

By: Herrero

H.B. No. 1940

A BILL TO BE ENTITLED

AN ACT

relating to authorizing a power of attorney for a caregiver 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 CAREGIVER 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 a caregiver of the child; and

(2) the parent who did not execute the power of attorney is not willing or able to execute the power of attorney or make decisions regarding the care of the parent's child.

Sec. 151.052. AUTHORIZATION FOR POWER OF ATTORNEY FOR CAREGIVER OF CHILD. (a) A person may execute a power of attorney appointing another person as the person's agent to make decisions regarding the person's child.

(b) The power of attorney must be witnessed by two witnesses who are at least 18 years of age, neither of whom is the agent, and

1 at least one of whom is not related by blood or marriage to the child
2 or the agent.

3 (c) If one parent executes the power of attorney, and the
4 other parent does not, the parent executing the power of attorney
5 must provide a written explanation on the power of attorney that the
6 other parent is not willing or able to sign the power of attorney or
7 make decisions regarding the parent's child.

8 Sec. 151.053. TERMINATION OF AGENT'S AUTHORITY. The
9 authority of an agent appointed in a power of attorney for the
10 caregiver of a child executed by the child's parent or parents
11 terminates:

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

15 (2) on written revocation of the power of attorney
16 witnessed by two witnesses who are at least 18 years of age, neither
17 of whom is the agent, and at least one of whom is not related by
18 blood or marriage to the child or the agent:

19 (A) by both parents who signed the power of
20 attorney;

21 (B) by the parent who signed the power of
22 attorney; or

23 (C) by the parent who did not sign the power of
24 attorney if the written revocation contains a statement that the
25 parent is able to make decisions for the parent's child.

26 Sec. 151.054. USE OF POWER OF ATTORNEY IN APPOINTING
27 GUARDIAN OF THE PERSON FOR CHILD. (a) A power of attorney executed

1 under this subchapter is not considered a written declaration of
2 appointment of a guardian authorized by Section 676(d), Texas
3 Probate Code.

4 (b) If a person who executes a power of attorney under this
5 subchapter does not execute a written declaration of appointment of
6 a guardian authorized by Section 676(d), Texas Probate Code, and an
7 application for the appointment of a guardian of the person for the
8 child is pending under Chapter XIII, Texas Probate Code, the court
9 may consider the person appointed as the agent under the power of
10 attorney in appointing a qualified person to serve as guardian of
11 the person for the child under Section 676(c), Texas Probate Code.

12 Sec. 151.055. DISCLOSURE STATEMENT. A disclosure statement
13 must be provided with the Power of Attorney for Caregiver of Child.
14 The disclosure statement must be in substantially the following
15 form:

16 "THE POWER OF ATTORNEY FOR CAREGIVER OF CHILD IS A VERY
17 IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THE POWER OF ATTORNEY FOR
18 CAREGIVER OF CHILD, YOU MUST READ THIS ENTIRE DISCLOSURE STATEMENT.
19 YOU DO NOT NEED TO HAVE AN ATTORNEY PREPARE THE POWER OF ATTORNEY
20 FOR CAREGIVER OF CHILD, BUT YOU CAN IF YOU WANT TO.

21 "WARNING: Under Texas law, leaving your child with someone
22 voluntarily may affect your parental rights to possession of the
23 child. You are encouraged to consult an attorney.

24 "Except to the extent that you limit the authority of your
25 agent, the person you name as your agent may make decisions for you
26 about each named child in accordance with your choices in this
27 document.

1 "The agent's authority begins when the Power of Attorney for
2 Caregiver of Child is executed (fully signed and witnessed).

3 "If only one parent signs the Power of Attorney for Caregiver
4 of Child, that parent shall state in writing the reason or reasons
5 why the other parent did not sign.

6 "The person you appoint as agent should be someone you know
7 and trust. The person must be at least 18 years of age. You should
8 inform the person you appoint that you want the person to have the
9 powers that you choose to give in the Power of Attorney for
10 Caregiver of Child. Your agent must comply with limitations on the
11 authority of the agent, which are set forth in the area of the power
12 of attorney titled 'Limitations on Agent.' You should discuss the
13 Power of Attorney for Caregiver of Child thoroughly with your agent
14 and give your agent a signed copy. You should write on the power of
15 attorney the names of people and institutions who have signed
16 copies. Your agent is not liable for the expenses of raising your
17 child except in certain situations. You will continue to be
18 responsible for these expenses.

19 "After you have signed the Power of Attorney for Caregiver of
20 Child, you have the right to make decisions at any time about your
21 child unless a court order provides otherwise, even if your agent
22 disagrees.

23 "You have the right to revoke the authority granted to your
24 agent. This power of attorney can only be revoked in writing. This
25 power of attorney can be revoked, by the parent or parents who
26 signed the power of attorney, in a writing witnessed by two
27 witnesses who are at least 18 years of age, neither of whom is the

1 agent, and at least one of whom is not related by blood or marriage
2 to the child or the agent.

3 "If the parent who did not execute the power of attorney is
4 willing and able to make decisions regarding the care of the child,
5 that parent may revoke the power of attorney. The revocation must
6 be in writing and witnessed by two witnesses who are at least 18
7 years of age, neither of whom is the agent, and at least one of whom
8 is not related by blood or marriage to the child or the agent.

9 "You should put a time limit on the power of attorney. If the
10 time limit occurs while the child is still in the care of the person
11 to whom you have given authority, you must execute a new Power of
12 Attorney for Caregiver of Child if you want the caregiver to
13 continue to have authority.

14 "In the power of attorney, you must specify whether the power
15 of attorney continues in effect until the expiration date if you
16 become disabled or incapacitated after signing the power of
17 attorney.

18 "If you revoke the Power of Attorney for Caregiver of Child
19 you should give notice of the revocation to your agent and anyone
20 else that has a copy, including educational institutions, banks, or
21 other businesses or people.

22 "The Power of Attorney for Caregiver of Child may not be
23 changed or modified. If you want to make changes, you must execute a
24 new one.

25 "You may want to designate an alternate agent in case your
26 agent is unwilling, unable, or ineligible to act as your agent. Any
27 alternate agent you designate has the same authority to make

1 decisions for you concerning each named child.

2 "To the caregiver named as an agent in this power of attorney:

3 "This power of attorney does not give you possessory
4 conservatorship or managing conservatorship of the child. This
5 power of attorney does not stop a parent from resuming possession
6 and caregiving immediately at any time the parent requests return
7 of the child. Failure to return each named child on request of the
8 parent may constitute a crime, unless there is a court order that
9 provides otherwise.

10 "Caution: The caregiver receiving authority under this power
11 of attorney may become liable for expenses relating to the child if:

12 "(1) the caregiver signs a statement or a contract in
13 the caregiver's name for services or goods for the child;

14 "(2) the caregiver is present when services or goods
15 are provided to the child unless the services or goods are fully
16 paid for with money from a parent or the child; or

17 "(3) the caregiver authorizes the child to tell a
18 provider of services or goods that the caregiver is responsible for
19 the cost of the services or goods."

20 Sec. 151.056. FORM. A Power of Attorney for Caregiver of
21 Child must be in substantially the following form:

22 "POWER OF ATTORNEY FOR CAREGIVER OF CHILD

23 "WARNING: If there is a pending suit affecting the
24 parent-child relationship concerning a child named in this Power of
25 Attorney for Caregiver of Child, or other pending litigation in any
26 court concerning custody, possession, or placement of the child, or
27 access to or visitation with the child or if a court has continuing

1 jurisdiction concerning the child, this Power of Attorney for
2 Caregiver of Child cannot be executed unless the court by written
3 order allows it to be executed.

4 "1. PARENT INFORMATION.

5 "My name is (print): _____

6 "I am a parent of the child or children (hereinafter referred
7 to as 'child') named in this Power of Attorney for Caregiver of
8 Child.

9 "My address: _____

10 "Telephone number or best way to contact: _____

11 "Driver's license number and issuing state or other form of
12 identification: _____

13 "Name of other parent: _____

14 "Address: _____

15 "Telephone number: _____

16 "Required:

17 "___ The other parent has signed this power of attorney.

18 "___ The other parent has not signed this power of attorney
19 because:

20 _____

21 _____

22 _____

23 "Note: If only one parent signs this power of attorney, the
24 power of attorney must be witnessed by two witnesses to be
25 effective.

26 "2. ACKNOWLEDGMENT OF DISCLOSURE STATEMENT.

27 "___ (initial) I have read and understand the information

1 contained in the disclosure statement attached to and made part of
2 this power of attorney.

3 "_____ (other parent initial) has read and understands the
4 information contained in the disclosure statement attached to and
5 made part of this power of attorney.

6 "3. PRIOR COURT ORDERS CONCERNING CHILD (initial the correct
7 choice).

8 "_____ NO court has issued orders about my child and there are
9 no child support orders in effect with respect to my child.

10 "_____ A court HAS issued orders about my child:

11 "Cause number: _____, _____ County,
12 Texas.

13 "__ The order grants me the right to determine the primary
14 physical residence of my child.

15 "__ I have provided my agent with a copy of the order.

16 "4. DESIGNATION OF AGENT.

17 "I do hereby appoint (print name of agent) _____
18 as my agent to act on behalf of my child as stated below, unless I
19 state otherwise in this document.

20 "Agent's address: _____

21 "Driver's license number and issuing state or other form of
22 identification: _____

23 "Telephone number or best way to contact: _____

24 "5. CHILDREN COVERED BY THIS POWER OF ATTORNEY.

25 "Please provide the following information for each child for
26 whom this power of attorney is to be effective. Attach additional
27 sheets if necessary.

1 "Child's name (first, middle, last): _____"

2 "Date of birth: _____"

3 "6. POWERS (AREAS OF AUTHORITY)."

4 "My agent is hereby appointed in my place to perform the
5 following acts on behalf of each child named above:

6 "Initial ONLY those areas of authority that you wish your
7 agent to have. Draw vertical or wavy lines through each area of
8 authority that you do not want your agent to have.

9 "_____ To maintain physical possession of the child.

10 "_____ To designate the primary residence of the child in
11 Texas (Note: if there are prior court orders that limit where your
12 child can live, your agent is also limited by those orders).

13 "_____ To provide care, control, protection, and reasonable
14 discipline of the child.

15 "_____ To direct the moral and religious training of the
16 child.

17 "_____ To arrange for child care or preschool for the child, if
18 appropriate.

19 "_____ To make decisions regarding the education of the child
20 and to have access to the child's school records.

21 "_____ To register the child for school and to authorize the
22 child's participation in school activities.

23 "_____ To make all necessary arrangements and to execute all
24 necessary consents and forms for the child to participate in
25 age-appropriate extracurricular activities, civic activities,
26 social activities, club or organization memberships and
27 activities, and recreational, sports, and athletic activities.

1 "_____ To arrange for the provision to the child of clothing,
2 food, shelter, education, and medical, psychiatric, psychological,
3 dental, surgical, counseling, therapy, and rehabilitative
4 services.

5 "_____ To arrange for insurance as appropriate for the child
6 to cover medical, psychiatric, psychological, dental, surgical,
7 counseling, therapy, or rehabilitative services, and to arrange for
8 appropriate accident, travel, or other insurance for the child.

9 "_____ To consent to medical, psychiatric, psychological,
10 dental, surgical, counseling, therapy, and rehabilitative services
11 for the child and to have access to all records relating to those
12 services.

13 "_____ For the child, in regard to confidential information
14 and protected health information, for the purposes of the Health
15 Insurance Portability and Accountability Act of 1996 (HIPAA), and
16 any other law or rule requiring authority to consent to or obtain
17 confidential information of any sort or protected health
18 information, my agent is acting in loco parentis and can execute
19 requests and authorizations regarding confidential information or
20 protected health information for the child.

21 "_____ To open and manage accounts at financial institutions
22 for the child, with or without the name of the agent as co-signer on
23 the account, as appropriate to the maturity of the child.

24 "_____ To arrange for the child to obtain motor vehicle,
25 boating, and other licenses and registrations, as appropriate to
26 the maturity of the child.

27 "_____ To co-sign or guarantee appropriate loans to the child

1 by third parties for educational purposes or to purchase goods and
2 services.

3 "_____ To collect debts owing to the child, to pay debts owed
4 by the child from the child's money, to defend suits against the
5 child, and to pursue suits to benefit the child, but this does not
6 wave the legal protection of the child under any law due to the
7 child being a minor.

8 "_____ To give consent for lawful employment appropriate to
9 the age, interest, and capabilities of the child.

10 "_____ As permitted under applicable law, to arrange for and
11 authorize travel out of state and out of country for the child and
12 to execute necessary documents related to out-of-state and
13 out-of-country travel.

14 "7. ALLERGIES AND SPECIAL HEALTH NEEDS. (Attach additional
15 sheets as necessary.)

16 "The following children have the following allergies
17 (including allergic reactions to medicines) or the following
18 special health needs (including dietary needs):

19 _____

20 "8. LIMITATIONS ON AGENT (optional). (Attach additional
21 sheets as necessary.)

22 "Limitations on the decision-making authority and powers of
23 my agent are as follows: _____

24 "Except to the extent that I have geographically limited the
25 exercise of one or more powers or areas of decision-making in the
26 limitations section or elsewhere in this power of attorney, powers
27 and authorities granted to my agent in this Power of Attorney for

1 Caregiver of Child can be exercised both within and outside the
2 State of Texas.

3 "9. DESIGNATION OF ALTERNATE AGENT (optional).

4 "If the person designated as my agent is unable or unwilling
5 to continue to act as caregiver for my child, I designate the
6 following person to serve as my agent to make decisions on behalf of
7 my child:

8 "Alternate agent:

9 "Name: _____

10 "Address: _____

11 "Telephone number: _____

12 "10. DURATION.

13 "___ (initial) I understand that this power of attorney
14 starts on the day I sign it and continues until it is revoked, or
15 until the expiration date, whichever date occurs earlier. I
16 understand that I can revoke this power of attorney at any time by
17 revoking it in accordance with the revocation provisions.

18 "The expiration date of this power of attorney is
19 _____.

20 "11. EFFECT OF SUBSEQUENT DISABILITY. Initial whichever
21 statement is true and states your intent:

22 "(Initial one space only)

23 "___ This power of attorney is not affected merely due to my
24 subsequent disability or incapacity and remains in effect until the
25 expiration date or the date I revoke this power of attorney before
26 the expiration date. If I am later determined by a court to be
27 incapacitated, then the court may invalidate this power of attorney

1 in whole or in part, or may leave it wholly unaffected.

2 "___ This power of attorney becomes ineffective if I later
3 become disabled or incapacitated or if I am later determined by a
4 court to be incapacitated.

5 "12. REVOCATION PROVISIONS.

6 "This power of attorney revokes all prior Powers of Attorney
7 for Caregiver of Child.

8 "I understand that this power of attorney can only be
9 revoked, by the parent or parents who signed it, in a writing
10 witnessed by two witnesses who are at least 18 years of age, neither
11 of whom is the agent, and at least one of whom is not related by
12 blood or marriage to the child or the agent. I understand that a
13 parent who did not sign the power of attorney may revoke the power
14 of attorney by executing a written statement that the parent is
15 willing and able to make decisions regarding the parent's child.
16 The written statement must be witnessed by two witnesses who are at
17 least 18 years of age, neither of whom is the agent, and at least one
18 of whom is not related by blood or marriage to the child or the
19 agent.

20 "13. ORIGINAL AND COPIES. The original of this Power of
21 Attorney for Caregiver of Child is in the possession of:

22 _____

23 "The following persons have a copy of this Power of Attorney
24 for Caregiver of Child: _____

25 "14. PRESENTATION. Unless otherwise limited in regard to
26 methods of presentation, in the limitations section of this power
27 of attorney, the agent named in this Power of Attorney for Caregiver

1 of Child can present this power of attorney in person, by fax, by
2 attachment to e-mail, or by copy sent by United States mail or
3 delivery service.

4 "15. SIGNATURES.

5 "Parent:

6 "I have read the disclosure statement for the Power of
7 Attorney for Caregiver of Child. I sign my name to this Power of
8 Attorney for Caregiver of Child.

9 "Signed on this _____ day of _____, 2_____.

10 "_____

11 "(parent's signature)

12 "_____

13 "(parent's printed name)

14 "Other parent:

15 "I have read the disclosure statement for the Power of
16 Attorney for Caregiver of Child. I authorize the above parent to
17 make this Power of Attorney for Caregiver of Child on behalf of my
18 children named in this document.

19 "Signed on this _____ day of _____, 2_____.

20 "_____

21 "(other parent's signature)

22 "_____

23 "(other parent's printed name)

24 "16. WITNESSES:

25 "Witnesses are required for your power of attorney to be
26 valid. Neither witness can be your agent. One witness cannot be a
27 relative of the child or the agent.

1 "First witness:

2 "I am at least 18 years of age and I am not the person
3 appointed as the agent by this document. I am not related to the
4 child or the agent by blood or marriage.

5 "Signature: _____

6 "Printed name: _____

7 "Date: _____

8 "Address: _____

9 "Second witness:

10 "I am at least 18 years of age and I am not the person
11 appointed as the agent by this document.

12 "Signature: _____

13 "Printed name: _____

14 "Date: _____

15 "Address: _____"

16 SECTION 3. The Department of Family and Protective Services
17 shall prescribe forms for the disclosure statement under Section
18 151.055, Family Code, as added by this Act, and the power of
19 attorney under Section 151.056, Family Code, as added by this Act,
20 not later than January 1, 2010. The department and the Texas
21 Education Agency shall make the forms available on their Internet
22 websites or provide paper copies to the public on request without
23 charge.

24 SECTION 4. This Act takes effect immediately if it receives
25 a vote of two-thirds of all the members elected to each house, as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect September 1, 2009.