

By: Watson

S. B. No. 1598

A BILL TO BE ENTITLED

# 1 AN ACT

2 relating to authorizing a power of attorney for a caregiver of a  
3 child.

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

5 SECTION 1. Chapter 151, Family Code, is amended by  
6 designating Sections 151.001, 151.002, and 151.003 as Subchapter A  
7 and adding a heading to Subchapter A to read as follows:

## SUBCHAPTER A. RIGHTS AND DUTIES IN GENERAL

9 SECTION 2. Chapter 151, Family Code, is amended by adding  
10 Subchapter B to read as follows:

## SUBCHAPTER B. POWER OF ATTORNEY FOR CAREGIVER OF CHILD

12                   Sec. 151.051. EFFECT OF POWER OF ATTORNEY. A power of  
13 attorney under this subchapter is effective only if:

19                   Sec. 151.052. AUTHORIZATION FOR POWER OF ATTORNEY FOR  
20 CAREGIVER OF CHILD. (a) A person may execute a power of attorney  
21 appointing another person as the person's agent to make decisions  
22 regarding the person's child.

23                   (b) The power of attorney must be witnessed by two witnesses  
24 who are at least 18 years of age, neither of whom is the agent, and

1 at least one of whom is not related by blood or marriage to the child  
2 or the agent.

3 (c) If one parent executes the power of attorney, and the  
4 other parent does not, the parent executing the power of attorney  
5 must provide a written explanation on the power of attorney that the  
6 other parent is not willing or able to sign the power of attorney or  
7 make decisions regarding the parent's child.

8 Sec. 151.053. TERMINATION OF AGENT'S AUTHORITY. The  
9 authority of an agent appointed in a power of attorney for the  
10 caregiver of a child executed by the child's parent or parents  
11 terminates:

12 (1) on the appointment and qualification of a guardian  
13 of the person appointed for the child under Chapter XIII, Texas  
14 Probate Code; or

15 (2) on written revocation of the power of attorney  
16 witnessed by two witnesses who are at least 18 years of age, neither  
17 of whom is the agent, and at least one of whom is not related by  
18 blood or marriage to the child or the agent:

19 (A) by both parents who signed the power of  
20 attorney;

21 (B) by the parent who signed the power of  
22 attorney; or

23 (C) by the parent who did not sign the power of  
24 attorney if the written revocation contains a statement that the  
25 parent is able to make decisions for the parent's child.

26 Sec. 151.054. USE OF POWER OF ATTORNEY IN APPOINTING  
27 GUARDIAN OF THE PERSON FOR CHILD. (a) A power of attorney executed

1 under this subchapter is not considered a written declaration of  
2 appointment of a guardian authorized by Section 676(d), Texas  
3 Probate Code.

4 (b) If a person who executes a power of attorney under this  
5 subchapter does not execute a written declaration of appointment of  
6 a guardian authorized by Section 676(d), Texas Probate Code, and an  
7 application for the appointment of a guardian of the person for the  
8 child is pending under Chapter XIII, Texas Probate Code, the court  
9 may consider the person appointed as the agent under the power of  
10 attorney in appointing a qualified person to serve as guardian of  
11 the person for the child under Section 676(c), Texas Probate Code.

12 Sec. 151.055. DISCLOSURE STATEMENT. A disclosure statement  
13 must be provided with the Power of Attorney for Caregiver of Child.  
14 The disclosure statement must be in substantially the following  
15 form:

16 "THE POWER OF ATTORNEY FOR CAREGIVER OF CHILD IS A VERY  
17 IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THE POWER OF ATTORNEY FOR  
18 CAREGIVER OF CHILD, YOU MUST READ THIS ENTIRE DISCLOSURE STATEMENT.  
19 YOU DO NOT NEED TO HAVE AN ATTORNEY PREPARE THE POWER OF ATTORNEY  
20 FOR CAREGIVER OF CHILD, BUT YOU CAN IF YOU WANT TO.

21 "WARNING: Under Texas law, leaving your child with someone  
22 voluntarily may affect your parental rights to possession of the  
23 child. You are encouraged to consult an attorney.

24 "Except to the extent that you limit the authority of your  
25 agent, the person you name as your agent may make decisions for you  
26 about each named child in accordance with your choices in this  
27 document.

1        "The agent's authority begins when the Power of Attorney for  
2 Caregiver of Child is executed (fully signed and witnessed).

3        "If only one parent signs the Power of Attorney for Caregiver  
4 of Child, that parent shall state in writing the reason or reasons  
5 why the other parent did not sign.

6        "The person you appoint as agent should be someone you know  
7 and trust. The person must be at least 18 years of age. You should  
8 inform the person you appoint that you want the person to have the  
9 powers that you choose to give in the Power of Attorney for  
10 Caregiver of Child. Your agent must comply with limitations on the  
11 authority of the agent, which are set forth in the area of the power  
12 of attorney titled 'Limitations on Agent.' You should discuss the  
13 Power of Attorney for Caregiver of Child thoroughly with your agent  
14 and give your agent a signed copy. You should write on the power of  
15 attorney the names of people and institutions who have signed  
16 copies. Your agent is not liable for the expenses of raising your  
17 child except in certain situations. You will continue to be  
18 responsible for these expenses.

19        "After you have signed the Power of Attorney for Caregiver of  
20 Child, you have the right to make decisions at any time about your  
21 child unless a court order provides otherwise, even if your agent  
22 disagrees.

23        "You have the right to revoke the authority granted to your  
24 agent. This power of attorney can only be revoked in writing. This  
25 power of attorney can be revoked, by the parent or parents who  
26 signed the power of attorney, in a writing witnessed by two  
27 witnesses who are at least 18 years of age, neither of whom is the

1 agent, and at least one of whom is not related by blood or marriage  
2 to the child or the agent.

3       "If the parent who did not execute the power of attorney is  
4 willing and able to make decisions regarding the care of the child,  
5 that parent may revoke the power of attorney. The revocation must  
6 be in writing and witnessed by two witnesses who are at least 18  
7 years of age, neither of whom is the agent, and at least one of whom  
8 is not related by blood or marriage to the child or the agent.

9       "You should put a time limit on the power of attorney. If the  
10 time limit occurs while the child is still in the care of the person  
11 to whom you have given authority, you must execute a new Power of  
12 Attorney for Caregiver of Child if you want the caregiver to  
13 continue to have authority.

14       "In the power of attorney, you must specify whether the power  
15 of attorney continues in effect until the expiration date if you  
16 become disabled or incapacitated after signing the power of  
17 attorney.

18       "If you revoke the Power of Attorney for Caregiver of Child  
19 you should give notice of the revocation to your agent and anyone  
20 else that has a copy, including educational institutions, banks, or  
21 other businesses or people.

22       "The Power of Attorney for Caregiver of Child may not be  
23 changed or modified. If you want to make changes, you must execute a  
24 new one.

25       "You may want to designate an alternate agent in case your  
26 agent is unwilling, unable, or ineligible to act as your agent. Any  
27 alternate agent you designate has the same authority to make

1 decisions for you concerning each named child.

2 "To the caregiver named as an agent in this power of attorney:  
3 "This power of attorney does not give you possessory  
4 conservatorship or managing conservatorship of the child. This  
5 power of attorney does not stop a parent from resuming possession  
6 and caregiving immediately at any time the parent requests return  
7 of the child. Failure to return each named child on request of the  
8 parent may constitute a crime, unless there is a court order that  
9 provides otherwise.

10 "Caution: The caregiver receiving authority under this power  
11 of attorney may become liable for expenses relating to the child if:

12 "(1) the caregiver signs a statement or a contract in  
13 the caregiver's name for services or goods for the child;

14 "(2) the caregiver is present when services or goods  
15 are provided to the child unless the services or goods are fully  
16 paid for with money from a parent or the child; or

17 "(3) the caregiver authorizes the child to tell a  
18 provider of services or goods that the caregiver is responsible for  
19 the cost of the services or goods."

20 Sec. 151.056. FORM. A Power of Attorney for Caregiver of  
21 Child must be in substantially the following form:

22 "POWER OF ATTORNEY FOR CAREGIVER OF CHILD

23 "WARNING: If there is a pending suit affecting the  
24 parent-child relationship concerning a child named in this Power of  
25 Attorney for Caregiver of Child, or other pending litigation in any  
26 court concerning custody, possession, or placement of the child, or  
27 access to or visitation with the child or if a court has continuing

1 jurisdiction concerning the child, this Power of Attorney for  
2 Caregiver of Child cannot be executed unless the court by written  
3 order allows it to be executed.

4 "1. PARENT INFORMATION.

5 "My name is (print): \_\_\_\_\_

6 "I am a parent of the child or children (hereinafter referred  
7 to as 'child') named in this Power of Attorney for Caregiver of  
8 Child.

9 "My address: \_\_\_\_\_

10 "Telephone number or best way to contact: \_\_\_\_\_

11 "Driver's license number and issuing state or other form of  
12 identification: \_\_\_\_\_

13 "Name of other parent: \_\_\_\_\_

14 "Address: \_\_\_\_\_

15 "Telephone number: \_\_\_\_\_

16 "Required:

17 "\_\_\_\_ The other parent has signed this power of attorney.

18 "\_\_\_\_ The other parent has not signed this power of attorney  
19 because:

20 \_\_\_\_\_

21 \_\_\_\_\_

22 \_\_\_\_\_

23 "Note: If only one parent signs this power of attorney, the  
24 power of attorney must be witnessed by two witnesses to be  
25 effective.

26 "2. ACKNOWLEDGMENT OF DISCLOSURE STATEMENT.

27 "\_\_\_\_ (initial) I have read and understand the information

1 contained in the disclosure statement attached to and made part of  
2 this power of attorney.

3 "\_\_\_\_ (other parent initial) has read and understands the  
4 information contained in the disclosure statement attached to and  
5 made part of this power of attorney.

6 "3. PRIOR COURT ORDERS CONCERNING CHILD (initial the correct  
7 choice).

8 "\_\_\_\_ NO court has issued orders about my child and there are  
9 no child support orders in effect with respect to my child.

10 "\_\_\_\_ A court HAS issued orders about my child:

11 "Cause number: \_\_\_\_\_, \_\_\_\_\_ County,  
12 Texas.

13 "\_\_\_\_ The order grants me the right to determine the primary  
14 physical residence of my child.

15 "\_\_\_\_ I have provided my agent with a copy of the order.

16 "4. DESIGNATION OF AGENT.

17 "I do hereby appoint (print name of agent)  
18 as my agent to act on behalf of my child as stated below, unless I  
19 state otherwise in this document.

20 "Agent's address: \_\_\_\_\_

21 "Driver's license number and issuing state or other form of  
22 identification: \_\_\_\_\_

23 "Telephone number or best way to contact: \_\_\_\_\_

24 "5. CHILDREN COVERED BY THIS POWER OF ATTORNEY.

25 "Please provide the following information for each child for  
26 whom this power of attorney is to be effective. Attach additional  
27 sheets if necessary.

1        "Child's name (first, middle, last): \_\_\_\_\_

2        "Date of birth: \_\_\_\_\_

3        "6. POWERS (AREAS OF AUTHORITY).

4        "My agent is hereby appointed in my place to perform the

5        following acts on behalf of each child named above:

6        "Initial ONLY those areas of authority that you wish your

7        agent to have. Draw vertical or wavy lines through each area of

8        authority that you do not want your agent to have.

9        "        To maintain physical possession of the child.

10       "        To designate the primary residence of the child in

11       Texas (Note: if there are prior court orders that limit where your

12       child can live, your agent is also limited by those orders).

13       "        To provide care, control, protection, and reasonable

14       discipline of the child.

15       "        To direct the moral and religious training of the

16       child.

17       "        To arrange for child care or preschool for the child, if

18       appropriate.

19       "        To make decisions regarding the education of the child

20       and to have access to the child's school records.

21       "        To register the child for school and to authorize the

22       child's participation in school activities.

23       "        To make all necessary arrangements and to execute all

24       necessary consents and forms for the child to participate in

25       age-appropriate extracurricular activities, civic activities,

26       social activities, club or organization memberships and

27       activities, and recreational, sports, and athletic activities.

1        " To arrange for the provision to the child of clothing,  
2 food, shelter, education, and medical, psychiatric, psychological,  
3 dental, surgical, counseling, therapy, and rehabilitative  
4 services.

5        " To arrange for insurance as appropriate for the child  
6 to cover medical, psychiatric, psychological, dental, surgical,  
7 counseling, therapy, or rehabilitative services, and to arrange for  
8 appropriate accident, travel, or other insurance for the child.

9        " To consent to medical, psychiatric, psychological,  
10 dental, surgical, counseling, therapy, and rehabilitative services  
11 for the child and to have access to all records relating to those  
12 services.

13        " For the child, in regard to confidential information  
14 and protected health information, for the purposes of the Health  
15 Insurance Portability and Accountability Act of 1996 (HIPAA), and  
16 any other law or rule requiring authority to consent to or obtain  
17 confidential information of any sort or protected health  
18 information, my agent is acting in loco parentis and can execute  
19 requests and authorizations regarding confidential information or  
20 protected health information for the child.

21        " To open and manage accounts at financial institutions  
22 for the child, with or without the name of the agent as co-signer on  
23 the account, as appropriate to the maturity of the child.

24        " To arrange for the child to obtain motor vehicle,  
25 boating, and other licenses and registrations, as appropriate to  
26 the maturity of the child.

27        " To co-sign or guarantee appropriate loans to the child

1 by third parties for educational purposes or to purchase goods and  
2 services.

3 " To collect debts owing to the child, to pay debts owed  
4 by the child from the child's money, to defend suits against the  
5 child, and to pursue suits to benefit the child, but this does not  
6 waive the legal protection of the child under any law due to the  
7 child being a minor.

8 " To give consent for lawful employment appropriate to  
9 the age, interest, and capabilities of the child.

10 " As permitted under applicable law, to arrange for and  
11 authorize travel out of state and out of country for the child and  
12 to execute necessary documents related to out-of-state and  
13 out-of-country travel.

14 "7. ALLERGIES AND SPECIAL HEALTH NEEDS. (Attach additional  
15 sheets as necessary.)

16 "The following children have the following allergies  
17 (including allergic reactions to medicines) or the following  
18 special health needs (including dietary needs):  
19 \_\_\_\_\_

20 "8. LIMITATIONS ON AGENT (optional). (Attach additional  
21 sheets as necessary.)

22 "Limitations on the decision-making authority and powers of  
23 my agent are as follows: \_\_\_\_\_

24 "Except to the extent that I have geographically limited the  
25 exercise of one or more powers or areas of decision-making in the  
26 limitations section or elsewhere in this power of attorney, powers  
27 and authorities granted to my agent in this Power of Attorney for

1 Caregiver of Child can be exercised both within and outside the  
2 State of Texas.

3 "9. DESIGNATION OF ALTERNATE AGENT (optional).

4 "If the person designated as my agent is unable or unwilling  
5 to continue to act as caregiver for my child, I designate the  
6 following person to serve as my agent to make decisions on behalf of  
7 my child:

8 "Alternate agent:

9 "Name: \_\_\_\_\_

10 "Address: \_\_\_\_\_

11 "Telephone number: \_\_\_\_\_

12 "10. DURATION.

13 "\_\_\_\_ (initial) I understand that this power of attorney  
14 starts on the day I sign it and continues until it is revoked, or  
15 until the expiration date, whichever date occurs earlier. I  
16 understand that I can revoke this power of attorney at any time by  
17 revoking it in accordance with the revocation provisions.

18 "The expiration date of this power of attorney is  
19 \_\_\_\_\_.

20 "11. EFFECT OF SUBSEQUENT DISABILITY. Initial whichever  
21 statement is true and states your intent:

22 "(Initial one space only)

23 "\_\_\_\_ This power of attorney is not affected merely due to my  
24 subsequent disability or incapacity and remains in effect until the  
25 expiration date or the date I revoke this power of attorney before  
26 the expiration date. If I am later determined by a court to be  
27 incapacitated, then the court may invalidate this power of attorney

1 in whole or in part, or may leave it wholly unaffected.

2       " This power of attorney becomes ineffective if I later  
3 become disabled or incapacitated or if I am later determined by a  
4 court to be incapacitated.

5       "12. REVOCATION PROVISIONS.

6       "This power of attorney revokes all prior Powers of Attorney  
7 for Caregiver of Child.

8       I understand that this power of attorney can only be  
9 revoked, by the parent or parents who signed it, in a writing  
10 witnessed by two witnesses who are at least 18 years of age, neither  
11 of whom is the agent, and at least one of whom is not related by  
12 blood or marriage to the child or the agent. I understand that a  
13 parent who did not sign the power of attorney may revoke the power  
14 of attorney by executing a written statement that the parent is  
15 willing and able to make decisions regarding the parent's child.  
16 The written statement must be witnessed by two witnesses who are at  
17 least 18 years of age, neither of whom is the agent, and at least one  
18 of whom is not related by blood or marriage to the child or the  
19 agent.

20       "13. ORIGINAL AND COPIES. The original of this Power of  
21 Attorney for Caregiver of Child is in the possession of:  
22 \_\_\_\_\_

23       "The following persons have a copy of this Power of Attorney  
24 for Caregiver of Child: \_\_\_\_\_

25       "14. PRESENTATION. Unless otherwise limited in regard to  
26 methods of presentation, in the limitations section of this power  
27 of attorney, the agent named in this Power of Attorney for Caregiver

1 of Child can present this power of attorney in person, by fax, by  
2 attachment to e-mail, or by copy sent by United States mail or  
3 delivery service.

4       "15. SIGNATURES.

5       "Parent:

6           "I have read the disclosure statement for the Power of  
7 Attorney for Caregiver of Child. I sign my name to this Power of  
8 Attorney for Caregiver of Child.

9       "Signed on this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

10       "\_\_\_\_\_

11       "(parent's signature)

12       "\_\_\_\_\_

13       "(parent's printed name)

14       "Other parent:

15           "I have read the disclosure statement for the Power of  
16 Attorney for Caregiver of Child. I authorize the above parent to  
17 make this Power of Attorney for Caregiver of Child on behalf of my  
18 children named in this document.

19       "Signed on this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

20       "\_\_\_\_\_

21       "(other parent's signature)

22       "\_\_\_\_\_

23       "(other parent's printed name)

24       "16. WITNESSES:

25           "Witnesses are required for your power of attorney to be  
26 valid. Neither witness can be your agent. One witness cannot be a  
27 relative of the child or the agent.

1        "First witness:

2        "I am at least 18 years of age and I am not the person  
3        appointed as the agent by this document. I am not related to the  
4        child or the agent by blood or marriage.

5        "Signature: \_\_\_\_\_

6        "Printed name: \_\_\_\_\_

7        "Date: \_\_\_\_\_

8        "Address: \_\_\_\_\_

9        "Second witness:

10        "I am at least 18 years of age and I am not the person  
11        appointed as the agent by this document.

12        "Signature: \_\_\_\_\_

13        "Printed name: \_\_\_\_\_

14        "Date: \_\_\_\_\_

15        "Address: \_\_\_\_\_"

16        SECTION 3. The Department of Family and Protective Services  
17        shall prescribe forms for the disclosure statement under Section  
18        151.055, Family Code, as added by this Act, and the power of  
19        attorney under Section 151.056, Family Code, as added by this Act,  
20        not later than January 1, 2010. The department and the Texas  
21        Education Agency shall make the forms available on their Internet  
22        websites or provide paper copies to the public on request without  
23        charge.

24        SECTION 4. 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.