

1-1 By: Watson

S.B. No. 1598

1-2 (In the Senate - Filed March 10, 2009; March 17, 2009, read  
1-3 first time and referred to Committee on Jurisprudence;  
1-4 April 27, 2009, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 4, Nays 0; April 27, 2009,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1598

By: Watson

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to an agreement authorizing a nonparent relative of a  
1-11 child to make certain decisions regarding the child; providing a  
1-12 penalty.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subtitle A, Title 2, Family Code, is amended by  
1-15 adding Chapter 34 to read as follows:

1-16 CHAPTER 34. AUTHORIZATION AGREEMENT FOR NONPARENT RELATIVE

1-17 Sec. 34.001. APPLICABILITY. This chapter applies only to  
1-18 an authorization agreement between a parent of a child and a person  
1-19 who is the child's:

1-20 (1) grandparent;  
1-21 (2) adult sibling; or  
1-22 (3) adult aunt or uncle.

1-23 Sec. 34.002. AUTHORIZATION AGREEMENT. (a) A parent or  
1-24 both parents of a child may enter into an authorization agreement  
1-25 with a relative of the child listed in Section 34.001 to authorize  
1-26 the relative to perform the following acts in regard to the child:

1-27 (1) to authorize medical, dental, psychological, or  
1-28 surgical treatment and immunization of the child, including  
1-29 executing any consents or authorizations for the release of  
1-30 information as required by law relating to the treatment or  
1-31 immunization;

1-32 (2) to obtain and maintain health insurance coverage  
1-33 for the child and automobile insurance coverage for the child, if  
1-34 appropriate;

1-35 (3) to enroll the child in a day-care program or  
1-36 preschool or in a public or private primary or secondary school;

1-37 (4) to authorize the child to participate in  
1-38 age-appropriate extracurricular, civic, social, or recreational  
1-39 activities, including athletic activities;

1-40 (5) to authorize the child to obtain a learner's  
1-41 permit, driver's license, or state-issued identification card;

1-42 (6) to authorize employment of the child; and

1-43 (7) to apply for and receive public benefits on behalf  
1-44 of the child.

1-45 (b) To the extent of any conflict or inconsistency between  
1-46 this chapter and any other law relating to the eligibility  
1-47 requirements other than parental consent to obtain a service under  
1-48 Subsection (a), the other law controls.

1-49 Sec. 34.003. CONTENTS OF AUTHORIZATION AGREEMENT. (a) The  
1-50 authorization agreement must contain:

1-51 (1) the following information from the relative of the  
1-52 child to whom the parent is giving authorization:

1-53 (A) the name and signature of the relative;  
1-54 (B) the relative's relationship to the child; and  
1-55 (C) the relative's current physical address and

1-56 telephone number or the best way to contact the relative;

1-57 (2) the following information from the parent:

1-58 (A) the name and signature of the parent; and  
1-59 (B) the parent's current address and telephone  
1-60 number or the best way to contact the parent;

1-61 (3) the information in Subdivision (2) with respect to  
1-62 the other parent, if applicable;

1-63 (4) a statement that the relative has been given

2-1 authorization to perform the functions listed in Section 34.002(a)  
2-2 as a result of a voluntary action of the parent and that the  
2-3 relative has voluntarily assumed the responsibility of performing  
2-4 those functions;

2-5 (5) statements that neither the parent nor the  
2-6 relative has knowledge that a parent, guardian, custodian, licensed  
2-7 child-placing agency, or other authorized agency asserts any claim  
2-8 or authority inconsistent with the authorization agreement under  
2-9 this chapter with regard to actual physical possession or care,  
2-10 custody, or control of the child;

2-11 (6) statements that:

2-12 (A) to the best of the parent's and relative's  
2-13 knowledge:

2-14 (i) there is no court order or pending suit  
2-15 affecting the parent-child relationship concerning the child;

2-16 (ii) there is no pending litigation in any  
2-17 court concerning:

2-18 (a) custody, possession, or placement  
2-19 of the child; or

2-20 (b) access to or visitation with the  
2-21 child; and

2-22 (iii) the court does not have continuing  
2-23 jurisdiction concerning the child; or

2-24 (B) the court with continuing jurisdiction  
2-25 concerning the child has given written approval for the execution  
2-26 of the authorization agreement accompanied by the following  
2-27 information:

2-28 (i) the county in which the court is  
2-29 located;

2-30 (ii) the number of the court; and  
2-31 (iii) the cause number in which the order  
2-32 was issued or the litigation is pending;

2-33 (7) a statement that the authorization is made in  
2-34 conformance with this chapter;

2-35 (8) a statement that the parent and the relative  
2-36 understand that each party to the authorization agreement is  
2-37 required by law to immediately provide to each other party  
2-38 information regarding any change in the party's address or contact  
2-39 information;

2-40 (9) a statement by the parent that establishes the  
2-41 circumstances under which the authorization agreement expires,  
2-42 including that the authorization agreement:

2-43 (A) is valid until revoked;

2-44 (B) continues in effect after the death or during  
2-45 any incapacity of the parent; or

2-46 (C) expires on a date stated in the authorization  
2-47 agreement; and

2-48 (10) space for the signature and seal of a notary  
2-49 public.

2-50 (b) The authorization agreement must contain the following  
2-51 warnings and disclosures:

2-52 (1) that the authorization agreement is an important  
2-53 legal document;

2-54 (2) that the parent and the relative must read all of  
2-55 the warnings and disclosures before signing the authorization  
2-56 agreement;

2-57 (3) that the persons signing the authorization  
2-58 agreement are not required to consult an attorney but are advised to  
2-59 do so;

2-60 (4) that the parent's rights as a parent may be  
2-61 adversely affected by placing or leaving the parent's child with  
2-62 another person;

2-63 (5) that the authorization agreement does not confer  
2-64 on the relative the rights of a managing or possessory conservator  
2-65 or legal guardian;

2-66 (6) that a parent who is a party to the authorization  
2-67 agreement may terminate the authorization agreement and resume  
2-68 custody, possession, care, and control of the child on demand and  
2-69 that at any time the parent may request the return of the child;

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

(8) that, under other applicable law, the relative may be liable for certain expenses relating to the child in the relative's care but that the parent still retains the parental obligation to support the child;

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

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

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

Sec. 34.004. EXECUTION OF AUTHORIZATION AGREEMENT.

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

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

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

(2) there is pending litigation in any court

(2) there is pending litigation in any court concerning: (A) custody, possession, or placement of the

child; or

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

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

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

(c) An authorization agreement obtained in violation of

ction (b) is void.

Sec. 34.005. DUTIES OF PARTIES TO AUTHORIZATION AGREEMENT.

(a) If both parents did not sign the authorization agreement, the parties shall mail a copy of the executed authorization agreement to the parent who was not a party to the authorization agreement at the parent's last known address not later than the 10th day after the date the authorization agreement is executed if that parent is living and that parent's parental rights have not been terminated.

An authorization agreement is void if the parties fail to comply with this subsection.

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

Sec. 34.006. AUTHORIZATION VOIDABLE. An authorization

agreement is voidable by a party if the other party knowingly:

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

duress, or misrepresentation; or  
(2) made a false statement on the authorization  
agreement.

ent. Sec. 34.007. EFFECT OF AUTHORIZATION AGREEMENT. (a) A

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

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

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

Sec. 34.008. TERMINATION OF AUTHORIZATION AGREEMENT.  
(a) Except as provided by Subsection (b), an authorization agreement under this chapter terminates if, after the execution of the authorization agreement, a court enters an order:

(1) affecting the parent-child relationship;  
(2) concerning custody, possession, or placement of  
the child;  
(3) concerning access to or visitation with the child;

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

(b) An authorization agreement may continue after a court order described by Subsection (a) is entered if the court entering the order gives written permission.

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

(1) gives each party written notice of the revocation;  
(2) files the written revocation with the clerk of the  
county in which:

County in which: (A) the child resides;  
(B) the child resided at the time the  
authorization agreement was executed; or

authorization agreement was executed, or  
(C) the relative resides; and  
(3) files the written revocation with the clerk of  
each court.

each court; over the child; (A) that has continuing, exclusive jurisdiction (B) in which there is a court under an pending

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

(C) in which there is pending litigation

concerning: (i) custody, possession, or placement of  
the child; or

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

(D) that has entered an order regarding the appointment of a guardian for the child under Section 676. Texas

appointment of a guardian for the child under section 570, Texas Probate Code.

chapter does not state when the authorization agreement expires, the authorization agreement is valid until revoked.

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

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

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

(2) makes a false statement on an authorization agreement; or  
(3) obtains an authorization agreement by fraud, duress, or misrepresentation.

(b) An offense under this section is a Class B misdemeanor.  
SECTION 2. The Department of Family and Protective Services shall prescribe forms for the disclosure statement and authorization agreement under Chapter 34, Family Code, as added by this Act, not later than January 1, 2010. The department and the Texas Education Agency shall make the forms available on their Internet websites or provide paper copies to the public on request without charge.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.