

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;

3-1 (7) that failure by the relative to return the child to
3-2 the parent immediately on request may have criminal and civil
3-3 consequences;

3-4 (8) that, under other applicable law, the relative may
3-5 be liable for certain expenses relating to the child in the
3-6 relative's care but that the parent still retains the parental
3-7 obligation to support the child;

3-8 (9) that, in certain circumstances, the authorization
3-9 agreement may not be entered into without written permission of the
3-10 court;

3-11 (10) that the authorization agreement may be
3-12 terminated by certain court orders affecting the child; and

3-13 (11) that the authorization agreement is void unless
3-14 the parties mail a copy of the authorization agreement to a parent
3-15 who was not a party to the authorization agreement, if the parent is
3-16 living and the parent's parental rights have not been terminated,
3-17 not later than the 10th day after the date the authorization
3-18 agreement is signed.

3-19 Sec. 34.004. EXECUTION OF AUTHORIZATION AGREEMENT.

3-20 (a) The authorization agreement must be signed and sworn to before
3-21 a notary public by the parent and the relative.

3-22 (b) A parent may not execute an authorization agreement
3-23 without a written order by the appropriate court if:

3-24 (1) there is a court order or pending suit affecting
3-25 the parent-child relationship concerning the child;

3-26 (2) there is pending litigation in any court
3-27 concerning:

3-28 (A) custody, possession, or placement of the
3-29 child; or

3-30 (B) access to or visitation with the child; or

3-31 (3) the court has continuing, exclusive jurisdiction
3-32 over the child.

3-33 (c) An authorization agreement obtained in violation of
3-34 Subsection (b) is void.

3-35 Sec. 34.005. DUTIES OF PARTIES TO AUTHORIZATION AGREEMENT.

3-36 (a) If both parents did not sign the authorization agreement, the
3-37 parties shall mail a copy of the executed authorization agreement
3-38 to the parent who was not a party to the authorization agreement at
3-39 the parent's last known address not later than the 10th day after
3-40 the date the authorization agreement is executed if that parent is
3-41 living and that parent's parental rights have not been terminated.
3-42 An authorization agreement is void if the parties fail to comply
3-43 with this subsection.

3-44 (b) A party to the authorization agreement shall
3-45 immediately inform each other party of any change in the party's
3-46 address or contact information. If a party fails to comply with
3-47 this subsection, the authorization agreement is voidable by the
3-48 other party.

3-49 Sec. 34.006. AUTHORIZATION VOIDABLE. An authorization
3-50 agreement is voidable by a party if the other party knowingly:

3-51 (1) obtained the authorization agreement by fraud,
3-52 duress, or misrepresentation; or

3-53 (2) made a false statement on the authorization
3-54 agreement.

3-55 Sec. 34.007. EFFECT OF AUTHORIZATION AGREEMENT. (a) A

3-56 person who is not a party to the authorization agreement who relies
3-57 in good faith on an authorization agreement under this chapter,
3-58 without actual knowledge that the authorization agreement is void,
3-59 revoked, or invalid, is not subject to civil or criminal liability
3-60 to any person, and is not subject to professional disciplinary
3-61 action, for that reliance if the agreement is completed as required
3-62 by this chapter.

3-63 (b) The authorization agreement does not affect the rights
3-64 of the child's parent or legal guardian regarding the care,
3-65 custody, and control of the child, and does not mean that the
3-66 relative has legal custody of the child.

3-67 (c) An authorization agreement executed under this chapter
3-68 does not confer or affect standing or a right of intervention in any
3-69 proceeding under Title 5.

4-1 Sec. 34.008. TERMINATION OF AUTHORIZATION AGREEMENT.
4-2 (a) Except as provided by Subsection (b), an authorization
4-3 agreement under this chapter terminates if, after the execution of
4-4 the authorization agreement, a court enters an order:

- 4-5 (1) affecting the parent-child relationship;
- 4-6 (2) concerning custody, possession, or placement of
4-7 the child;
- 4-8 (3) concerning access to or visitation with the child;
4-9 or
- 4-10 (4) regarding the appointment of a guardian for the
4-11 child under Section 676, Texas Probate Code.

4-12 (b) An authorization agreement may continue after a court
4-13 order described by Subsection (a) is entered if the court entering
4-14 the order gives written permission.

4-15 (c) An authorization agreement under this chapter
4-16 terminates on written revocation by a party to the authorization
4-17 agreement if the party:

- 4-18 (1) gives each party written notice of the revocation;
- 4-19 (2) files the written revocation with the clerk of the
4-20 county in which:

- 4-21 (A) the child resides;
- 4-22 (B) the child resided at the time the
4-23 authorization agreement was executed; or
- 4-24 (C) the relative resides; and

4-25 (3) files the written revocation with the clerk of
4-26 each court:

- 4-27 (A) that has continuing, exclusive jurisdiction
4-28 over the child;
- 4-29 (B) in which there is a court order or pending
4-30 suit affecting the parent-child relationship concerning the child;
- 4-31 (C) in which there is pending litigation
4-32 concerning:

- 4-33 (i) custody, possession, or placement of
4-34 the child; or
- 4-35 (ii) access to or visitation with the
4-36 child; or

4-37 (D) that has entered an order regarding the
4-38 appointment of a guardian for the child under Section 676, Texas
4-39 Probate Code.

4-40 (d) If an authorization agreement executed under this
4-41 chapter does not state when the authorization agreement expires,
4-42 the authorization agreement is valid until revoked.

4-43 (e) If both parents have signed the authorization
4-44 agreement, either parent may revoke the authorization agreement
4-45 without the other parent's consent.

4-46 Sec. 34.009. PENALTY. (a) A person commits an offense if
4-47 the person knowingly:

- 4-48 (1) presents a document that is not a valid
4-49 authorization agreement as a valid authorization agreement under
4-50 this chapter;
- 4-51 (2) makes a false statement on an authorization
4-52 agreement; or
- 4-53 (3) obtains an authorization agreement by fraud,
4-54 duress, or misrepresentation.

4-55 (b) An offense under this section is a Class B misdemeanor.

4-56 SECTION 2. The Department of Family and Protective Services
4-57 shall prescribe forms for the disclosure statement and
4-58 authorization agreement under Chapter 34, Family Code, as added by
4-59 this Act, not later than January 1, 2010. The department and the
4-60 Texas Education Agency shall make the forms available on their
4-61 Internet websites or provide paper copies to the public on request
4-62 without charge.

4-63 SECTION 3. This Act takes effect immediately if it receives
4-64 a vote of two-thirds of all the members elected to each house, as
4-65 provided by Section 39, Article III, Texas Constitution. If this
4-66 Act does not receive the vote necessary for immediate effect, this
4-67 Act takes effect September 1, 2009.

4-68 * * * * *