

By: Blanco

H.B. No. 1043

A BILL TO BE ENTITLED

AN ACT

relating to a court order authorizing temporary care of a minor child.

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

SECTION 1. Subtitle A, Title 2, Family Code, is amended by adding Chapter 35 to read as follows:

CHAPTER 35. TEMPORARY AUTHORIZATION FOR CARE OF MINOR CHILD

Sec. 35.001. APPLICABILITY. This chapter applies to a person whose relationship to a child would make the person eligible to consent to treatment under Section 32.001 or eligible to enter an authorization agreement under Section 34.001.

Sec. 35.002. TEMPORARY AUTHORIZATION. A person described by Section 35.001 may seek a court order for temporary authorization for care of a child by filing a petition in the district court in the county in which the person resides if:

(1) the child has resided with the person for at least the 30 days preceding the date the petition was filed; and

(2) the person does not have an authorization agreement under Chapter 34 or other signed, written documentation from a parent, conservator, or guardian that enables the person to provide necessary care for the child.

Sec. 35.003. PETITION FOR TEMPORARY AUTHORIZATION FOR CARE OF CHILD. (a) A petition for temporary authorization for care of a child must:

- 1           (1) be styled "ex parte" and be in the name of the  
2 child;
- 3           (2) be verified by the petitioner;
- 4           (3) state:
  - 5               (A) the name, date of birth, and current physical  
6 address of the child;
  - 7               (B) the name, date of birth, and current physical  
8 address of the petitioner; and
  - 9               (C) the name and, if known, the current physical  
10 and mailing addresses of the child's parents, conservators, or  
11 guardians;
- 12           (4) describe the status and location of any court  
13 proceeding in this or another state with respect to the child;
- 14           (5) describe the petitioner's relationship to the  
15 child;
- 16           (6) provide the dates during the preceding 12 months  
17 that the child has resided with the petitioner;
- 18           (7) describe any service or action that the petitioner  
19 is unable to obtain or undertake on behalf of the child without  
20 authorization from the court;
- 21           (8) state any reason that the petitioner is unable to  
22 obtain signed, written documentation from a parent, conservator, or  
23 guardian of the child;
- 24           (9) contain a statement of the period for which the  
25 petitioner is requesting temporary authorization; and
- 26           (10) contain a statement of any reason supporting the  
27 request for the temporary authorization.

1        (b) If the petition identifies a court proceeding with  
2 respect to the child under Subsection (a)(4), the petitioner shall  
3 submit a copy of any court order that designates a conservator or  
4 guardian of the child.

5        Sec. 35.004. NOTICE; HEARING. (a) On receipt of the  
6 petition, the court shall set a hearing.

7        (b) A copy of the petition and notice of the hearing shall be  
8 delivered to the parent, conservator, or guardian of the child by  
9 personal service or by certified mail, return receipt requested, at  
10 the last known address of the parent, conservator, or guardian.

11        (c) Proof of service under Subsection (b) must be filed with  
12 the court at least three days before the date of the hearing.

13        Sec. 35.005. ORDER FOR TEMPORARY AUTHORIZATION. (a) At the  
14 hearing on the petition, the court may hear evidence relating to the  
15 child's need for care by the petitioner, any other matter raised in  
16 the petition, and any objection or other testimony of the child's  
17 parent, conservator, or guardian.

18        (b) The court shall award temporary authorization for care  
19 of the child to the petitioner if the court finds it is necessary to  
20 the child's welfare and no objection is made by the child's parent,  
21 conservator, or guardian. If an objection is made, the court shall  
22 dismiss the petition without prejudice.

23        (c) The court shall grant the petition for temporary  
24 authorization only if the court finds by a preponderance of the  
25 evidence that the child does not have a parent, conservator,  
26 guardian, or other legal representative available to give the  
27 necessary consent.

1       (d) The order granting temporary authorization under this  
2 chapter expires on the first anniversary of the date of issuance or  
3 at an earlier date determined by the court. The order may authorize  
4 the petitioner to:

5           (1) consent to medical, dental, psychological, and  
6 surgical treatment and immunization of the child;

7           (2) execute any consent or authorization for the  
8 release of information as required by law relating to the treatment  
9 or immunization under Subdivision (1);

10          (3) obtain and maintain any public benefit for the  
11 child;

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

14          (5) authorize the child to participate in  
15 age-appropriate extracurricular, civic, social, or recreational  
16 activities, including athletic activities; and

17          (6) authorize or consent to any other care for the  
18 child essential to the child's welfare.

19       (e) An order granting temporary authorization under this  
20 chapter must state:

21           (1) the name and date of birth of the person with  
22 temporary authorization to care for the child;

23           (2) the specific areas of authorization granted to the  
24 person;

25           (3) that the order does not supersede any rights of a  
26 parent, conservator, or guardian as provided by court order; and

27           (4) the expiration date of the temporary authorization

1 order.

2 (f) A copy of an order for temporary authorization must:

3 (1) be filed under the cause number in any court that  
4 has rendered a conservatorship or guardian order regarding the  
5 child; and

6 (2) be sent to the last known address of the child's  
7 parent, conservator, or guardian.

8 Sec. 35.006. RENEWAL OR TERMINATION OF TEMPORARY  
9 AUTHORIZATION. (a) A temporary authorization order may be renewed  
10 by court order for a period of not more than one year on a showing by  
11 the petitioner of a continuing need for the order.

12 (b) At any time, the petitioner or the child's parent,  
13 conservator, or guardian may request the court to terminate the  
14 order. The court shall terminate the order on finding that there is  
15 no longer a need for the order.

16 Sec. 35.007. EFFECT OF TEMPORARY AUTHORIZATION. (a) A  
17 person who relies in good faith on a temporary authorization order  
18 under this chapter is not subject to:

19 (1) civil or criminal liability to any person; or

20 (2) professional disciplinary action.

21 (b) A temporary authorization order does not affect the  
22 rights of the child's parent, conservator, or guardian regarding  
23 the care, custody, and control of the child, and does not establish  
24 legal custody of the child.

25 (c) A temporary authorization order does not confer or  
26 affect standing or a right of intervention in any proceeding under  
27 Title 5.

1        (d) An order under this chapter is not a child custody  
2 determination and does not create a court of continuing, exclusive  
3 jurisdiction under Title 5.

4        SECTION 2. This Act takes effect immediately if it receives  
5 a vote of two-thirds of all the members elected to each house, as  
6 provided by Section 39, Article III, Texas Constitution. If this  
7 Act does not receive the vote necessary for immediate effect, this  
8 Act takes effect September 1, 2017.