

By: Veasey

H.B. No. 1359

Substitute the following for H.B. No. 1359:

By: Scott

C.S.H.B. No. 1359

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 35 to read as follows:

CHAPTER 35. RIGHTS OF CERTAIN RELATIVE CAREGIVERS TO ENROLL CHILD
IN SCHOOL

Sec. 35.001. 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. 35.002. AFFIDAVIT OF CAREGIVER. (a) 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) the parent or legal guardian cannot be contacted for authorization.

(b) The affidavit must be witnessed by two witnesses who are at least 18 years of age or older and at least one of whom is not related by blood or marriage to the child or the caregiver.

(c) The completed affidavit must be notarized.

Sec. 35.003. RIGHTS AND DUTIES OF CHILD AND CAREGIVER. (a)

1 A caregiver may provide the affidavit under this chapter to a school
2 or school district to enroll the child in school.

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

8 Sec. 35.004. EFFECT OF AFFIDAVIT. (a) A person who relies
9 on an affidavit that complies with this chapter has no obligation to
10 make any further inquiry or investigation.

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

15 Sec. 35.005. FORM OF AFFIDAVIT. The caregiver's
16 authorization affidavit must be in substantially the following
17 form:

18 Caregiver's Authorization Affidavit

19 Use of this affidavit is authorized by Chapter 35, Family
20 Code.

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

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

26 1. Name of child: _____.

27 2. Child's birth date: _____.

1 3. My name (adult giving authorization): _____.

2 4. My home address: _____

3 _____

4 _____.

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

8 6. () I am unable to contact the parent(s) or other
9 person(s) having legal custody of the child at this time to notify
10 them of my intended authorization.

11 7. My date of birth: _____.

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

14 _____.

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

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

20 Dated: _____

21 Signed: _____

22 Witnesses:

23 I am 18 years of age or older and I am not related to the
24 child, the parents of the child, or the caregiver by blood or
25 marriage.

26 Signature: _____

27 Printed Name: _____

1 Date: _____

2 I am 18 years of age or older.

3 Signature: _____

4 Printed Name: _____

5 Date: _____

6 Notary:

7 State of _____

8 County of _____

9 Subscribed and sworn to before me, a notary public, by

10 _____ this _____ day of _____, 2_____.

11 Printed Name of Notary: _____

12 Commission Expires: _____

13 Notices:

14 1. This declaration does not affect the rights of the
15 child's parents or legal guardian regarding the care, custody, and
16 control of the child, and does not mean that the caregiver has legal
17 custody of the child.

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

20 Additional Information:

21 TO CAREGIVERS:

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

25 2. If the child no longer resides with you, or if the child's
26 parent or guardian objects to this authorization, you are required
27 to notify any school to which you have given this affidavit. The

1 affidavit is invalid after the school receives notice.

2 TO SCHOOL OFFICIALS:

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

8 2. The school district may require additional reasonable
9 evidence that the caregiver lives at the address provided in item 4
10 of the affidavit.

11 Sec. 35.006. RULES. (a) The commissioner of education
12 shall adopt rules to implement this chapter and to ensure that the
13 caregiver's authorization affidavit is accepted by schools and
14 school districts.

15 (b) The Texas Education Agency shall develop the form
16 required by Section 35.005 and make that form available on the
17 agency's Internet website.

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

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

27 (1) the person and either parent of the person reside

1 in the school district;

2 (2) the person does not reside in the school district
3 but a parent of the person resides in the school district and that
4 parent is a joint managing conservator or the sole managing
5 conservator or possessory conservator of the person;

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

9 (4) the person has established a separate residence
10 under Subsection (d);

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

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

20 (7) the person resides at a residential facility
21 located in the district;

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

25 (9) the person does not reside in the school district
26 but the grandparent of the person:

27 (A) resides in the school district; and

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

3 (10) the person lives with a relative who submits to
4 the district a caregiver's authorization affidavit executed under
5 Chapter 35, Family Code.

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

8 (f) [~~Except as otherwise provided by this subsection, for a~~
9 ~~child to be enrolled in a public school, the child must be enrolled~~
10 ~~by the child's parent or by the child's guardian or other person~~
11 ~~with legal control of the child under a court order.] A school
12 district shall record the name, address, and date of birth of the
13 person enrolling a child.~~

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

16 Sec. 26.002. DEFINITION. In this chapter, "parent"
17 includes a person standing in parental relation. The term includes
18 a relative who submits a caregiver's authorization affidavit
19 executed under Chapter 35, Family Code. The term does not include a
20 person as to whom the parent-child relationship has been terminated
21 or a person not entitled to possession of or access to a child under
22 a court order. Except as provided by federal law, all rights of a
23 parent under Title 2 of this code and all educational rights under
24 Section 151.001(a)(10) [~~151.003(a)(10)~~], Family Code, shall be
25 exercised by a student who is 18 years of age or older or whose
26 disabilities of minority have been removed for general purposes
27 under Chapter 31, Family Code, unless the student has been

1 determined to be incompetent or the student's rights have been
2 otherwise restricted by a court order.

3 SECTION 5. Sections 25.001, 25.002, and 26.002, Education
4 Code, as amended by this Act, apply beginning with the 2011-2012
5 school year.

6 SECTION 6. This Act takes effect immediately if it receives
7 a vote of two-thirds of all the members elected to each house, as
8 provided by Section 39, Article III, Texas Constitution. If this
9 Act does not receive the vote necessary for immediate effect, this
10 Act takes effect September 1, 2011.