

By: Rodriguez

S.B. No. 1091

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 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.

Sec. 35.003. RIGHTS AND DUTIES OF CHILD AND CAREGIVER.

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

(b) If the child no longer resides with the caregiver or if the child's parent or guardian objects to the caregiver's

1 authorization, the affidavit is invalid and the caregiver shall
2 notify all parties to whom the caregiver provided the affidavit,
3 including the child's school.

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

7 (b) The caregiver's authorization affidavit does not affect
8 the rights of the child's parent or legal guardian regarding the
9 care, custody, and control of the child and does not mean that the
10 caregiver has legal custody of the child.

11 Sec. 35.005. FORM OF AFFIDAVIT. The caregiver's
12 authorization affidavit must be in substantially the following
13 form:

14 Caregiver's Authorization Affidavit

15 Use of this affidavit is authorized by Chapter 35, Family
16 Code.

17 Instructions: Completion of and the signing of the affidavit
18 are sufficient to authorize enrollment of a child in school. Print
19 clearly.

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

22 1. Name of child: _____.

23 2. Child's birth date: _____.

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

25 4. My home address: _____

26 _____

27 _____.

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

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

7 7. My date of birth: _____.

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

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

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

16 Dated: _____

17 Signed: _____

18 Notices:

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

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

25 Additional Information:

26 TO CAREGIVERS:

27 1. "Qualified relative," for purposes of item 5 of the

1 affidavit, means (a) a person related to the child by blood, (b) a
2 spouse of a blood relative of the child, or (c) a blood relative of a
3 spouse of a blood relative of the child.

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

8 TO SCHOOL OFFICIALS:

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

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

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

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

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

26 (b) The board of trustees of a school district or its
27 designee shall admit into the public schools of the district free of

1 tuition a person who is at least five years of age and younger than
2 21 years of age on the first day of September of the school year in
3 which admission is sought, and may admit a person who is at least 21
4 years of age and under 26 years of age for the purpose of completing
5 the requirements for a high school diploma, if:

6 (1) the person and either parent of the person reside
7 in the school district;

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

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

15 (4) the person has established a separate residence
16 under Subsection (d);

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

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

26 (7) the person resides at a residential facility
27 located in the district;

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

4 (9) the person does not reside in the school district
5 but the grandparent of the person:

6 (A) resides in the school district; and

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

9 (10) the person lives with a relative who resides in
10 the school district and is authorized to enroll the child in school
11 pursuant to an authorization agreement executed under Chapter 34,
12 Family Code or who submits to the district a caregiver's
13 authorization affidavit executed under Chapter 35, 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 person with whom the child resides who is authorized to enroll
21 the child in school pursuant to an authorization agreement executed
22 under Chapter 34, Family Code, or by a relative under a caregiver's
23 authorization affidavit under Chapter 35, Family Code. A school
24 district shall record the name, address, and date of birth of the
25 person enrolling a child.

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

1 Sec. 26.002. DEFINITION. In this chapter, "parent"
2 includes a person standing in parental relation. The term includes
3 a person with whom the child resides who is authorized to enroll the
4 child in school pursuant to an authorization agreement executed
5 under Chapter 34, Family Code, or a relative who submits a
6 caregiver's authorization affidavit executed under Chapter 35,
7 Family Code. The term does not include a person as to whom the
8 parent-child relationship has been terminated or a person not
9 entitled to possession of or access to a child under a court order.
10 Except as provided by federal law, all rights of a parent under
11 Title 2 of this code and all educational rights under Section
12 151.001(a)(10) [~~151.003(a)(10)~~], Family Code, shall be exercised
13 by a student who is 18 years of age or older or whose disabilities of
14 minority have been removed for general purposes under Chapter 31,
15 Family Code, unless the student has been determined to be
16 incompetent or the student's rights have been otherwise restricted
17 by a court order.

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

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