

By: King of Taylor

H.B. No. 2837

Substitute the following for H.B. No. 2837:

By: Dutton

C.S.H.B. No. 2837

A BILL TO BE ENTITLED

1 AN ACT

2 relating to authorization agreements between a parent and a
3 relative or other person for the care and custody of the parent's
4 child and an exemption from a licensing requirement; authorizing a
5 fee.

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

7 SECTION 1. Section 34.001, Family Code, is amended to read
8 as follows:

9 Sec. 34.001. APPLICABILITY. This chapter applies only to:

10 (1) an authorization agreement between a parent of a
11 child and a person who is the child's:

12 (A) grandparent;

13 (B) adult sibling; or

14 (C) adult aunt or uncle; ~~and~~

15 (2) an authorization agreement between a parent of a
16 child and the person with whom the child is placed under a parental
17 child safety placement agreement; and

18 (3) an authorization agreement between a parent of a
19 child and a person who is unrelated to the child with whom the child
20 is placed through a qualified nonprofit organization that assists
21 the parent with executing the authorization agreement.

22 SECTION 2. Section 34.0015, Family Code, is amended to read
23 as follows:

24 Sec. 34.0015. DEFINITIONS ~~[DEFINITION]~~. In this chapter:

1 (1) "Department" means the Department of Family and
2 Protective Services.

3 (2) "Parent" [~~,"parent"~~] has the meaning assigned by
4 Section 101.024.

5 (3) "Qualified nonprofit organization" means a
6 charitable or religious institution that is exempt from federal
7 income taxation under Section 501(a), Internal Revenue Code of
8 1986, as an organization described by Section 501(c)(3) of that
9 code, that assists a parent or legal guardian of a child with the
10 process of entering into an authorization agreement under this
11 chapter, including identifying an appropriate placement for each
12 child subject to the agreement and providing services and resources
13 to support the child, parents, and other persons authorized to
14 provide temporary care of the child under the agreement.

15 SECTION 3. Sections 34.002(a) and (c), Family Code, are
16 amended to read as follows:

17 (a) A parent or both parents of a child may enter into an
18 authorization agreement with a relative of the child or other
19 person listed in Section 34.001 to authorize the relative or other
20 person to perform the following acts in regard to the child:

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

26 (2) to obtain and maintain health insurance coverage
27 for the child and automobile insurance coverage for the child, if

1 appropriate;

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

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

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

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

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

12 (c) An authorization agreement under this chapter does not
13 confer on a relative of the child or other person listed in Section
14 34.001 or a relative or other person with whom the child is placed
15 under a child safety placement agreement the right to consent to the
16 marriage or adoption of the child, consent to the termination of
17 parental rights to the child, or authorize the performance of an
18 abortion on the child or the administration of emergency
19 contraception to the child.

20 SECTION 4. Chapter 34, Family Code, is amended by adding
21 Sections 34.0022, 34.0023, and 34.0024 to read as follows:

22 Sec. 34.0022. AUTHORIZATION AGREEMENT BETWEEN PARENT AND
23 NONRELATIVE. (a) A parent may enter into an authorization
24 agreement with a person who is not a relative of the parent's child
25 only if the authorization agreement is entered into with the
26 assistance of a qualified nonprofit organization in accordance with
27 this chapter. Except as provided by Section 34.0024(b), this

1 subsection does not apply to a parent whose child is the subject of
2 an ongoing department investigation of child abuse or neglect or to
3 whom the department is providing services.

4 (b) An authorization agreement executed under this section
5 expires on the first anniversary of the date the agreement is
6 executed unless an earlier date is specified in the agreement. The
7 parties to the agreement may execute a subsequent authorization
8 agreement if necessary.

9 (c) A parent or other legal guardian of a child may revoke or
10 withdraw an authorization agreement at any time.

11 Sec. 34.0023. EFFECT ON PARENTAL RIGHTS. A parent's
12 execution of an authorization agreement under this chapter does
13 not, without other evidence, constitute abandonment or child abuse
14 or neglect.

15 Sec. 34.0024. SERVICES OF QUALIFIED NONPROFIT
16 ORGANIZATION. (a) For each request received by a qualified
17 nonprofit organization to assist a parent and a person who is not
18 related to the parent's child with entering into an authorization
19 agreement and placement of a child under this chapter, the
20 qualified nonprofit organization shall:

21 (1) for each person to whom powers are delegated under
22 the agreement and for each person age 14 or older who resides in the
23 home, ensure that:

24 (A) a criminal history background check is
25 conducted through the Department of Public Safety as authorized
26 under Section 411.1411, Government Code;

27 (B) a fingerprint-based criminal history check

1 is conducted through the Department of Public Safety and the
2 Federal Bureau of Investigation; and

3 (C) an abuse or neglect registry check is
4 conducted by the department for the in-state registry and by the
5 organization for any applicable out-of-state registry;

6 (2) ensure that each person providing care for a child
7 under an authorization agreement authorized by this chapter is
8 trained in the rights, duties, and limitations regarding providing
9 care for a child under an authorization agreement as provided in
10 this chapter; and

11 (3) notify the department of the request and verify
12 that the department does not have an open investigation of child
13 abuse or neglect involving the child or parent or is not otherwise
14 providing services to the parent.

15 (b) If the department has an open investigation of abuse and
16 neglect related to the child or is providing services to the parent,
17 the department must approve the authorization agreement before the
18 agreement may take effect.

19 (c) If the department does not have an open investigation
20 involving the child or parent or is not otherwise providing
21 services to the parent, department approval of the agreement is not
22 required and the department may not open an investigation based
23 solely on receiving the notification required by Subsection (a)(3).
24 This subsection does not prohibit the department from opening an
25 investigation under Chapter 261.

26 (d) The executive commissioner of the Health and Human
27 Services Commission by rule shall establish a fee for the

1 department to charge for each abuse or neglect registry check
2 conducted by the department for a qualified nonprofit organization
3 under this section. The fee must be in an amount sufficient for the
4 department to recover the costs to the department of conducting the
5 registry check under this section.

6 SECTION 5. Section 34.003, Family Code, is amended to read
7 as follows:

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

10 (1) the following information from the relative of the
11 child or other person to whom the parent is giving authorization:

12 (A) the name and signature of the relative or
13 other person;

14 (B) the relative's or other person's relationship
15 to the child; and

16 (C) the relative's or other person's current
17 physical address and telephone number or the best way to contact the
18 relative or other person;

19 (2) the following information from the parent:

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

21 (B) the parent's current address and telephone
22 number or the best way to contact the parent;

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

25 (4) a statement that the relative or other person has
26 been given authorization to perform the functions listed in Section
27 34.002(a) as a result of a voluntary action of the parent and that

1 the relative or other person has voluntarily assumed the
2 responsibility of performing those functions;

3 (5) statements that neither the parent nor the
4 relative or other person has knowledge that a parent, guardian,
5 custodian, licensed child-placing agency, or other authorized
6 agency asserts any claim or authority inconsistent with the
7 authorization agreement under this chapter with regard to actual
8 physical possession or care, custody, or control of the child;

9 (6) statements that:

10 (A) to the best of the parent's and relative's or
11 other person's knowledge:

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

14 (ii) there is no pending litigation in any
15 court concerning:

16 (a) custody, possession, or placement
17 of the child; or

18 (b) access to or visitation with the
19 child; and

20 (iii) the court does not have continuing
21 jurisdiction concerning the child; or

22 (B) the court with continuing jurisdiction
23 concerning the child has given written approval for the execution
24 of the authorization agreement accompanied by the following
25 information:

26 (i) the county in which the court is
27 located;

1 (ii) the number of the court; and
2 (iii) the cause number in which the order
3 was issued or the litigation is pending;

4 (7) a statement that to the best of the parent's and
5 relative's or other person's knowledge there is no current, valid
6 authorization agreement regarding the child;

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

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

14 (10) a statement by the parent that establishes the
15 circumstances under which the authorization agreement expires,
16 including that the authorization agreement:

- 17 (A) is valid until revoked;
- 18 (B) continues in effect after the death or during
19 any incapacity of the parent; or
- 20 (C) expires on a date stated in the authorization
21 agreement; ~~and~~

22 (11) if the authorization agreement is executed with
23 the assistance of a qualified nonprofit organization, the following
24 information:

25 (A) the organization's name, tax identification
26 number, and current physical address and telephone number; and

27 (B) the name and signature of the individual

1 authorized to act on behalf of the organization; and

2 (12) space for the signature and seal of a notary
3 public.

4 (b) The authorization agreement must contain the following
5 warnings and disclosures:

6 (1) that the authorization agreement is an important
7 legal document;

8 (2) that the parent and the relative or other person
9 must read all of the warnings and disclosures before signing the
10 authorization agreement;

11 (3) that the persons signing the authorization
12 agreement are not required to consult an attorney but are advised to
13 do so;

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

17 (5) that the authorization agreement does not confer
18 on the relative or other person the rights of a managing or
19 possessory conservator or legal guardian;

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

24 (7) that failure by the relative or other person to
25 return the child to the parent immediately on request may have
26 criminal and civil consequences;

27 (8) that, under other applicable law, the relative or

1 other person may be liable for certain expenses relating to the
2 child in the relative's or other person's care but that the parent
3 still retains the parental obligation to support the child;

4 (9) that, in certain circumstances, the authorization
5 agreement may not be entered into without written permission of the
6 court;

7 (10) that the authorization agreement may be
8 terminated by certain court orders affecting the child;

9 (11) that the authorization agreement does not
10 supersede, invalidate, or terminate any prior authorization
11 agreement regarding the child;

12 (12) that the authorization agreement is void if a
13 prior authorization agreement regarding the child is in effect and
14 has not expired or been terminated;

15 (13) that, except as provided by Section 34.005(a-1),
16 the authorization agreement is void unless:

17 (A) the parties mail a copy of the authorization
18 agreement by certified mail, return receipt requested, or
19 international registered mail, return receipt requested, as
20 applicable, to a parent who was not a party to the authorization
21 agreement, if the parent is living and the parent's parental rights
22 have not been terminated, not later than the 10th day after the date
23 the authorization agreement is signed; and

24 (B) if the parties do not receive a response from
25 the parent who is not a party to the authorization agreement before
26 the 20th day after the date the copy of the authorization agreement
27 is mailed under Paragraph (A), the parties mail a second copy of the

1 authorization agreement by first class mail or international first
2 class mail, as applicable, to the parent not later than the 45th day
3 after the date the authorization agreement is signed; and

4 (14) that the authorization agreement does not confer
5 on a relative of the child or other person the right to consent to
6 the marriage or adoption of the child, consent to termination of the
7 parental rights of the child, or authorize the performance of an
8 abortion on the child or the administration of emergency
9 contraception to the child.

10 SECTION 6. Section 34.004(a), Family Code, is amended to
11 read as follows:

12 (a) The authorization agreement must be signed and sworn to
13 before a notary public by:

14 (1) the parent;

15 (2) [and] the relative or other person who is granted
16 authority to care for the child under the authorization agreement;
17 and

18 (3) if the authorization agreement is executed with
19 the assistance of a qualified nonprofit organization, a
20 representative of the organization.

21 SECTION 7. Section 34.007(b), Family Code, is amended to
22 read as follows:

23 (b) The authorization agreement does not affect the rights
24 of the child's parent or legal guardian regarding the care,
25 custody, and control of the child, and does not mean that the
26 relative or other person has legal custody of the child.

27 SECTION 8. Section 34.008(c), Family Code, is amended to

1 read as follows:

2 (c) An authorization agreement under this chapter
3 terminates on written revocation by a party to the authorization
4 agreement if the party:

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

6 (2) files the written revocation with the clerk of the
7 county in which:

8 (A) the child resides;

9 (B) the child resided at the time the
10 authorization agreement was executed; or

11 (C) the relative or other person resides; and

12 (3) files the written revocation with the clerk of
13 each court:

14 (A) that has continuing, exclusive jurisdiction
15 over the child;

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

18 (C) in which there is pending litigation
19 concerning:

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

22 (ii) access to or visitation with the
23 child; or

24 (D) that has entered an order regarding the
25 appointment of a guardian for the child under Subchapter B, Chapter
26 1104, Estates [~~Section 676, Texas Probate~~] Code.

27 SECTION 9. Section 261.002(b), Family Code, as amended by

1 S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, is
2 amended to read as follows:

3 (b) The executive commissioner may adopt rules necessary to
4 carry out this section. The rules shall provide for cooperation
5 with local child service agencies, including hospitals, clinics,
6 ~~and~~ schools, and qualified nonprofit organizations as defined by
7 Section 34.0015, and cooperation with other states in exchanging
8 reports to effect a national registration system.

9 SECTION 10. Subchapter F, Chapter 411, Government Code, is
10 amended by adding Section 411.1411 to read as follows:

11 Sec. 411.1411. ACCESS TO CRIMINAL HISTORY RECORD
12 INFORMATION: QUALIFIED NONPROFIT ORGANIZATIONS PROVIDING
13 ASSISTANCE WITH AUTHORIZATION AGREEMENTS. (a) In this section,
14 "qualified nonprofit organization" has the meaning assigned by
15 Section 34.0015, Family Code.

16 (b) A qualified nonprofit organization is entitled to
17 obtain from the department criminal history record information
18 maintained by the department that relates to a person who is an
19 employee, employment applicant, volunteer, or volunteer applicant
20 of the organization.

21 (c) The department may adopt rules governing the
22 administration of this section.

23 (d) A qualified nonprofit organization may use the criminal
24 history record information obtained under this section only to
25 determine the suitability of a person for a position as an employee
26 of or volunteer with the organization.

27 (e) Criminal history record information obtained under this

1 section may not be released or disclosed to any person except in a
2 criminal proceeding, on court order, or with the consent of the
3 person who is the subject of the criminal history record
4 information.

5 SECTION 11. Section 42.041(b), Human Resources Code, is
6 amended to read as follows:

7 (b) This section does not apply to:

8 (1) a state-operated facility;

9 (2) an agency foster home or agency foster group home;

10 (3) a facility that is operated in connection with a
11 shopping center, business, religious organization, or
12 establishment where children are cared for during short periods
13 while parents or persons responsible for the children are attending
14 religious services, shopping, or engaging in other activities,
15 including retreats or classes for religious instruction, on or near
16 the premises, that does not advertise as a child-care facility or
17 day-care center, and that informs parents that it is not licensed by
18 the state;

19 (4) a school or class for religious instruction that
20 does not last longer than two weeks and is conducted by a religious
21 organization during the summer months;

22 (5) a youth camp licensed by the Department of State
23 Health Services;

24 (6) a facility licensed, operated, certified, or
25 registered by another state agency;

26 (7) an educational facility that is accredited by the
27 Texas Education Agency, the Southern Association of Colleges and

1 Schools, or an accreditation body that is a member of the Texas
2 Private School Accreditation Commission and that operates
3 primarily for educational purposes for prekindergarten and above, a
4 before-school or after-school program operated directly by an
5 accredited educational facility, or a before-school or
6 after-school program operated by another entity under contract with
7 the educational facility, if the Texas Education Agency, the
8 Southern Association of Colleges and Schools, or the other
9 accreditation body, as applicable, has approved the curriculum
10 content of the before-school or after-school program operated under
11 the contract;

12 (8) an educational facility that operates solely for
13 educational purposes for prekindergarten through at least grade
14 two, that does not provide custodial care for more than one hour
15 during the hours before or after the customary school day, and that
16 is a member of an organization that promulgates, publishes, and
17 requires compliance with health, safety, fire, and sanitation
18 standards equal to standards required by state, municipal, and
19 county codes;

20 (9) a kindergarten or preschool educational program
21 that is operated as part of a public school or a private school
22 accredited by the Texas Education Agency, that offers educational
23 programs through grade six, and that does not provide custodial
24 care during the hours before or after the customary school day;

25 (10) a family home, whether registered or listed;

26 (11) an educational facility that is integral to and
27 inseparable from its sponsoring religious organization or an

1 educational facility both of which do not provide custodial care
2 for more than two hours maximum per day, and that offers an
3 educational program in one or more of the following:
4 prekindergarten through at least grade three, elementary grades, or
5 secondary grades;

6 (12) an emergency shelter facility, other than a
7 facility that would otherwise require a license as a child-care
8 facility under this section, that provides shelter or care to a
9 minor and the minor's child or children, if any, under Section
10 [32.201](#), Family Code, if the facility:

11 (A) is currently under a contract with a state or
12 federal agency; or

13 (B) meets the requirements listed under Section
14 [51.005\(b\)\(3\)](#);

15 (13) a juvenile detention facility certified under
16 Section [51.12](#), Family Code, a juvenile correctional facility
17 certified under Section [51.125](#), Family Code, a juvenile facility
18 providing services solely for the Texas Juvenile Justice
19 Department, or any other correctional facility for children
20 operated or regulated by another state agency or by a political
21 subdivision of the state;

22 (14) an elementary-age (ages 5-13) recreation program
23 operated by a municipality provided the governing body of the
24 municipality annually adopts standards of care by ordinance after a
25 public hearing for such programs, that such standards are provided
26 to the parents of each program participant, and that the ordinances
27 shall include, at a minimum, staffing ratios, minimum staff

1 qualifications, minimum facility, health, and safety standards,
2 and mechanisms for monitoring and enforcing the adopted local
3 standards; and further provided that parents be informed that the
4 program is not licensed by the state and the program may not be
5 advertised as a child-care facility;

6 (15) an annual youth camp held in a municipality with a
7 population of more than 1.5 million that operates for not more than
8 three months and that has been operated for at least 10 years by a
9 nonprofit organization that provides care for the homeless;

10 (16) a food distribution program that:

11 (A) serves an evening meal to children two years
12 of age or older; and

13 (B) is operated by a nonprofit food bank in a
14 nonprofit, religious, or educational facility for not more than two
15 hours a day on regular business days;

16 (17) a child-care facility that operates for less than
17 three consecutive weeks and less than 40 days in a period of 12
18 months;

19 (18) a program:

20 (A) in which a child receives direct instruction
21 in a single skill, talent, ability, expertise, or proficiency;

22 (B) that does not provide services or offerings
23 that are not directly related to the single talent, ability,
24 expertise, or proficiency;

25 (C) that does not advertise or otherwise
26 represent that the program is a child-care facility, day-care
27 center, or licensed before-school or after-school program or that

1 the program offers child-care services;

2 (D) that informs the parent or guardian:

3 (i) that the program is not licensed by the
4 state; and

5 (ii) about the physical risks a child may
6 face while participating in the program; and

7 (E) that conducts background checks for all
8 program employees and volunteers who work with children in the
9 program using information that is obtained from the Department of
10 Public Safety;

11 (19) an elementary-age (ages 5-13) recreation program
12 that:

13 (A) adopts standards of care, including
14 standards relating to staff ratios, staff training, health, and
15 safety;

16 (B) provides a mechanism for monitoring and
17 enforcing the standards and receiving complaints from parents of
18 enrolled children;

19 (C) does not advertise as or otherwise represent
20 the program as a child-care facility, day-care center, or licensed
21 before-school or after-school program or that the program offers
22 child-care services;

23 (D) informs parents that the program is not
24 licensed by the state;

25 (E) is organized as a nonprofit organization or
26 is located on the premises of a participant's residence;

27 (F) does not accept any remuneration other than a

1 nominal annual membership fee;

2 (G) does not solicit donations as compensation or
3 payment for any good or service provided as part of the program; and

4 (H) conducts background checks for all program
5 employees and volunteers who work with children in the program
6 using information that is obtained from the Department of Public
7 Safety;

8 (20) a living arrangement in a caretaker's home
9 involving one or more children or a sibling group, excluding
10 children who are related to the caretaker, in which the caretaker:

11 (A) had a prior relationship with the child or
12 sibling group or other family members of the child or sibling group;

13 (B) does not care for more than one unrelated
14 child or sibling group;

15 (C) does not receive compensation or solicit
16 donations for the care of the child or sibling group; and

17 (D) has a written agreement with the parent to
18 care for the child or sibling group;

19 (21) a living arrangement in a caretaker's home
20 involving one or more children or a sibling group, excluding
21 children who are related to the caretaker, in which:

22 (A) the department is the managing conservator of
23 the child or sibling group;

24 (B) the department placed the child or sibling
25 group in the caretaker's home; and

26 (C) the caretaker had a long-standing and
27 significant relationship with the child or sibling group before the

1 child or sibling group was placed with the caretaker;

2 (22) a living arrangement in a caretaker's home
3 involving one or more children or a sibling group, excluding
4 children who are related to the caretaker, in which the child is in
5 the United States on a time-limited visa under the sponsorship of
6 the caretaker or of a sponsoring organization; ~~or~~

7 (23) a facility operated by a nonprofit organization
8 that:

9 (A) does not otherwise operate as a child-care
10 facility that is required to be licensed under this section;

11 (B) provides emergency shelter and care for not
12 more than 15 days to children 13 years of age or older but younger
13 than 18 years of age who are victims of human trafficking alleged
14 under Section 20A.02, Penal Code;

15 (C) is located in a municipality with a
16 population of at least 600,000 that is in a county on an
17 international border; and

18 (D) meets one of the following criteria:

19 (i) is licensed by, or operates under an
20 agreement with, a state or federal agency to provide shelter and
21 care to children; or

22 (ii) meets the eligibility requirements for
23 a contract under Section 51.005(b)(3); or

24 (24) a living arrangement in a caretaker's home
25 involving one or more children or a sibling group, excluding
26 children who are related to the caretaker, in which the caretaker:

27 (A) is a volunteer host family for a qualified

1 nonprofit organization, as defined by Section 34.0015, Family Code;

2 (B) has a written authorization agreement with
3 the parent of the child or sibling group to care for each child or
4 sibling group;

5 (C) does not care for more than six children; and

6 (D) does not receive compensation for the care of
7 a child or sibling group.

8 SECTION 12. This Act takes effect September 1, 2015.