

By: Herrero, Walle, et al.

H.B. No. 1940

Substitute the following for H.B. No. 1940:

By: Hughes

C.S.H.B. No. 1940

A BILL TO BE ENTITLED

AN ACT

1
2 relating to an agreement authorizing a non-parent relative of a
3 child to make certain decisions regarding the child; providing a
4 penalty.

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

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

8 CHAPTER 34. AUTHORIZATION AGREEMENT FOR NON-PARENT RELATIVE

9 Sec. 34.001. APPLICABILITY. This chapter applies only to
10 an authorization agreement between a parent of a child and a person
11 who is the child's:

- 12 (1) grandparent;
13 (2) adult sibling; or
14 (3) adult aunt or uncle.

15 Sec. 34.002. AUTHORIZATION AGREEMENT. (a) A parent or both
16 parents of a child may enter into an authorization agreement with a
17 relative of the child listed in Section 34.001 to authorize the
18 relative to perform the following acts in regard to the child:

19 (1) to authorize medical, dental, psychological, or
20 surgical treatment and immunization of the child, including
21 executing any consents or authorizations for the release of
22 information as required by law relating to the treatment or
23 immunization;

24 (2) to obtain and maintain health insurance coverage

1 for the child and automobile insurance coverage for the child, if
2 appropriate;

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

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

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

10 (6) to authorize employment of the child; and

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

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

17 Sec. 34.003. CONTENTS OF AUTHORIZATION AGREEMENT. (a) The
18 authorization agreement must contain:

19 (1) the following information from the relative of the
20 child to whom the parent is giving authorization:

21 (A) the name and signature of the relative;

22 (B) the relative's relationship to the child; and

23 (C) the relative's current physical address and
24 telephone number or the best way to contact the relative;

25 (2) the following information from the parent:

26 (A) the name and signature of the parent; and

27 (B) the parent's current address and telephone

1 number or the best way to contact the parent;

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

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

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

15 (6) statements that:

16 (A) to the best of the parent's and relative's
17 knowledge:

18 (i) there is no court order or pending suit
19 affecting the parent-child relationship concerning the child;

20 (ii) there is no pending litigation in any
21 court concerning:

22 (a) custody, possession, or placement
23 of the child; or

24 (b) access to or visitation with the
25 child; and

26 (iii) the court does not have continuing
27 jurisdiction concerning the child; or

1 (B) the court with continuing jurisdiction
2 concerning the child has given written approval for the execution
3 of the authorization agreement accompanied by the following
4 information:

5 (i) the county in which the court is
6 located;

7 (ii) the number of the court; and

8 (iii) the cause number in which the order
9 was issued or the litigation is pending;

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

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

17 (9) a statement by the parent that establishes the
18 circumstances under which the authorization agreement expires,
19 including that the authorization agreement:

20 (A) is valid until revoked;

21 (B) continues in effect after the death or during
22 any incapacity of the parent; or

23 (C) expires on a date stated in the authorization
24 agreement; and

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

27 (b) The authorization agreement must contain the following

1 warnings and disclosures:

2 (1) that the authorization agreement is an important
3 legal document;

4 (2) that the parent and the relative must read all of
5 the warnings and disclosures before signing the authorization
6 agreement;

7 (3) that the persons signing the authorization
8 agreement are not required to consult an attorney but are advised to
9 do so;

10 (4) that the parent's rights as a parent may be
11 adversely affected by placing or leaving the parent's child with
12 another person;

13 (5) that the authorization agreement does not confer
14 on the relative the rights of a managing or possessory conservator
15 or legal guardian;

16 (6) that a parent who is a party to the authorization
17 agreement may terminate the authorization agreement and resume
18 custody, possession, care, and control of the child on demand and
19 that at any time the parent may request the return of the child;

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

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

27 (9) that, in certain circumstances, the authorization

1 agreement may not be entered into without written permission of the
2 court;

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

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

11 Sec. 34.004. EXECUTION OF AUTHORIZATION AGREEMENT. (a)
12 The authorization agreement must be signed and sworn to before a
13 notary public by the parent and the relative.

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

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

18 (2) there is pending litigation in any court
19 concerning:

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

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

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

25 (c) An authorization agreement obtained in violation of
26 Subsection (b) is void.

27 Sec. 34.005. DUTIES OF PARTIES TO AUTHORIZATION AGREEMENT.

1 (a) If both parents did not sign the authorization agreement, the
2 parties shall mail a copy of the executed authorization agreement
3 to the parent who was not a party to the authorization agreement at
4 the parent's last known address not later than the 10th day after
5 the date the authorization agreement is executed if that parent is
6 living and that parent's parental rights have not been terminated.
7 An authorization agreement is void if the parties fail to comply
8 with this subsection.

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

14 Sec. 34.006. AUTHORIZATION VOIDABLE. An authorization
15 agreement is voidable by a party if the other party knowingly:

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

18 (2) made a false statement on the authorization
19 agreement.

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

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

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

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

12 (1) affecting the parent-child relationship;

13 (2) concerning custody, possession, or placement of
14 the child;

15 (3) concerning access to or visitation with the child;

16 or

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

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

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

25 (1) gives each party written notice of the revocation;

26 (2) files the written revocation with the clerk of the
27 county in which:

1 (A) the child resides;
2 (B) the child resided at the time the
3 authorization agreement was executed; or

4 (C) the relative resides; and
5 (3) files the written revocation with the clerk of
6 each court:

7 (A) that has continuing, exclusive jurisdiction
8 over the child;

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

11 (C) in which there is pending litigation
12 concerning:

13 (i) custody, possession, or placement of
14 the child; or

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

17 (D) that has entered an order regarding the
18 appointment of a guardian for the child under Section 676, Texas
19 Probate Code.

20 (d) If an authorization agreement executed under this
21 chapter does not state when the authorization agreement expires,
22 the authorization agreement is valid until revoked.

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

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

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

4 (2) makes a false statement on an authorization
5 agreement; or

6 (3) obtains an authorization agreement by fraud,
7 duress, or misrepresentation.

8 (b) An offense under this section is a Class B misdemeanor.

9 SECTION 2. The Department of Family and Protective Services
10 shall prescribe forms for the disclosure statement and
11 authorization agreement under Chapter 34, Family Code, as added by
12 this Act, not later than January 1, 2010. The department and the
13 Texas Education Agency shall make the forms available on their
14 Internet websites or provide paper copies to the public on request
15 without charge.

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