

BILL ANALYSIS

Senate Research Center

S.B. 1598
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Jurisprudence
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The cost and trauma of court proceedings can be avoided through a statutory power of attorney for a caregiver of a child in cases in which the parent is willing to grant authority to the caregiver. There are more than 240,000 children in Texas being raised in households with neither parent present. The majority of these children are not in the child welfare caseload. Similar to the medical power of attorney as an alternative to guardianship of older persons that the legislature passed years ago, the proposed statutory power of attorney for a caregiver of a child can be an alternative to suits affecting the parent-child relationship in areas of decision-making by the parent. Thus, this legislation offers parents a cost-effective means of giving specified authority to a caregiver without the necessity of a court proceeding.

S.B. 1598 amends current law relating to an agreement authorizing a nonparent relative of a child to make certain decisions regarding the child and provides a penalty.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle A, Title 2, Family Code, by adding Chapter 34, as follows:

CHAPTER 34. AUTHORIZATION AGREEMENT FOR NONPARENT RELATIVE

Sec. 34.001. **APPLICABILITY.** Provides that this chapter applies only to an authorization agreement between a parent of a child and a person who is the child's grandparent, adult sibling, or adult aunt or uncle.

Sec. 34.002. **AUTHORIZATION AGREEMENT.** (a) Authorizes a parent or both parents of a child to 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 for the child and automobile insurance coverage for the child, if appropriate;

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

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

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

(6) to authorize employment of the child; and

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

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

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

Sec. 34.003. CONTENTS OF AUTHORIZATION AGREEMENT. (a) Requires that the authorization agreement contain:

(1) the following information from the relative of the child to whom the parent is giving authorization: the name and signature of the relative, the relative's relationship to the child, and the relative's current physical address and telephone number or the best way to contact the relative;

(2) the following information from the parent: the name and signature of the parent and the parent's current address and telephone number or the best way to contact the parent;

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

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

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

(6) statements that to the best of the parent's and relative's knowledge there is no court order or pending suit affecting the parent-child relationship concerning the child, there is no pending litigation in any court concerning custody, possession, or placement of the child, or access to or visitation with the child, and the court does not have continuing jurisdiction concerning the child; or the court with continuing jurisdiction concerning the child has given written approval for the execution of the authorization agreement accompanied by certain information;

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

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

(9) a statement by the parent that establishes the circumstances under which the authorization agreement expires, including that the authorization agreement is valid until revoked, continues in effect after the

death or during any incapacity of the parent, or expires on a date stated in the authorization agreement; and

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

(b) Requires that the authorization agreement contain the following warnings and disclosures:

- (1) that the authorization agreement is an important legal document;
- (2) that the parent and the relative must read all the warnings and disclosures before signing the authorization agreement;
- (3) that the persons signing the authorization agreement are not required to consult an attorney but are advised to so do;
- (4) that the parent's rights as a parent may be adversely affected by placing or leaving the parent's child with another person;
- (5) that the authorization agreement does not confer on the relative the rights of managing or possessory conservator or legal guardian;
- (6) that a parent who is a party to the authorization agreement may terminate the authorization agreement and resume custody, possession, care, and control of the child on demand and 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;
- (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; and
- (12) that the authorization agreement does not confer on a relative of the child the right to authorize the performance of an abortion on the child or the administration of emergency contraception to the child.

Sec. 34.004. EXECUTION OF AUTHORIZATION AGREEMENT. (a) Requires that the authorization agreement be signed and sworn to before a notary public by the parent and the relative.

(b) Prohibits a parent from executing an authorization agreement without a written order by the appropriate court if there is a court order or pending suit affecting the parent-child relationship concerning the child; there is pending litigation in any court concerning custody, possession, or placement of the child, or access to or visitation with the child; or the court has continuing, exclusive jurisdiction over the child.

- (c) Provides that an authorization agreement obtained in violation of Subsection (b) is void.

Sec. 34.005. DUTIES OF PARTIES TO AUTHORIZATION AGREEMENT. (a) Requires the parties, if both parents did not sign the authorization agreement, to 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. Provides that an authorization agreement is void if the parties fail to comply with this subsection.

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

Sec. 34.006. AUTHORIZATION VOIDABLE. Provides that an authorization agreement is voidable by a party if the other party knowingly obtained the authorization agreement by fraud, duress, or misrepresentation, or made a false statement on the authorization agreement.

Sec. 34.007. EFFECT OF AUTHORIZATION AGREEMENT. (a) Provides that 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) Provides that 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) Provides that 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) Provides that, 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 affecting the parent-child relationship; concerning custody, possession, or placement of the child; concerning access to or visitation with the child; or regarding the appointment of a guardian for the child under Section 676 (Guardians of Minors), Texas Probate Code.

- (b) Authorizes an authorization agreement to continue after a court order described by Subsection (a) is entered if the court entering the order gives written permission.

- (c) Provides that an authorization agreement under this chapter terminates on written revocation by a party to the authorization agreement if the party gives each party written notice of the revocation; files the written revocation with the clerk of the county in which the child resides, the child resided at the time the authorization agreement was executed, or the relative resides; and files the written revocation with the clerk of each court that has continuing, exclusive jurisdiction over the child, in which there is a court order or pending suit affecting the parent-child relationship concerning the child, in which there is a pending litigation concerning certain other matters; or that has entered into an order regarding the appointment of a guardian for the child under Section 676, Texas Probate Code.

- (d) Provides that if an authorization agreement executed under this chapter does not state when the authorization agreement expires, the authorization agreement is valid until revoked.

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

Sec. 34.009. PENALTY. (a) Provides that a person commits an offense if the person knowingly presents a document that is not a valid authorization agreement as a valid authorization agreement under this chapter, makes a false statement on an authorization agreement, or obtains an authorization agreement by fraud, duress, or misrepresentation.

(b) Provides that an offense under this section is a Class B misdemeanor.

SECTION 2. Requires the Department of Family and Protective Services (DFPS) to 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. Requires DFPS and the Texas Education Agency to make the forms available on their Internet websites or provide paper copies to the public on request without charge.

SECTION 3. Effective date: upon passage or September 1, 2009.