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

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

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

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

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

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

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

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

Sec. 151.054. USE OF POWER OF ATTORNEY IN APPOINTING
GUARDIAN OF THE PERSON FOR CHILD. (a) A power of attorney executed
under this subchapter is not considered a written declaration of
appointment of a guardian authorized by Section 676(d), Texas
Probate Code.

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

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

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

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

"Except to the extent that you limit the authority of your
agent, the person you name as your agent may make decisions for you
about each named child in accordance with your choices in this
document."
"The agent's authority begins when the Power of Attorney for Caregiver of Child is executed (fully signed and witnessed).

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

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

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

"You have the right to revoke the authority granted to your agent. This power of attorney can only be revoked in writing. This power of attorney can be revoked, by the parent or parents who signed the power of attorney, in a writing witnessed by two witnesses who are at least 18 years of age, neither of whom is the
agent, and at least one of whom is not related by blood or marriage to the child or the agent.

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

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

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

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

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

"You may want to designate an alternate agent in case your agent is unwilling, unable, or ineligible to act as your agent. Any alternate agent you designate has the same authority to make
decisions for you concerning each named child.

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

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

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

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

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

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

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

"POWER OF ATTORNEY FOR CAREGIVER OF CHILD

"WARNING: If there is a pending suit affecting the
parent-child relationship concerning a child named in this Power of
Attorney for Caregiver of Child, or other pending litigation in any
court concerning custody, possession, or placement of the child, or
access to or visitation with the child or if a court has continuing
jurisdiction concerning the child, this Power of Attorney for Caregiver of Child cannot be executed unless the court by written order allows it to be executed.

"1. PARENT INFORMATION.

"My name is (print): _____________________________

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

"My address: _____________________________

"Telephone number or best way to contact: __________________

"Driver's license number and issuing state or other form of identification: _______________________

"Name of other parent: _____________________________

"Address: _____________________________

"Telephone number: _____________________________

"Required:

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

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

________________________________________________________________

________________________________________________________________

________________________________________________________________

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

"2. ACKNOWLEDGMENT OF DISCLOSURE STATEMENT.

"___ (initial) I have read and understand the information
contained in the disclosure statement attached to and made part of this power of attorney.

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

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

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

"____ A court HAS issued orders about my child:

"Cause number: ________________, ________________ County, Texas.

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

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

4. DESIGNATION OF AGENT.

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

"Agent's address: _____________________________

"Driver's license number and issuing state or other form of identification: _____________________________

"Telephone number or best way to contact: _____________________________

5. CHILDREN COVERED BY THIS POWER OF ATTORNEY.

"Please provide the following information for each child for whom this power of attorney is to be effective. Attach additional sheets if necessary.
Child's name (first, middle, last): ______________________

Date of birth: ______________________

6. POWERS (AREAS OF AUTHORITY).

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

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

- To maintain physical possession of the child.
- To designate the primary residence of the child in Texas (Note: if there are prior court orders that limit where your child can live, your agent is also limited by those orders).
- To provide care, control, protection, and reasonable discipline of the child.
- To direct the moral and religious training of the child.
- To arrange for child care or preschool for the child, if appropriate.
- To make decisions regarding the education of the child and to have access to the child's school records.
- To register the child for school and to authorize the child's participation in school activities.
- To make all necessary arrangements and to execute all necessary consents and forms for the child to participate in age-appropriate extracurricular activities, civic activities, social activities, club or organization memberships and activities, and recreational, sports, and athletic activities.
To arrange for the provision to the child of clothing, food, shelter, education, and medical, psychiatric, psychological, dental, surgical, counseling, therapy, and rehabilitative services.

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

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

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

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

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

To co-sign or guarantee appropriate loans to the child.
by third parties for educational purposes or to purchase goods and services.

"____ To collect debts owing to the child, to pay debts owed by the child from the child’s money, to defend suits against the child, and to pursue suits to benefit the child, but this does not waive the legal protection of the child under any law due to the child being a minor.

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

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

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

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

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

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

"Except to the extent that I have geographically limited the exercise of one or more powers or areas of decision-making in the limitations section or elsewhere in this power of attorney, powers and authorities granted to my agent in this Power of Attorney for
Caregiver of Child can be exercised both within and outside the State of Texas.

9. DESIGNATION OF ALTERNATE AGENT (optional).

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

"Alternate agent:

"Name: _________________________________
"Address: ______________________________
"Telephone number: _____________________

10. DURATION.

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

"The expiration date of this power of attorney is ________________.

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

"(Initial one space only)

" This power of attorney is not affected merely due to my subsequent disability or incapacity and remains in effect until the expiration date or the date I revoke this power of attorney before the expiration date. If I am later determined by a court to be incapacitated, then the court may invalidate this power of attorney.
in whole or in part, or may leave it wholly unaffected.

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

"12. REVOCATION PROVISIONS.
"This power of attorney revokes all prior Powers of Attorney for Caregiver of Child.

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

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

_____________________________

"The following persons have a copy of this Power of Attorney for Caregiver of Child: ________________________________

"14. PRESENTATION. Unless otherwise limited in regard to methods of presentation, in the limitations section of this power of attorney, the agent named in this Power of Attorney for Caregiver
of Child can present this power of attorney in person, by fax, by attachment to e-mail, or by copy sent by United States mail or delivery service.

"15. SIGNATURES.

"Parent:

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

"Signed on this _________ day of ___________________, 2____.

_____________________________
(parent's signature)

_____________________________
(parent's printed name)

"Other parent:

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

"Signed on this _________ day of ___________________, 2____.

_____________________________
(other parent's signature)

_____________________________
(other parent's printed name)

"16. WITNESSES:

"Witnesses are required for your power of attorney to be valid. Neither witness can be your agent. One witness cannot be a relative of the child or the agent.
"First witness:
"I am at least 18 years of age and I am not the person
appointed as the agent by this document. I am not related to the
child or the agent by blood or marriage.
"Signature: _____________________________
"Printed name: ___________________________
"Date: ________________________
"Address: _________________________________________

"Second witness:
"I am at least 18 years of age and I am not the person
appointed as the agent by this document.
"Signature: ______________________________
"Printed name: ___________________________
"Date: ________________________
"Address: _________________________________________"

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

SECTION 4. This Act takes effect immediately if it receives
a vote of two-thirds of all the members elected to each house, as
provided by Section 39, Article III, Texas Constitution. If this
Act does not receive the vote necessary for immediate effect, this
1 Act takes effect September 1, 2009.