

By: Villarreal

H.B. No. 804

A BILL TO BE ENTITLED

AN ACT

relating to authorizing a power of attorney for the medical care and education of a child.

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

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

SUBCHAPTER A. RIGHTS AND DUTIES IN GENERAL

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

SUBCHAPTER B. POWER OF ATTORNEY FOR MEDICAL CARE AND EDUCATION OF

CHILD

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

(1) at least one parent of a child has executed a power of attorney for the medical care and education of the child; and

(2) neither parent is able to make decisions regarding the care of the parent's child, including a situation in which neither parent can be reached.

Sec. 151.052. AUTHORIZATION FOR POWER OF ATTORNEY FOR MEDICAL CARE AND EDUCATION OF CHILD. A person may execute a power of attorney appointing another person as the person's agent to make decisions regarding the medical care and education of the person's child.

1 Sec. 151.053. FORM. (a) A power of attorney for the
2 medical care and education of a child must be in substantially the
3 following form:

4 POWER OF ATTORNEY FOR THE MEDICAL CARE AND EDUCATION OF A CHILD

5 Part I: To be filled out and/or initialed by parent(s).

6 Minor Child's Name_____

7 Mother/Legal Guardian's Name & Address

8 _____

9 _____

10 _____

11 Father/Legal Guardian's Name & Address

12 _____

13 _____

14 _____

15 Caregiver's Name & Address

16 _____

17 _____

18 _____

19 (check one of the following)

20 (____) Both parents are living and have signed this
21 document;

22 (____) One parent is deceased;

23 (____) The parent-child relationship has been
24 terminated for one of the parents;

25 (____) The decision-making authority of one parent has
26 been limited by a court order;

27 (____) One parent is the sole managing conservator of

1 the minor child and has sent a copy of this document, by certified
2 mail, return receipt requested, to the other parent at that
3 parent's last known address; or

4 () The other parent has not consented to the
5 appointment or consent cannot be obtained because
6 _____.

7 Temporary care-giving authority regarding the minor child
8 will be given to the caregiver during the period of the following
9 type(s) of hardship (check at least one):

10 () the serious illness or incarceration of a parent
11 or legal guardian;

12 () the physical or mental condition of the parent
13 or legal guardian or the child is such that care and supervision of
14 the child cannot be provided;

15 () the need for medical or mental health treatment
16 (including substance abuse treatment) by the parent or legal
17 guardian;

18 () the military deployment of the parent or legal
19 guardian; or

20 () other (please describe)
21 _____, at a time
22 when the other parent or legal guardian, if applicable, is unable to
23 care for the child.

24 () I/We the undersigned, authorize the named caregiver
25 to do one or more of the following (check as appropriate):

26 () enroll the child in school and extracurricular
27 activities;

1 (_____) obtain medical, dental, and mental health
2 treatment for the child; and

3 (_____) provide for the child's food, lodging, housing,
4 recreation, and travel.

5 (_____) I/We grant the following additional powers to the
6 named caregiver:_____.

7 (_____) I/We understand that this document does not provide
8 legal custody to the caregiver. If at any time I/we disagree with a
9 decision of the named caregiver or choose to make any health care or
10 educational decisions for my/our child, I/we must revoke the power
11 of attorney, in writing, and provide written documentation to the
12 health care provider and the local education agency (i.e., school).

13 (_____) I/We understand that this document may be terminated
14 by another written document signed by either parent with legal
15 authority or by any order of a court with competent jurisdiction.

16 Part II: To be initialed by caregiver as applicable.

17 (_____) I understand that this document, properly executed,
18 gives me the right to enroll the minor child in the local education
19 agency serving the area where I reside.

20 (_____) I understand that this document does not provide me
21 with legal custody of the minor child.

22 (_____) I understand that, prior to enrollment, the local
23 education agency may require documentation of the minor child's
24 residence with a caregiver and/or documentation or other
25 verification of the validity of the stated hardship.

26 (_____) I understand that, except to the extent limited by
27 federal law, I shall be assigned the rights, duties, and

1 responsibilities that would otherwise be assigned to the parent,
2 legal guardian, or legal custodian of the minor child.

3 () I understand that if the minor child ceases to reside
4 with me, I am required by law to notify any person, school, or
5 health care provider to whom I have given this document.

6 I/We declare under penalty of perjury under the laws of the
7 State of Texas that the foregoing is true and correct.

8 Signed this ___ day of _____, 20__.

9 _____

10 Mother/Legal Guardian

11 The Mother/Legal Guardian, _____,
12 personally appeared before me this _____ day of _____, 20__.

13 _____

14 Notary Public in and for the State of Texas

15 My commission expires: _____

16 Signed this ___ day of _____, 20__.

17 _____

18 Father/Legal Guardian

19 The Father/Legal Guardian, _____,
20 personally appeared before me this _____ day of _____, 20__.

21 _____

22 Notary Public in and for the State of Texas

23 My commission expires: _____

24 Signed this ___ day of _____, 20__.

25 _____

26 Caregiver

27 The Caregiver, _____, personally appeared

1 before me this _____ day of _____, 20__.

2 _____

3 Notary Public in and for the State of Texas

4 My commission expires: _____

5 NOTICE TO THE LOCAL EDUCATION AGENCY AND/OR HEALTH CARE

6 PROVIDER: No person, school official, or health care provider who

7 acts in good faith reliance on a power of attorney for care of a

8 minor child to enroll the child in school or to provide medical,

9 dental, or mental health care, without actual knowledge of facts

10 contrary to those authorized, is subject to criminal or civil

11 liability to any person, or is subject to professional disciplinary

12 action for such reliance. This immunity applies even if medical,

13 dental, or mental health care is provided to a minor child or the

14 child is enrolled in a school in contravention of the wishes of the

15 child's parent, if the person, school official, or health care

16 provider has been provided a copy of an appropriately executed

17 power of attorney for care of the minor child and has not been

18 provided written documentation that the parent has revoked the

19 power of attorney for care of the minor child. Nothing in this

20 document relieves any individual from liability for a violation of

21 any other law.

22 (b) A power of attorney for the medical care and education

23 of a child is legally sufficient under this chapter if the wording

24 of the form complies substantially with Subsection (a), the form is

25 properly completed, and the signatures of the parent or parents, as

26 applicable, and the caregiver are acknowledged.

27 Sec. 151.054. TERMINATION OF AGENT'S AUTHORITY. (a) The

1 authority of an agent appointed in a power of attorney for the
2 medical care and education of a child executed by the child's parent
3 or parents terminates:

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

7 (2) on revocation of the power of attorney by either
8 parent who executed the power of attorney.

9 (b) An agent's authority with regard to a child under a
10 power of attorney is terminated if a parent of the child who did not
11 execute the power of attorney presents to the court evidence that
12 the parent is able to make decisions regarding the care of the
13 child.

14 Sec. 151.055. USE OF POWER OF ATTORNEY IN APPOINTING
15 GUARDIAN OF THE PERSON FOR CHILD. (a) A power of attorney for the
16 medical care and education of a child executed under this
17 subchapter is not considered a written declaration of appointment
18 of a guardian authorized by Section 676(d), Texas Probate Code.

19 (b) If a person who executes a power of attorney for the
20 medical care and education of a child under this subchapter does not
21 execute a written declaration of appointment of a guardian
22 authorized by Section 676(d), Texas Probate Code, and an
23 application for the appointment of a guardian of the person for the
24 child is pending under Chapter XIII, Texas Probate Code, the court
25 may consider the person appointed as the agent under the power of
26 attorney for the medical care and education of a child in appointing
27 a qualified person to serve as guardian of the person for the child

1 under Section 676(c), Texas Probate Code.

2 SECTION 3. This Act takes effect September 1, 2009.