a) The General Assembly recognizes as a matter of public policy the
fundamental right of a parent to delegate decisions relating to health care for the parent's
minor child where the parent is unavailable for a period of time by reason of travel or
otherwise.

(b) The purpose of this Article is to establish a nonexclusive method for a parent
to authorize in the parent's absence consent to health care for the parent's minor child.
This Article is not intended to be in derogation of the common law or of Article 1A of
Chapter 90 of the General Statutes.

"§ 32A-29. Definitions.

As used in this Article, unless the context clearly requires otherwise, the term:

(1) 'Agent' means the person authorized pursuant to this Article to consent
to and authorize health care for a minor child.

(2) 'Authorization to consent to health care for minor' means a written
instrument, signed by the custodial parent and acknowledged before a

1 notary public, pursuant to which the custodial parent authorizes an
2 agent to authorize and consent to health care for the minor child of the
3 custodial parent, and which substantially meets the requirements of
4 this Article.

5 (3) 'Custodial parent' means a parent having sole or joint legal custody of
6 that parent's minor child.

7 (4) 'Health care' means any care, treatment, service or procedure to
8 maintain, diagnose, treat, or provide for a minor child's physical or
9 mental or personal care and comfort, including life sustaining
10 procedures and dental care.

11 (5) 'Life sustaining procedures' are those forms of care or treatment which
12 only serve to artificially prolong the dying process and may include
13 mechanical ventilation, dialysis, antibiotics, artificial nutrition and
14 hydration, and other forms of treatment which sustain, restore, or
15 supplant vital bodily functions, but do not include care necessary to
16 provide comfort or to alleviate pain.

17 (6) 'Minor or minor child' means an individual who has not attained the
18 age of 18 years and who has not been emancipated.

19 **"§ 32A-30. Who may make an authorization to consent to health care for minor.**

20 Any custodial parent having understanding and capacity to make and communicate
21 health care decisions who is 18 years of age or older or who is emancipated may make
22 an authorization to consent to health care for the parent's minor child.

23 **"§ 32A-31. Extent and limitations of authority.**

24 (a) A custodial parent of a minor child, pursuant to an authorization to consent to
25 health care for minor, may grant an agent full power and authority to consent to and
26 authorize health care for the minor child to the same extent that a custodial parent could
27 give such consent and authorization.

28 (b) An authorization to consent to health care for minor may contain, and the
29 authority of the agent designated shall be subject to, any specific limitations or
30 restrictions as the custodial parent deems appropriate.

31 (c) A custodial parent may not, pursuant to an authorization to consent to health
32 care for minor, authorize an agent to consent to the withholding or withdrawal of life
33 sustaining procedures.

34 **"§ 32A-32. Duration of authorization; revocation.**

35 (a) An authorization to consent to health care for minor shall be automatically
36 revoked as follows:

37 (1) If the authorization to consent to health care for minor specifies a date
38 after which it shall not be effective, then the authorization shall be
39 automatically revoked upon such date.

40 (2) An authorization to consent to health care for minor shall be revoked
41 upon the minor child's attainment of the age of 18 years or upon the
42 minor child's emancipation.

1 (3) An authorization to consent to health care for minor executed by a
 2 custodial parent shall be revoked upon the termination of such
 3 custodial parent's rights to custody of the minor child.

4 (b) An authorization to consent to health care for minor may be revoked at any
 5 time by the custodial parent making such authorization. The custodial parent may
 6 exercise such right of revocation by executing and acknowledging an instrument of
 7 revocation, by executing and acknowledging a subsequent authorization to consent to
 8 health care for the minor, or in any other manner in which the custodial parent is able to
 9 communicate the parent's intent to revoke. Such revocation shall become effective only
 10 upon communication by the custodial parent to the agent named in the revoked
 11 authorization.

12 (c) In the event of a disagreement regarding the health care for a minor child
 13 between two or more agents authorized pursuant to this Article to consent to and
 14 authorize health care for a minor, or between any such agent and a parent of the minor,
 15 whether or not the parent is a custodial parent, then any authorization to consent to
 16 health care for minor designating any person as an agent shall be revoked during the
 17 period of such disagreement, and the provisions of health care for the minor during such
 18 period shall be governed by the common law, the provisions of Article 1A of Chapter
 19 90, and other provisions of law, as if no authorization to consent to health care for minor
 20 had been executed.

21 (d) An authorization to consent to health care for minor shall not be affected by
 22 the subsequent incapacity or mental incompetence of the custodial parent making such
 23 authorization.

24 **"§ 32A-33. Reliance on authorization to consent to health care for minor.**

25 (a) Any physician, dentist, or other health care provider involved in the health
 26 care of a minor child may rely upon the authority of the agent named in a signed and
 27 acknowledged authorization to consent to health care for minor in the absence of actual
 28 knowledge that the authorization has been revoked or is otherwise invalid.

29 (b) Any consent to health care for a minor child given by an agent pursuant to an
 30 authorization to consent to health care for minor shall have the same effect as if the
 31 custodial parent making the authorization were present and acting on behalf of the
 32 parent's minor child. Any physician, dentist, or other health care provider relying in
 33 good faith on the authority of an agent shall be protected to the full extent of the power
 34 conferred upon the agent, and no person so relying on the authority of the agent shall be
 35 liable, by reason of reliance, for actions taken pursuant to a consent of the agent.

36 **"§ 32A-34. Statutory form authorization to consent to health care for minor.**

37 The use of the following form in the creation of any authorization to consent to
 38 health care for minor is lawful and, when used, it shall meet the requirements and be
 39 construed in accordance with the provisions of this Article.

40 **'AUTHORIZATION TO CONSENT**
 41 **TO HEALTH CARE FOR MINOR.'**

42 I, _____, of _____ County, _____, am the custodial parent
 43 having legal custody of _____, a minor child, age _____, born _____, 19 ____. I
 44 authorize _____, an adult in whose care the minor child has been

1 entrusted, and who resides at _____, to do any acts which may be necessary or
2 proper to provide for the health care of the minor child, including, but not limited to, the
3 power (i) to provide for such health care at any hospital or other institution, or the
4 employing of any physician, dentist, nurse, or other person whose services may be
5 needed for such health care, and (ii) to consent to and authorize any health care,
6 including administration of anesthesia, X-ray examination, performance of operations,
7 and other procedures by physicians, dentists, and other medical personnel.

8
9 [Optional: This consent shall be effective from the date of execution to and
10 including _____, 19 ____].

11
12 By signing here, I indicate that I have the understanding and capacity to
13 communicate health care decisions and that I am fully informed as to the contents of
14 this document and understand the full import of this grant of powers to the agent named
15 herein.

16
17 (SEAL)

18 Custodial Parent

Date

19
20 STATE OF NORTH CAROLINA

21
22 COUNTY OF

23
24 On this _____ day of _____, 19 _____, personally appeared before me the
25 named _____, to me known and known to me to be the person described in and who
26 executed the foregoing instrument and he (or she) acknowledges that he (or she)
27 executed the same and being duly sworn by me, made oath that the statements in the
28 foregoing instrument are true.

29
30
31 Notary Public

32
33 My Commission Expires:

34
35 (OFFICIAL SEAL)."

36 Sec. 2. This act becomes effective January 1, 1994.