

By: Watson

S.B. No. 1598

A BILL TO BE ENTITLED

AN ACT

relating to an agreement authorizing a nonparent relative of a child to make certain decisions regarding the child; providing a penalty.

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

SECTION 1. Subtitle A, Title 2, Family Code, is amended by adding Chapter 34 to read as follows:

CHAPTER 34. AUTHORIZATION AGREEMENT FOR NONPARENT RELATIVE

Sec. 34.001. APPLICABILITY. This chapter applies only to an authorization agreement between a parent of a child and a person who is the child's:

- (1) grandparent;
- (2) adult sibling; or
- (3) adult aunt or uncle.

Sec. 34.002. AUTHORIZATION AGREEMENT. (a) A parent or both parents of a child may enter into an authorization agreement with a relative of the child listed in Section 34.001 to authorize the relative to perform the following acts in regard to the child:

- (1) to authorize medical, dental, psychological, or surgical treatment and immunization of the child, including executing any consents or authorizations for the release of information as required by law relating to the treatment or immunization;
- (2) to obtain and maintain health insurance coverage

1 for the child and automobile insurance coverage for the child, if
2 appropriate;

3 (3) to enroll the child in a day-care program or
4 preschool or in a public or private primary or secondary school;

5 (4) to authorize the child to participate in
6 age-appropriate extracurricular, civic, social, or recreational
7 activities, including athletic activities;

8 (5) to authorize the child to obtain a learner's
9 permit, driver's license, or state-issued identification card;

10 (6) to authorize employment of the child; and

11 (7) to apply for and receive public benefits on behalf
12 of the child.

13 (b) To the extent of any conflict or inconsistency between
14 this chapter and any other law relating to the eligibility
15 requirements other than parental consent to obtain a service under
16 Subsection (a), the other law controls.

17 (c) An authorization agreement under this chapter does not
18 confer on a relative of the child listed in Section 34.001 the right
19 to authorize the performance of an abortion on the child or the
20 administration of emergency contraception to the child.

21 Sec. 34.003. CONTENTS OF AUTHORIZATION AGREEMENT. (a) The
22 authorization agreement must contain:

23 (1) the following information from the relative of the
24 child to whom the parent is giving authorization:

25 (A) the name and signature of the relative;

26 (B) the relative's relationship to the child; and

27 (C) the relative's current physical address and

- 1 telephone number or the best way to contact the relative;
2 (2) the following information from the parent:
3 (A) the name and signature of the parent; and
4 (B) the parent's current address and telephone
5 number or the best way to contact the parent;
6 (3) the information in Subdivision (2) with respect to
7 the other parent, if applicable;
8 (4) a statement that the relative has been given
9 authorization to perform the functions listed in Section 34.002(a)
10 as a result of a voluntary action of the parent and that the
11 relative has voluntarily assumed the responsibility of performing
12 those functions;
13 (5) statements that neither the parent nor the
14 relative has knowledge that a parent, guardian, custodian, licensed
15 child-placing agency, or other authorized agency asserts any claim
16 or authority inconsistent with the authorization agreement under
17 this chapter with regard to actual physical possession or care,
18 custody, or control of the child;
19 (6) statements that:
20 (A) to the best of the parent's and relative's
21 knowledge:
22 (i) there is no court order or pending suit
23 affecting the parent-child relationship concerning the child;
24 (ii) there is no pending litigation in any
25 court concerning:
26 (a) custody, possession, or placement
27 of the child; or

1 (b) access to or visitation with the
2 child; and

3 (iii) the court does not have continuing
4 jurisdiction concerning the child; or

5 (B) the court with continuing jurisdiction
6 concerning the child has given written approval for the execution
7 of the authorization agreement accompanied by the following
8 information:

9 (i) the county in which the court is
10 located;

11 (ii) the number of the court; and

12 (iii) the cause number in which the order
13 was issued or the litigation is pending;

14 (7) a statement that the authorization is made in
15 conformance with this chapter;

16 (8) a statement that the parent and the relative
17 understand that each party to the authorization agreement is
18 required by law to immediately provide to each other party
19 information regarding any change in the party's address or contact
20 information;

21 (9) a statement by the parent that establishes the
22 circumstances under which the authorization agreement expires,
23 including that the authorization agreement:

24 (A) is valid until revoked;

25 (B) continues in effect after the death or during
26 any incapacity of the parent; or

27 (C) expires on a date stated in the authorization

1 agreement; and

2 (10) space for the signature and seal of a notary
3 public.

4 (b) The authorization agreement must contain the following
5 warnings and disclosures:

6 (1) that the authorization agreement is an important
7 legal document;

8 (2) that the parent and the relative must read all of
9 the warnings and disclosures before signing the authorization
10 agreement;

11 (3) that the persons signing the authorization
12 agreement are not required to consult an attorney but are advised to
13 do so;

14 (4) that the parent's rights as a parent may be
15 adversely affected by placing or leaving the parent's child with
16 another person;

17 (5) that the authorization agreement does not confer
18 on the relative the rights of a managing or possessory conservator
19 or legal guardian;

20 (6) that a parent who is a party to the authorization
21 agreement may terminate the authorization agreement and resume
22 custody, possession, care, and control of the child on demand and
23 that at any time the parent may request the return of the child;

24 (7) that failure by the relative to return the child to
25 the parent immediately on request may have criminal and civil
26 consequences;

27 (8) that, under other applicable law, the relative may

1 be liable for certain expenses relating to the child in the
2 relative's care but that the parent still retains the parental
3 obligation to support the child;

4 (9) that, in certain circumstances, the authorization
5 agreement may not be entered into without written permission of the
6 court;

7 (10) that the authorization agreement may be
8 terminated by certain court orders affecting the child;

9 (11) that the authorization agreement is void unless
10 the parties mail a copy of the authorization agreement to a parent
11 who was not a party to the authorization agreement, if the parent is
12 living and the parent's parental rights have not been terminated,
13 not later than the 10th day after the date the authorization
14 agreement is signed; and

15 (12) that the authorization agreement does not confer
16 on a relative of the child the right to authorize the performance of
17 an abortion on the child or the administration of emergency
18 contraception to the child.

19 Sec. 34.004. EXECUTION OF AUTHORIZATION AGREEMENT.

20 (a) The authorization agreement must be signed and sworn to before
21 a notary public by the parent and the relative.

22 (b) A parent may not execute an authorization agreement
23 without a written order by the appropriate court if:

24 (1) there is a court order or pending suit affecting
25 the parent-child relationship concerning the child;

26 (2) there is pending litigation in any court
27 concerning:

1 (A) custody, possession, or placement of the
2 child; or

3 (B) access to or visitation with the child; or

4 (3) the court has continuing, exclusive jurisdiction
5 over the child.

6 (c) An authorization agreement obtained in violation of
7 Subsection (b) is void.

8 Sec. 34.005. DUTIES OF PARTIES TO AUTHORIZATION AGREEMENT.

9 (a) If both parents did not sign the authorization agreement, the
10 parties shall mail a copy of the executed authorization agreement
11 to the parent who was not a party to the authorization agreement at
12 the parent's last known address not later than the 10th day after
13 the date the authorization agreement is executed if that parent is
14 living and that parent's parental rights have not been terminated.
15 An authorization agreement is void if the parties fail to comply
16 with this subsection.

17 (b) A party to the authorization agreement shall
18 immediately inform each other party of any change in the party's
19 address or contact information. If a party fails to comply with
20 this subsection, the authorization agreement is voidable by the
21 other party.

22 Sec. 34.006. AUTHORIZATION VOIDABLE. An authorization
23 agreement is voidable by a party if the other party knowingly:

24 (1) obtained the authorization agreement by fraud,
25 duress, or misrepresentation; or

26 (2) made a false statement on the authorization
27 agreement.

1 Sec. 34.007. EFFECT OF AUTHORIZATION AGREEMENT. (a) A
2 person who is not a party to the authorization agreement who relies
3 in good faith on an authorization agreement under this chapter,
4 without actual knowledge that the authorization agreement is void,
5 revoked, or invalid, is not subject to civil or criminal liability
6 to any person, and is not subject to professional disciplinary
7 action, for that reliance if the agreement is completed as required
8 by this chapter.

9 (b) The authorization agreement does not affect the rights
10 of the child's parent or legal guardian regarding the care,
11 custody, and control of the child, and does not mean that the
12 relative has legal custody of the child.

13 (c) An authorization agreement executed under this chapter
14 does not confer or affect standing or a right of intervention in any
15 proceeding under Title 5.

16 Sec. 34.008. TERMINATION OF AUTHORIZATION AGREEMENT.

17 (a) Except as provided by Subsection (b), an authorization
18 agreement under this chapter terminates if, after the execution of
19 the authorization agreement, a court enters an order:

20 (1) affecting the parent-child relationship;

21 (2) concerning custody, possession, or placement of
22 the child;

23 (3) concerning access to or visitation with the child;

24 or

25 (4) regarding the appointment of a guardian for the
26 child under Section 676, Texas Probate Code.

27 (b) An authorization agreement may continue after a court

1 order described by Subsection (a) is entered if the court entering
2 the order gives written permission.

3 (c) An authorization agreement under this chapter
4 terminates on written revocation by a party to the authorization
5 agreement if the party:

6 (1) gives each party written notice of the revocation;

7 (2) files the written revocation with the clerk of the
8 county in which:

9 (A) the child resides;

10 (B) the child resided at the time the
11 authorization agreement was executed; or

12 (C) the relative resides; and

13 (3) files the written revocation with the clerk of
14 each court:

15 (A) that has continuing, exclusive jurisdiction
16 over the child;

17 (B) in which there is a court order or pending
18 suit affecting the parent-child relationship concerning the child;

19 (C) in which there is pending litigation
20 concerning:

21 (i) custody, possession, or placement of
22 the child; or

23 (ii) access to or visitation with the
24 child; or

25 (D) that has entered an order regarding the
26 appointment of a guardian for the child under Section 676, Texas
27 Probate Code.

1 (d) If an authorization agreement executed under this
2 chapter does not state when the authorization agreement expires,
3 the authorization agreement is valid until revoked.

4 (e) If both parents have signed the authorization
5 agreement, either parent may revoke the authorization agreement
6 without the other parent's consent.

7 Sec. 34.009. PENALTY. (a) A person commits an offense if
8 the person knowingly:

9 (1) presents a document that is not a valid
10 authorization agreement as a valid authorization agreement under
11 this chapter;

12 (2) makes a false statement on an authorization
13 agreement; or

14 (3) obtains an authorization agreement by fraud,
15 duress, or misrepresentation.

16 (b) An offense under this section is a Class B misdemeanor.

17 SECTION 2. The Department of Family and Protective Services
18 shall prescribe forms for the disclosure statement and
19 authorization agreement under Chapter 34, Family Code, as added by
20 this Act, not later than January 1, 2010. The department and the
21 Texas Education Agency shall make the forms available on their
22 Internet websites or provide paper copies to the public on request
23 without charge.

24 SECTION 3. This Act takes effect immediately if it receives
25 a vote of two-thirds of all the members elected to each house, as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect September 1, 2009.