

By: Veasey

H.B. No. 3488

Substitute the following for H.B. No. 3488:

By: Madden

C.S.H.B. No. 3488

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to authorization for a caregiver who is a relative to  
3 enroll a child in school.

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

5 SECTION 1. Subtitle A, Title 2, Family Code, is amended by  
6 adding Chapter 34 to read as follows:

7 CHAPTER 34. RIGHTS OF RELATIVE CAREGIVER

8 Sec. 34.001. DEFINITION. In this chapter, "relative" means  
9 someone related to a child by consanguinity or affinity, as  
10 determined under Sections 573.022 and 573.024, Government Code,  
11 respectively.

12 Sec. 34.002. AFFIDAVIT OF CAREGIVER. (a) A caregiver of a  
13 child who is a relative of the child may execute an affidavit  
14 indicating that:

15 (1) the child primarily resides with the caregiver;  
16 and

17 (2) either:

18 (A) the parent or legal guardian has been advised  
19 that the caregiver will be making educational decisions for the  
20 child and the parent or guardian has not objected; or

21 (B) the parent or legal guardian cannot be  
22 contacted for authorization.

23 (b) The affidavit must be witnessed by two witnesses who are  
24 at least 18 years of age or older and at least one of whom is not

1 related by blood or marriage to the child or the caregiver.

2 (c) The completed affidavit must be notarized.

3 Sec. 34.003. RIGHTS AND DUTIES OF CHILD AND CAREGIVER. (a)  
4 A caregiver may provide the affidavit under this chapter to a school  
5 or school district to enroll the child in school.

6 (b) If the child no longer resides with the caregiver or if  
7 the child's parent or guardian objects to the caregiver's  
8 authorization, the affidavit is invalid and the caregiver shall  
9 notify all parties to whom the caregiver provided the affidavit,  
10 including the child's school.

11 Sec. 34.004. EFFECT OF AFFIDAVIT. (a) A person who relies  
12 on an affidavit that complies with this chapter has no obligation to  
13 make any further inquiry or investigation.

14 (b) The caregiver's authorization affidavit does not affect  
15 the rights of the child's parent or legal guardian regarding the  
16 care, custody, and control of the child, and does not mean that the  
17 caregiver has legal custody of the child.

18 Sec. 34.005. FORM OF AFFIDAVIT. The caregiver's  
19 authorization affidavit must be in substantially the following  
20 form:

21 Caregiver's Authorization Affidavit

22 Use of this affidavit is authorized by Chapter 34, Family  
23 Code.

24 Instructions: Completion of and the signing of the affidavit  
25 is sufficient to authorize enrollment of a child in school. Print  
26 clearly.

27 The child named below lives in my home and I am 18 years of age

1 or older.

2 1. Name of child: \_\_\_\_\_.

3 2. Child's birth date: \_\_\_\_\_.

4 3. My name (adult giving authorization): \_\_\_\_\_.

5 4. My home address: \_\_\_\_\_

6 \_\_\_\_\_

7 \_\_\_\_\_.

8 5. ( ) I am a grandparent, aunt, uncle, or other qualified  
9 relative of the child (see portion of this form that provides  
10 definition of "qualified relative").

11 6. Check one or both (for example, if one parent was advised  
12 and the other cannot be located):

13 ( ) I have advised the parent(s) or other person(s) having  
14 legal custody of the child of my intent to enroll the child in  
15 school and have received no objection.

16 ( ) I am unable to contact the parent(s) or other person(s)  
17 having legal custody of the child at this time to notify them of my  
18 intended authorization.

19 7. My date of birth: \_\_\_\_\_.

20 8. My Texas driver's license or identification card number,  
21 or other form of identification (specify):

22 \_\_\_\_\_.

23 Warning: Do not sign this form if any of the statements above  
24 are incorrect, or you will be committing a crime punishable by a  
25 fine, imprisonment, or both.

26 I declare under penalty of perjury under the laws of the State  
27 of Texas that the foregoing is true and correct.

1        Dated: \_\_\_\_\_

2        Signed: \_\_\_\_\_

3        Witnesses:

4        I am 18 years of age or older and I am not related to the  
5 child, the parents of the child, or the caregiver by blood or  
6 marriage.

7        Signature: \_\_\_\_\_

8        Printed Name: \_\_\_\_\_

9        Date: \_\_\_\_\_

10       I am 18 years of age or older.

11       Signature: \_\_\_\_\_

12       Printed Name: \_\_\_\_\_

13       Date: \_\_\_\_\_

14       Notary:

15       State of \_\_\_\_\_

16       County of \_\_\_\_\_

17       Subscribed and sworn to before me, a notary public, by  
18 \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

19       Printed Name of Notary: \_\_\_\_\_

20       Commission Expires: \_\_\_\_\_

21       Notices:

22       1. This declaration does not affect the rights of the  
23 child's parents or legal guardian regarding the care, custody, and  
24 control of the child, and does not mean that the caregiver has legal  
25 custody of the child.

26       2. A person who relies on this affidavit has no obligation  
27 to make any further inquiry or investigation.

1 Additional Information:

2 TO CAREGIVERS:

3 1. "Qualified relative," for purposes of item 5 of the  
4 affidavit, means a person related to the child by consanguinity or  
5 affinity (blood, marriage, or adoption).

6 2. If the child no longer resides with you, or if the child's  
7 parent or guardian objects to this authorization, you are required  
8 to notify any school to which you have given this affidavit. The  
9 affidavit is invalid after the school receives notice.

10 TO SCHOOL OFFICIALS:

11 1. Section 25.001, Education Code, provides that this  
12 affidavit constitutes a sufficient basis for a determination of  
13 residency of the child, without the requirement of a guardianship  
14 or other custody order, unless the school district determines from  
15 actual facts that the child is not living with the caregiver.

16 2. The school district may require additional reasonable  
17 evidence that the caregiver lives at the address provided in item 4  
18 of the affidavit.

19 Sec. 34.006. RULES. (a) The commissioner of education  
20 shall adopt rules to implement this chapter and to ensure that the  
21 caregiver's authorization affidavit is accepted by schools and  
22 school districts.

23 (b) The Texas Education Agency shall develop the form  
24 required by Section 34.005 and make that form available on the  
25 agency's Internet website.

26 SECTION 2. Section 25.001(b), Education Code, is amended to  
27 read as follows:

1           (b) The board of trustees of a school district or its  
2 designee shall admit into the public schools of the district free of  
3 tuition a person who is over five and younger than 21 years of age on  
4 the first day of September of the school year in which admission is  
5 sought, and may admit a person who is at least 21 years of age and  
6 under 26 years of age for the purpose of completing the requirements  
7 for a high school diploma, if:

8           (1) the person and either parent of the person reside  
9 in the school district;

10           (2) the person does not reside in the school district  
11 but a parent of the person resides in the school district and that  
12 parent is a joint managing conservator or the sole managing  
13 conservator or possessory conservator of the person;

14           (3) the person and the person's guardian or other  
15 person having lawful control of the person under a court order  
16 reside within the school district;

17           (4) the person has established a separate residence  
18 under Subsection (d);

19           (5) the person is homeless, as defined by 42 U.S.C.  
20 Section 11302, regardless of the residence of the person, of either  
21 parent of the person, or of the person's guardian or other person  
22 having lawful control of the person;

23           (6) the person is a foreign exchange student placed  
24 with a host family that resides in the school district by a  
25 nationally recognized foreign exchange program, unless the school  
26 district has applied for and been granted a waiver by the  
27 commissioner under Subsection (e);

1 (7) the person resides at a residential facility  
2 located in the district;

3 (8) the person resides in the school district and is 18  
4 years of age or older or the person's disabilities of minority have  
5 been removed; ~~[or]~~

6 (9) the person does not reside in the school district  
7 but the grandparent of the person:

8 (A) resides in the school district; and

9 (B) provides a substantial amount of  
10 after-school care for the person as determined by the board; or

11 (10) the person lives with a relative who submits to  
12 the district a caregiver's authorization affidavit executed under  
13 Chapter 34, Family Code.

14 SECTION 3. Section 25.002(f), Education Code, is amended to  
15 read as follows:

16 (f) For ~~[Except as otherwise provided by this subsection,~~  
17 ~~for]~~ a child to be enrolled in a public school, the child must be  
18 enrolled by the child's parent, ~~[or by]~~ the child's guardian or  
19 other person with legal control of the child under a court order, or  
20 by a relative under a caregiver's authorization affidavit under  
21 Chapter 34, Family Code. A school district shall record the name,  
22 address, and date of birth of the person enrolling a child.

23 SECTION 4. Section 26.002, Education Code, is amended to  
24 read as follows:

25 Sec. 26.002. DEFINITION. In this chapter, "parent"  
26 includes a person standing in parental relation. The term includes  
27 a relative who submits a caregiver's authorization affidavit

1 executed under Chapter 34, Family Code. The term does not include a  
2 person as to whom the parent-child relationship has been terminated  
3 or a person not entitled to possession of or access to a child under  
4 a court order. Except as provided by federal law, all rights of a  
5 parent under Title 2 of this code and all educational rights under  
6 Section 151.001(a)(10) [~~151.003(a)(10)~~], Family Code, shall be  
7 exercised by a student who is 18 years of age or older or whose  
8 disabilities of minority have been removed for general purposes  
9 under Chapter 31, Family Code, unless the student has been  
10 determined to be incompetent or the student's rights have been  
11 otherwise restricted by a court order.

12 SECTION 5. Sections 25.001, 25.002, and 26.002, Education  
13 Code, as amended by this Act, apply beginning with the 2009-2010  
14 school year.

15 SECTION 6. This Act takes effect immediately if it receives  
16 a vote of two-thirds of all the members elected to each house, as  
17 provided by Section 39, Article III, Texas Constitution. If this  
18 Act does not receive the vote necessary for immediate effect, this  
19 Act takes effect September 1, 2009.