

## **BILL ANALYSIS**

Senate Research Center  
85R1153 JSC-F

H.B. 1043  
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State Affairs  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Advocates express concern that when an extended family member of a child takes the child into the family member's home while the child's parents are unable to care for the child, the family member often is unable to consent to care that may be necessary for the child's welfare.

H.B. 1043 amends the Family Code to authorize a person who is eligible to consent to medical, dental, psychological, or surgical treatment for a child, or eligible to enter an authorization agreement regarding making certain decisions for another person's child, to seek a court order for temporary authorization for care of a child. To be eligible to enter the authorization agreement, the person would have to file a petition in the district court in the county in which the person resides if the child has resided with the person for at least the 30 days preceding the date the petition was filed and the person does not have such an authorization agreement or other signed, written documentation from a parent, conservator, or guardian that enables the person to provide necessary care for the child.

H.B. 1043 amends current law relating to a court order authorizing temporary care of a minor child.

### **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 Subtitle A, Title 2, Family Code, by adding Chapter 35, as follows:

#### **CHAPTER 35. TEMPORARY AUTHORIZATION FOR CARE OF MINOR CHILD**

Sec. 35.001. **APPLICABILITY.** Provides that this chapter applies to a person whose relationship to a child would make the person eligible to consent to treatment under Section 32.001 (Consent by Non-Parent) or eligible to enter an authorization agreement under Section 34.001 (Applicability).

Sec. 35.002. **TEMPORARY AUTHORIZATION.** Authorizes a person described by Section 35.001 to 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 certain conditions are met.

Sec. 35.003. **PETITION FOR TEMPORARY AUTHORIZATION FOR CARE OF CHILD.** (a) Requires that a petition for temporary authorization for care of a child meet certain requirements.

(b) Requires the petitioner, if the petition identifies a court proceeding with respect to the child under Subsection (a)(4) (relating to a description of the status and location of any court proceeding in this or another state with respect to the child required by a petition for temporary authorization for care of a child), to

submit a copy of any court order that designates a conservator or guardian of the child.

Sec. 35.004. NOTICE; HEARING. (a) Requires the court, on receipt of the petition, to set a hearing.

(b) Requires that a copy of the petition and notice of the hearing be delivered to the parent, conservator, or guardian of the child by personal service or by certified mail, return receipt requested, at the last known address of the parent, conservator, or guardian.

(c) Requires that proof of service under Subsection (b) be filed with the court at least three days before the date of the hearing.

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

(b) Requires that the court award temporary authorization for care of the child to the petitioner if the court finds it is necessary to the child's welfare and no objection is made by the child's parent, conservator, or guardian. Requires that the court dismiss the petition without prejudice if an objection is made.

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

(d) Provides that the order granting temporary authorization under this chapter expires on the first anniversary of the date of issuance or at an earlier date determined by the court. Authorizes the order to authorize the petitioner to take certain actions.

(e) Requires that an order granting temporary authorization under this chapter state certain information.

(f) Requires that a copy of an order for temporary authorization be filed under the cause number in any court that has rendered a conservatorship or guardian order regarding the child and be sent to the last known address of the child's parent, conservator, or guardian.

Sec. 35.006. RENEWAL OR TERMINATION OF TEMPORARY AUTHORIZATION.

(a) Authorizes a temporary authorization order to be renewed by court order for a period of not more than one year on a showing by the petitioner of a continuing need for the order.

(b) Authorizes the petitioner or the child's parent, conservator, or guardian, at any time, to request the court to terminate the order. Requires that the court terminate the order on finding that there is no longer a need for the order.

Sec. 35.007. EFFECT OF TEMPORARY AUTHORIZATION. (a) Provides that a person who relies in good faith on a temporary authorization order under this chapter is not subject to civil or criminal liability to any person or professional disciplinary action.

(b) Provides that a temporary authorization order does not affect the rights of the child's parent, conservator, or guardian regarding the care, custody, and control of the child, and does not establish legal custody of the child.

(c) Provides that a temporary authorization order does not confer or affect standing or a right of intervention in any proceeding under Title 5 (The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship).

(d) Provides that an order under this chapter is not a child custody determination and does not create a court of continuing, exclusive jurisdiction under Title 5.

SECTION 2. Effective date: upon passage or September 1, 2017.