

BILL ANALYSIS

C.S.H.B. 1940
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, over 600,000 children in Texas live in households headed by a grandparent, aunt, uncle, or other relative. Of these, over 244,000 live without either parent in the household. Yet, there is no agreement through which parents can authorize the caregivers to make decisions for the child.

C.S.H.B. 1940 authorizes a parent or both parents of a child to enter into an authorization agreement with a relative of the child to authorize the relative to make certain decisions on behalf of the child. The bill sets forth the information, statements, warnings, and disclosures required to be included in an authorization agreement and creates a Class B misdemeanor offense for a person who knowingly presents a document that is not a valid authorization agreement as a valid authorization agreement; makes a false statement on an authorization agreement; or obtains an authorization agreement by fraud, duress, or misrepresentation.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1940 amends the Family Code to make provisions relating to an authorization agreement for a non-parent relative applicable 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. The bill authorizes a parent or both parents of a child to enter into an authorization agreement with a relative of the child to authorize the relative 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; obtain and maintain health insurance coverage for the child and automobile insurance coverage for the child, if appropriate; enroll the child in a day-care program or preschool or in a public or private primary or secondary school; authorize the child to participate in age-appropriate extracurricular, civic, social, or recreational activities, including athletic activities; authorize the child to obtain a learner's permit, driver's license, or state-issued identification card; authorize employment of the child; and apply for and receive public benefits on behalf of the child.

C.S.H.B. 1940 establishes that, to the extent of any conflict or inconsistency between provisions relating to an authorization agreement for a non-parent relative and any other law relating to the eligibility requirements other than parental consent to obtain the services listed above, the other law controls.

C.S.H.B. 1940 sets forth the information, statements, warnings, and disclosures required to be included in an authorization agreement. The bill requires an authorization agreement to be signed and sworn to before a notary public by the parent and the relative.

C.S.H.B. 1940 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 a 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.S.H.B. 1940 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.

C.S.H.B. 1940 requires a party to the authorization agreement to immediately inform each other party of any change in the party's address or contact information.

C.S.H.B. 1940 sets forth conditions under which an authorization is void or voidable by a party of the agreement. The bill provides that a person who is not a party to the authorization agreement who relies in good faith on an authorization agreement 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. The bill establishes 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. The bill provides that an authorization agreement does not confer or affect standing or a right of intervention in any proceeding relating to the parent-child relationship. The bill sets forth provisions regarding the termination of an authorization agreement.

C.S.H.B. 1940 makes it a Class B misdemeanor offense for a person who knowingly presents a document that is not a valid authorization agreement as a valid authorization agreement; knowingly makes a false statement on an authorization agreement; or knowingly obtains an authorization agreement by fraud, duress, or misrepresentation.

C.S.H.B. 1940 requires the Department of Family and Protective Services (DFPS) to prescribe forms for the disclosure statement and authorization agreement not later than January 1, 2010. The bill 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.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1940 removes provisions included in the original authorizing power of attorney for the caregiver of a child and provisions outlining the forms related to this authorization. The substitute adds provisions not included in the original authorizing a parent or both parents of a child to enter into an authorization agreement with a relative of the child and setting forth the information, statements, warnings, and disclosures required to be included in an authorization agreement. The substitute adds provisions setting forth conditions under which an authorization is void or voidable by a party of the agreement and provisions regarding the termination of an authorization agreement. The substitute adds a provision not included in the original creating a Class B misdemeanor offense for a person who knowingly presents a document that is not a valid authorization agreement as a valid authorization agreement; makes a false statement on an authorization agreement; or obtains an authorization agreement by fraud, duress, or

misrepresentation. The substitute differs from the original in the provision requiring the Department of Family and Protective Services to prescribe the forms to make a change conforming to authorizing an agreement with a relative of a child, rather than a power of attorney for the caregiver as in the original.