

By: Marquez

H.B. No. 3745

A BILL TO BE ENTITLED

AN ACT

relating to authorization for a caregiver who is a relative to enroll a child in school.

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

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

CHAPTER 34. RIGHTS OF RELATIVE CAREGIVER

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

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

(1) the child primarily resides with the caregiver;

and

(2) either:

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

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

Sec. 34.003. RIGHTS AND DUTIES OF CHILD AND CAREGIVER. (a) A caregiver may provide the affidavit under this chapter to a school

1 or school district to enroll the child in school.

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

7 Sec. 34.004. EFFECT OF AFFIDAVIT. (a) A person who relies  
8 in good faith on a caregiver's authorization affidavit under this  
9 chapter is not subject to civil or criminal liability to any person,  
10 and is not subject to professional disciplinary action, for that  
11 reliance if the form is completed as required by this chapter.

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

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

19 Caregiver's Authorization Affidavit

20 Use of this affidavit is authorized by Chapter 34, Family  
21 Code.

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

25 The child named below lives in my home and I am 18 years of age  
26 or older.

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

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

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

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

4            \_\_\_\_\_

5            \_\_\_\_\_.

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

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

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

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

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

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

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

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

26            Dated: \_\_\_\_\_

27            Signed: \_\_\_\_\_

1        Notices:

2        1. This declaration does not affect the rights of the  
3 child's parents or legal guardian regarding the care, custody, and  
4 control of the child, and does not mean that the caregiver has legal  
5 custody of the child.

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

8        Additional Information:

9        TO CAREGIVERS:

10       1. "Qualified relative," for purposes of item 5 of the  
11 affidavit, means (a) a person related to the child by blood, (b) a  
12 spouse of a blood relative of the child, or (c) a blood relative of a  
13 spouse of a blood relative of the child.

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

18       TO SCHOOL OFFICIALS:

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

24       2. The school district may require additional reasonable  
25 evidence that the caregiver lives at the address provided in item 4  
26 of the affidavit.

27       Sec. 34.006. RULES. (a) The commissioner of education

1 shall adopt rules to implement this chapter and to ensure that the  
2 caregiver's authorization affidavit is accepted by schools and  
3 school districts.

4 (b) The Texas Education Agency shall develop the form  
5 required by Section 34.005 and make that form available on the  
6 agencies' Internet websites.

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

9 (b) The board of trustees of a school district or its  
10 designee shall admit into the public schools of the district free of  
11 tuition a person who is over five and younger than 21 years of age on  
12 the first day of September of the school year in which admission is  
13 sought, and may admit a person who is at least 21 years of age and  
14 under 26 years of age for the purpose of completing the requirements  
15 for a high school diploma, if:

16 (1) the person and either parent of the person reside  
17 in the school district;

18 (2) the person does not reside in the school district  
19 but a parent of the person resides in the school district and that  
20 parent is a joint managing conservator or the sole managing  
21 conservator or possessory conservator of the person;

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

25 (4) the person has established a separate residence  
26 under Subsection (d);

27 (5) the person is homeless, as defined by 42 U.S.C.

1 Section 11302, regardless of the residence of the person, of either  
2 parent of the person, or of the person's guardian or other person  
3 having lawful control of the person;

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

9 (7) the person resides at a residential facility  
10 located in the district;

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

14 (9) the person does not reside in the school district  
15 but the grandparent of the person:

16 (A) resides in the school district; and

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

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

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

24 (f) For ~~[Except as otherwise provided by this subsection,~~  
25 ~~for]~~ a child to be enrolled in a public school, the child must be  
26 enrolled by the child's parent, or ~~[or by]~~ the child's guardian or  
27 other person with legal control of the child under a court order, or

1 by a relative under a caregiver's authorization affidavit under  
2 Chapter 34, Family Code. A school district shall record the name,  
3 address, and date of birth of the person enrolling a child.

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

6 Sec. 26.002. DEFINITION. In this chapter, "parent"  
7 includes a person standing in parental relation. The term includes  
8 a relative who submits a caregiver's authorization affidavit  
9 executed under Chapter 34, Family Code. The term does not include a  
10 person as to whom the parent-child relationship has been terminated  
11 or a person not entitled to possession of or access to a child under  
12 a court order. Except as provided by federal law, all rights of a  
13 parent under Title 2 of this code and all educational rights under  
14 Section 151.001(a)(10) [~~151.003(a)(10)~~], Family Code, shall be  
15 exercised by a student who is 18 years of age or older or whose  
16 disabilities of minority have been removed for general purposes  
17 under Chapter 31, Family Code, unless the student has been  
18 determined to be incompetent or the student's rights have been  
19 otherwise restricted by a court order.

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

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