

REFERENCE TITLE: health care directives; contact orders

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

SB 1417

Introduced by
Senator Barto

AN ACT

AMENDING TITLE 36, CHAPTER 32, ARTICLE 1, ARIZONA REVISED STATUTES, BY
ADDING SECTION 36-3211; RELATING TO HEALTH CARE DIRECTIVES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 36, chapter 32, article 1, Arizona Revised
3 Statutes, is amended by adding section 36-3211, to read:

4 36-3211. Principals; significant relationships; contact
5 orders; definitions

6 A. AN AGENT WHO IS APPOINTED UNDER A HEALTH CARE DIRECTIVE SHALL
7 ENCOURAGE AND ALLOW CONTACT BETWEEN THE PRINCIPAL AND OTHER PERSONS WHO
8 HAVE A SIGNIFICANT RELATIONSHIP WITH THE PRINCIPAL.

9 B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, AN AGENT MAY
10 LIMIT, RESTRICT OR PROHIBIT CONTACT BETWEEN THE PRINCIPAL AND ANY PERSON
11 IF THE AGENT REASONABLY BELIEVES THAT THE CONTACT WILL BE DETRIMENTAL TO
12 THE PRINCIPAL'S HEALTH, SAFETY OR WELFARE.

13 C. IN EXERCISING THE AGENT'S POWERS PURSUANT TO SUBSECTIONS A AND B
14 OF THIS SECTION, THE AGENT SHALL CONSIDER THE WISHES OF THE PRINCIPAL IF
15 THE PRINCIPAL HAS SUFFICIENT MENTAL CAPACITY TO MAKE AN INTELLIGENT
16 CHOICE.

17 D. A PERSON WHO HAS A SIGNIFICANT RELATIONSHIP WITH THE PRINCIPAL
18 MAY PETITION THE COURT FOR AN ORDER COMPELLING THE AGENT TO ALLOW THE
19 PERSON TO HAVE CONTACT WITH THE PRINCIPAL. THE PETITION SHALL DESCRIBE THE
20 NATURE OF THE RELATIONSHIP BETWEEN THE PERSON AND THE PRINCIPAL AND THE
21 TYPE AND FREQUENCY OF CONTACT BEING REQUESTED. THE PERSON HAS THE BURDEN
22 OF PROVING THAT THE PERSON HAS A SIGNIFICANT RELATIONSHIP WITH THE
23 PRINCIPAL AND THAT THE REQUESTED CONTACT IS IN THE PRINCIPAL'S BEST
24 INTEREST.

25 E. A PRINCIPAL MAY PETITION THE COURT FOR AN ORDER COMPELLING THE
26 AGENT TO ALLOW THE PRINCIPAL TO HAVE CONTACT WITH A PERSON WHO HAS A
27 SIGNIFICANT RELATIONSHIP WITH THE PRINCIPAL. THE PETITION SHALL DESCRIBE
28 THE NATURE OF THE RELATIONSHIP BETWEEN THE PERSON AND THE PRINCIPAL AND
29 THE TYPE AND FREQUENCY OF CONTACT BEING REQUESTED. THE PRINCIPAL HAS THE
30 BURDEN OF PROVING THAT THE PERSON HAS A SIGNIFICANT RELATIONSHIP WITH THE
31 PRINCIPAL AND THAT THE REQUESTED CONTACT IS IN THE PRINCIPAL'S BEST
32 INTEREST.

33 F. IN DETERMINING WHAT, IF ANY, CONTACT BETWEEN A PERSON AND THE
34 PRINCIPAL IS IN THE PRINCIPAL'S BEST INTEREST, THE COURT SHALL CONSIDER
35 ALL FACTORS THAT ARE RELEVANT TO THE PRINCIPAL'S PHYSICAL AND EMOTIONAL
36 WELL-BEING, INCLUDING THE FOLLOWING:

37 1. THE PAST AND PRESENT RELATIONSHIP BETWEEN THE PRINCIPAL AND THE
38 PERSON WITH WHOM CONTACT IS REQUESTED.

39 2. IF THE PRINCIPAL HAS SUFFICIENT MENTAL CAPACITY TO MAKE AN
40 INTELLIGENT CHOICE, THE WISHES OF THE PRINCIPAL.

41 3. THE MENTAL AND PHYSICAL HEALTH OF THE PRINCIPAL AND THE PERSON
42 WITH WHOM CONTACT IS REQUESTED.

43 4. WHETHER THE PERSON WITH WHOM CONTACT IS REQUESTED HAS COMMITTED
44 ANY OF THE FOLLOWING:

45 (a) ACT INVOLVING DOMESTIC VIOLENCE AS DEFINED IN SECTION 13-3601.

1 (b) CHILD ABUSE.
2 (c) ABUSE, NEGLECT OR EXPLOITATION OF A VULNERABLE ADULT.
3 5. WHETHER THE PERSON WITH WHOM CONTACT IS REQUESTED HAS ABUSED
4 DRUGS OR ALCOHOL OR HAS BEEN CONVICTED OF ANY DRUG OFFENSE LISTED IN TITLE
5 13, CHAPTER 34 OR A VIOLATION OF TITLE 28, CHAPTER 4, ARTICLE 3.
6 6. WHETHER THE PERSON WITH WHOM CONTACT IS REQUESTED IS LISTED IN
7 THE ELDER ABUSE CENTRAL REGISTRY PURSUANT TO SECTION 46-457 OR IS REQUIRED
8 TO REGISTER PURSUANT TO SECTION 13-3821.
9 7. WHETHER THE PERSON WITH WHOM CONTACT IS REQUESTED HAS BEEN
10 CONVICTED OF A VIOLATION OF SECTION 13-2907.02 OR 13-2907.04.
11 G. ON THE FILING OF A PETITION UNDER SUBSECTION D OR E OF THIS
12 SECTION, THE COURT MAY:
13 1. APPOINT AN ATTORNEY FOR THE PRINCIPAL IF IT APPEARS THAT THIS IS
14 IN THE PRINCIPAL'S BEST INTERESTS.
15 2. APPOINT AN INVESTIGATOR AS PROVIDED UNDER SECTION 14-5308 OR A
16 PHYSICIAN, OR BOTH, TO EVALUATE THE PRINCIPAL AND SUBMIT A WRITTEN REPORT
17 TO THE COURT BEFORE THE HEARING.
18 3. ENTER ANY OTHER TEMPORARY ORDER THAT THE COURT DETERMINES IS
19 NECESSARY AND APPROPRIATE TO PROTECT THE WISHES OR BEST INTERESTS OF THE
20 PRINCIPAL, INCLUDING AN ORDER EXERCISING THE POWER OF A GUARDIAN OR
21 APPOINTING A TEMPORARY GUARDIAN AS PROVIDED UNDER SECTION 14-5310.
22 H. AN AGENT WHO IS APPOINTED UNDER A HEALTH CARE DIRECTIVE, A
23 COURT-APPOINTED FIDUCIARY FOR THE PRINCIPAL OR A PERSON WHO HAS A
24 SIGNIFICANT RELATIONSHIP WITH THE PRINCIPAL MAY PETITION THE COURT TO
25 MODIFY A CONTACT ORDER IF A MATERIAL CHANGE IN CIRCUMSTANCES AFFECTING THE
26 PRINCIPAL'S HEALTH, SAFETY OR WELFARE HAS OCCURRED SINCE THE LAST CONTACT
27 ORDER WAS MADE. THE PETITION SHALL BE SUPPORTED BY AN AFFIDAVIT ALLEGING
28 THE CHANGE OF CIRCUMSTANCES THAT HAS OCCURRED SINCE THE ENTRY OF THE LAST
29 CONTACT ORDER. THE COURT SHALL DENY THE PETITION UNLESS THE COURT FINDS
30 THAT THE PETITION ESTABLISHES GOOD CAUSE FOR A HEARING, IN WHICH CASE THE
31 COURT SHALL SET A HEARING ON THE PETITION. THE PETITION AND NOTICE OF THE
32 HEARING ON THE PETITION SHALL BE SERVED ON ALL PERSONS TO WHOM NOTICE IS
33 REQUIRED PURSUANT TO SECTION 14-5309 AND ON ANY COURT-APPOINTED FIDUCIARY
34 FOR THE PRINCIPAL.
35 I. AN AGENT WHO IS APPOINTED UNDER A HEALTH CARE DIRECTIVE, A
36 COURT-APPOINTED FIDUCIARY FOR THE PRINCIPAL OR A PERSON WHO HAS A
37 SIGNIFICANT RELATIONSHIP WITH THE PRINCIPAL MAY FILE A MOTION ASKING THE
38 COURT TO TEMPORARILY MODIFY OR SUSPEND A CONTACT ORDER IF A MATERIAL
39 CHANGE IN CIRCUMSTANCES AFFECTING THE PRINCIPAL'S HEALTH, SAFETY OR
40 WELFARE HAS OCCURRED SINCE THE LAST CONTACT ORDER WAS MADE. THE MOTION
41 SHALL BE SUPPORTED BY AN AFFIDAVIT ALLEGING THE CHANGE OF CIRCUMSTANCES
42 THAT HAS OCCURRED SINCE THE ENTRY OF THE LAST CONTACT ORDER. THE MOTION
43 SHALL BE FILED CONTEMPORANEOUSLY WITH OR AFTER THE FILING OF A PETITION TO
44 MODIFY THE PRIOR CONTACT ORDER. THE MOTION SHALL STATE WHETHER THE

1 PETITIONER REQUESTS THAT THE PRIOR CONTACT ORDER BE MODIFIED OR SUSPENDED
2 WITH OR WITHOUT NOTICE TO AFFECTED PERSONS.

3 J. THE COURT MAY TEMPORARILY MODIFY OR SUSPEND A CONTACT ORDER
4 WITHOUT NOTICE ONLY IF BOTH OF THE FOLLOWING APPLY:

5 1. IT CLEARLY APPEARS FROM SPECIFIC FACTS SHOWN IN THE MOTION OR
6 AFFIDAVIT THAT IMMEDIATE AND IRREPARABLE INJURY, LOSS OR DAMAGE LIKELY
7 WILL RESULT IF THE ORDER IS NOT ISSUED BEFORE THE AFFECTED PERSONS CAN BE
8 HEARD IN OPPOSITION.

9 2. THE MOVING PARTY OR THE MOVING PARTY'S ATTORNEY CERTIFIES TO THE
10 COURT IN WRITING THE EFFORTS, IF ANY, THAT THE MOVING PARTY OR THE MOVING
11 PARTY'S ATTORNEY HAS MADE TO GIVE THE NOTICE OR THE REASONS SUPPORTING THE
12 CLAIM THAT NOTICE SHOULD NOT BE REQUIRED.

13 K. IF THE COURT GRANTS A MOTION TO TEMPORARILY MODIFY OR SUSPEND A
14 CONTACT ORDER WITHOUT NOTICE, THE COURT SHALL SET A HEARING ON THE MOTION.

15 L. AN ORDER TEMPORARILY MODIFYING OR SUSPENDING A CONTACT ORDER
16 THAT IS GRANTED WITHOUT NOTICE SHALL STATE THE INJURY, LOSS OR DAMAGE THAT
17 WOULD LIKELY HAVE OCCURRED IF THE ORDER WERE NOT ISSUED BEFORE GIVING THE
18 AFFECTED PERSONS THE OPPORTUNITY TO BE HEARD IN OPPOSITION. THE TEMPORARY
19 ORDER EXPIRES AT THE DATE AND TIME SET FOR THE HEARING ON THE MOTION
20 UNLESS THE TEMPORARY ORDER IS EXTENDED BY THE COURT FOR GOOD CAUSE.

21 M. THE MOVING PARTY SHALL PERSONALLY SERVE A COPY OF THE ORDER AND
22 NOTICE OF THE HEARING ON THE PERSON WHOSE CONTACT WITH THE PRINCIPAL HAS
23 BEEN MODIFIED OR SUSPENDED. THE MOVING PARTY SHALL HAVE A COPY OF THE
24 ORDER SERVED ON ANY COURT-APPOINTED FIDUCIARY FOR THE PRINCIPAL AND ALL
25 PERSONS AFFECTED BY THE ORDER AS SOON AS PRACTICABLE AFTER ISSUANCE OF THE
26 ORDER IN THE MANNER PRESCRIBED IN SECTION 14-5309 OR AS OTHERWISE ORDERED
27 BY THE COURT.

28 N. ON NOTICE AND A HEARING, THE COURT MAY ENTER APPROPRIATE ORDERS
29 TO SAFEGUARD THE WISHES OF THE PRINCIPAL IF THOSE WISHES CAN BE REASONABLY
30 ASCERTAINED. IF THE COURT IS UNABLE TO DETERMINE THE WISHES OF THE
31 PRINCIPAL, THE COURT MAY ENTER APPROPRIATE ORDERS TO SAFEGUARD THE
32 PRINCIPAL'S BEST INTEREST. THESE ORDERS MAY APPOINT A TEMPORARY OR
33 PERMANENT GUARDIAN AND MAY ASSESS COURT COSTS, REASONABLE ATTORNEY FEES
34 AND THE COST OF ANY PROFESSIONALS APPOINTED TO EVALUATE THE PRINCIPAL
35 AGAINST A PARTY FOUND TO HAVE PROCEEDED IN BAD FAITH OR TO HAVE ACTED
36 UNREASONABLY.

37 O. FOR THE PURPOSES OF THIS SECTION:

38 1. "ABUSE" IN RELATION TO A VULNERABLE ADULT HAS THE SAME MEANING
39 PRESCRIBED IN SECTION 46-451.

40 2. "CHILD ABUSE" MEANS ABUSE AS DEFINED IN SECTION 8-201 OF AN
41 INDIVIDUAL WHO IS UNDER EIGHTEEN YEARS OF AGE.

42 3. "EXPLOITATION" HAS THE SAME MEANING PRESCRIBED IN SECTION
43 46-451.

44 4. "NEGLECT" HAS THE SAME MEANING PRESCRIBED IN SECTION 46-451.