

BILL ANALYSIS

Senate Research Center
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S.B. 1598
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Jurisprudence
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The cost and trauma of court proceedings can be avoided through a statutory power of attorney for a caregiver of a child in cases in which the parent is willing to grant authority to the caregiver. There are more than 240,000 children in Texas being raised in households with neither parent present. The majority of these children are not in the child welfare caseload. Similar to the medical power of attorney as an alternative to guardianship of older persons that the legislature passed years ago, the proposed statutory power of attorney for a caregiver of a child can be an alternative to suits affecting the parent-child relationship in areas of decision-making by the parent. Thus, this legislation offers parents a cost-effective means of giving specified authority to a caregiver without the necessity of a court proceeding.

As proposed, S.B. 1598 sets forth the required content for a statutory power of attorney for a caregiver of a child and the related disclosure statement. This bill requires the Department of Family and Protective Services (DFPS) to prescribe forms for the disclosure statement and the power of attorney and requires DFPS and the Texas Education Agency to make the forms available on their Internet websites or provide paper copies to the public on request without charge.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 151, Family Code, by designating Sections 151.001-151.003 as Subchapter A and adding a heading to Subchapter A, to read as follows:

SUBCHAPTER A. RIGHTS AND DUTIES IN GENERAL

SECTION 2. Amends Chapter 151, Family Code, by adding Subchapter B, as follows:

SUBCHAPTER B. POWER OF ATTORNEY FOR CAREGIVER OF CHILD

Sec. 151.051. **EFFECT OF POWER OF ATTORNEY.** Provides that a power of attorney under this subchapter is effective only if at least one parent of a child has executed a power of attorney for a caregiver of the child and 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) Authorizes a person to execute a power of attorney appointing another person as the person's agent to make decisions regarding the person's child.

(b) Requires that the power of attorney 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) Requires the parent executing the power of attorney, if one parent executes the power of attorney, and the other parent does not, to 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.** Provides that 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 on the appointment and qualification of a guardian of the person appointed for the child under Chapter XIII (Guardianship), Texas Probate Code, or 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 by both parents who signed the power of attorney; by the parent who signed the power of attorney; or 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) Provides that a power of attorney executed under this subchapter is not considered a written declaration of appointment of a guardian authorized by Section 676(d) (relating to the surviving parent of a minor to appoint a guardian), Texas Probate Code.

(b) Authorizes the court, 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, to 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) (relating to appointing a guardian for a minor orphan), Texas Probate Code.

Sec. 151.055. **DISCLOSURE STATEMENT.** Requires that a disclosure statement be provided with the Power of Attorney for Caregiver of Child. Sets forth the required form of the disclosure statement.

Sec. 151.056. **FORM.** Sets forth the required form of a Power of Attorney for Caregiver of Child.

SECTION 3. Requires the Department of Family and Protective Services (DFPS) to 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. Requires DFPS and the Texas Education Agency to make the forms available on their Internet websites or provide paper copies to the public on request without charge.

SECTION 4. Effective date: upon passage or September 1, 2009.