

BILL ANALYSIS

C.S.H.B. 3488
By: Veasey
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law provides that a child may only be enrolled in school by that child's parent, guardian, or other person with legal control of the child by court order. Unfortunately, many Texas children are being raised by their grandparents or other relatives who, although they are the primary and semi-permanent caregivers for the children, do not have legal custody of those children. This makes it difficult for such relatives to accomplish very basic tasks on behalf of the children, such as enrolling them in school.

C.S.H.B. 3488 authorizes such a relative caregiver to enroll a child in school provided that that relative caregiver has a caregiver authorization affidavit. This affidavit provides the caregiver with the authority to enroll a child in school upon the caregiver's word that the child primarily resides with the caregiver, and either the parent of the child cannot be contacted, or the parent has consented to the relative caregiver making educational decisions for the child. The bill requires at least two witnesses to support the declarations in the affidavit, one of whom may not be a relative of the child or the caregiver.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of education in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 3488 amends the Family Code to authorize a caregiver of a child who is a relative of the child to execute an affidavit indicating that the child primarily resides with the caregiver, and either the parent or legal guardian has been advised that the caregiver will be making educational decisions for the child and has not objected, or the parent or guardian cannot be contacted for authorization. The bill requires the affidavit to be witnessed by two witnesses who are at least 18 years of age or older, at least one of whom who is not related by blood or marriage to the child or to the caregiver. The bill requires the completed affidavit to be notarized. The bill defines "relative."

C.S.H.B. 3488 authorizes a caregiver to provide the affidavit to a school or school district to enroll the child in school. The bill makes an affidavit invalid if the child no longer resides with the caregiver or if the child's parent or guardian objects to the caregiver's authorization and requires the caregiver to notify all parties to whom the caregiver provided the affidavit, including the child's school. The bill establishes that a person who relies on an affidavit that complies with the bill's provisions has no obligation to make any further inquiry or investigation. The bill establishes that the caregiver's authorization affidavit does not affect the rights of the child's parent or legal guardian regarding the care, custody, and control of the child, and does not mean that the caregiver has legal custody of the child. The bill requires the caregiver's authorization affidavit to be in substantially the form prescribed in the. The bill requires the commissioner of education to adopt rules to implement the provisions of the bill and to ensure that the caregiver's authorization affidavit is accepted by schools and school districts. The bill requires the Texas Education Agency to develop the form of affidavit required by the bill's provisions and to make that form available on the agency's Internet website.

C.S.H.B. 3488 amends the Education Code to add to those persons the board of trustees of a school district or its designee is authorized or required, based on the age of the person, to admit

into the public schools of the district free of tuition, a person who lives with a relative who submits to the district a caregiver's authorization affidavit executed under these provisions. The bill adds a relative under a caregiver's authorization affidavit to those persons by whom a child must be enrolled in a public school for that child to be considered lawfully enrolled. The bill includes a relative who submits a caregiver's authorization affidavit in the definition of "parent" under provisions regarding parental rights and responsibilities. The bill establishes that the changes to the Education Code are applicable beginning with the 2009-2010 school year.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The committee substitute differs from the original in that it is a Legislative Council draft.