

## **BILL ANALYSIS**

C.S.H.B. 454  
By: Dukes  
Judiciary & Civil Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Under current law, a child may be enrolled in a public school only by a parent or guardian or by a person with legal control of the child under a court order. However, this does not account for children who are being raised by a relative other than a parent or legal guardian, and interested parties assert that such a relative can enroll such a child in school only if the relative obtains legal custody of the child or a court order or if the child's guardian authorizes the enrollment. The parties contend that hiring a lawyer to obtain custody or a court order is often too expensive for these relatives and that the child's guardian cannot always be contacted to authorize enrollment. Furthermore, if the process cannot be completed in a timely manner, there may be gaps in a child's education. C.S.H.B. 454 seeks to provide for a caregiver's affidavit as an alternative to costlier and more time-consuming measures to ensure that children who are being raised by noncustodial relatives are enrolled in school in a timely manner.

### **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. 454 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 that the caregiver made a reasonably diligent effort but was unable to locate or contact the child's parent or legal guardian for authorization and to provide the affidavit to a school or school district to enroll the child in school. The bill specifies the manner in which the affidavit is required to be executed and makes an affidavit invalid if the child no longer resides with the caregiver or the child's parent or guardian objects to the caregiver's authorization. The bill requires the caregiver to notify all parties to whom the caregiver provided the affidavit, including the child's school, if the affidavit is invalid.

C.S.H.B. 454 specifies that a person who relies on an affidavit that complies with the bill's requirements has no obligation to make any further inquiry or investigation. The bill clarifies 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 specifies that a caregiver's authorization affidavit does not confer or affect standing or a right of intervention in any proceeding in a suit affecting the parent-child relationship. The bill sets out the form of and language required to be included in a caregiver's authorization affidavit. The bill requires the commissioner of education to adopt rules to implement the bill's provisions and to ensure that the caregiver's authorization affidavit is accepted by schools and school districts. The bill requires the Texas Education Agency (TEA) to develop the form of the affidavit and to make that form available on TEA's Internet website.

C.S.H.B. 454 amends the Education Code to require the board of trustees of a school district or

its designee to admit into the public schools of the district free of tuition a person who meets certain age requirements and who lives with a relative who resides in the school district and submits to the district a nonparent relative authorization agreement for a nonparent relative or a caregiver's authorization affidavit. The bill removes language requiring a child to be enrolled in a public school by the child's parent or guardian or other person with legal control of the child under a court order. The bill expands the definition of "parent" for purposes of statutory provisions relating to parental rights and responsibilities in regard to public education to include a relative with whom the child resides and who is authorized to enroll the child in school pursuant to a nonparent authorization agreement or a caregiver's authorization affidavit. These Education Code provisions apply beginning with the 2013-2014 school year.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 454 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### **INTRODUCED**

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.**

**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.**

**Sec. 35.004. EFFECT OF AFFIDAVIT.** (a) A person who relies on an affidavit that

#### **HOUSE COMMITTEE SUBSTITUTE**

SECTION 1. Subtitle A, Title 2, Family Code, is amended by adding Chapter 35 to read as follows:

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##### **Sec. 35.001. DEFINITION.**

**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 caregiver made a reasonably diligent effort but was unable to locate or contact the child's parent or legal guardian 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.**

**Sec. 35.004. EFFECT OF AFFIDAVIT.** (a) A person who relies on an affidavit that

complies with this chapter has no obligation to make any further inquiry or investigation.  
(b) 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.

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

Caregiver's Authorization Affidavit

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

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

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

1. Name of child:

\_\_\_\_\_.

2. Child's birth date:

\_\_\_\_\_.

3. My name (adult giving authorization):

\_\_\_\_\_.

4. My home address:

\_\_\_\_\_.

\_\_\_\_\_.

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

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

7. My date of birth:

\_\_\_\_\_.

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

\_\_\_\_\_.

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

I declare under penalty of perjury under the

complies with this chapter has no obligation to make any further inquiry or investigation.  
(b) 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.

(c) A caregiver's authorization affidavit executed under this chapter does not confer or affect standing or a right of intervention in any proceeding under Title 5.

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

Caregiver's Authorization Affidavit

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

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

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

1. Name of child:

\_\_\_\_\_.

2. Child's birth date:

\_\_\_\_\_.

3. My name (adult giving authorization):

\_\_\_\_\_.

4. My home address:

\_\_\_\_\_.

\_\_\_\_\_.

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

6. ( ) I have made a reasonably diligent effort but am unable to locate or contact the parent(s) or other person(s) having legal custody of the child at this time to notify them of my intended authorization.

7. My date of birth:

\_\_\_\_\_.

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

\_\_\_\_\_.

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

I declare under penalty of perjury under the

laws of the State of Texas that the foregoing is true and correct.

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

Witnesses:

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

Signature:

\_\_\_\_\_  
Printed Name:

\_\_\_\_\_  
Date:

I am 18 years of age or older.

Signature:

\_\_\_\_\_  
Printed Name:

\_\_\_\_\_  
Date:

Notary:

State of \_\_\_\_\_

County \_\_\_\_\_ of

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

2 \_\_\_\_\_.

Printed Name of Notary:

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

Notices:

1. This declaration does not affect the rights of the child's parents 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.

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

Additional Information:

TO CAREGIVERS:

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

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

TO SCHOOL OFFICIALS:

1. Section 25.001, Education Code, provides that this affidavit constitutes a

laws of the State of Texas that the foregoing is true and correct.

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

Witnesses:

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

Signature:

\_\_\_\_\_  
Printed Name:

\_\_\_\_\_  
Date:

I am 18 years of age or older.

Signature:

\_\_\_\_\_  
Printed Name:

\_\_\_\_\_  
Date:

Notary:

State of \_\_\_\_\_

County \_\_\_\_\_ of

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

2 \_\_\_\_\_.

Printed Name of Notary:

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

Notices:

1. This declaration does not affect the rights of the child's parents 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.

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

Additional Information:

TO CAREGIVERS:

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

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

TO SCHOOL OFFICIALS:

1. Section 25.001, Education Code, provides that this affidavit constitutes a

sufficient basis for a determination of residency of the child, without the requirement of a guardianship or other custody order, unless the school district determines from actual facts that the child is not living with the caregiver.

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

Sec. 35.006. RULES.

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

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

- (1) the person and either parent of the person reside in the school district;
- (2) the person does not reside in the school district but a parent of the person resides in the school district and that parent is a joint managing conservator or the sole managing conservator or possessory conservator of the person;
- (3) the person and the person's guardian or other person having lawful control of the person under a court order reside within the school district;
- (4) the person has established a separate residence under Subsection (d);
- (5) the person is homeless, as defined by 42 U.S.C. Section 11302, regardless of the residence of the person, of either parent of the person, or of the person's guardian or other person having lawful control of the person;
- (6) the person is a foreign exchange student placed with a host family that resides in the school district by a nationally recognized foreign exchange program, unless the school district has applied for and been granted a waiver by the commissioner under Subsection (e);
- (7) the person resides at a residential facility located in the district;
- (8) the person resides in the school district

sufficient basis for a determination of residency of the child, without the requirement of a guardianship or other custody order, unless the school district determines from actual facts that the child is not living with the caregiver.

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

Sec. 35.006. RULES.

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

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

- (1) the person and either parent of the person reside in the school district;
- (2) the person does not reside in the school district but a parent of the person resides in the school district and that parent is a joint managing conservator or the sole managing conservator or possessory conservator of the person;
- (3) the person and the person's guardian or other person having lawful control of the person under a court order reside within the school district;
- (4) the person has established a separate residence under Subsection (d);
- (5) the person is homeless, as defined by 42 U.S.C. Section 11302, regardless of the residence of the person, of either parent of the person, or of the person's guardian or other person having lawful control of the person;
- (6) the person is a foreign exchange student placed with a host family that resides in the school district by a nationally recognized foreign exchange program, unless the school district has applied for and been granted a waiver by the commissioner under Subsection (e);
- (7) the person resides at a residential facility located in the district;
- (8) the person resides in the school district

and is 18 years of age or older or the person's disabilities of minority have been removed; [ø]

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

(A) resides in the school district; and

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

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

SECTION 3. Section 25.002(f), Education Code, is amended.

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

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

SECTION 5. Sections 25.001, 25.002, and 26.002, Education Code, as amended by this Act, apply beginning with the 2013-2014 school year.

SECTION 6. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each

and is 18 years of age or older or the person's disabilities of minority have been removed; [ø]

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

(A) resides in the school district; and

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

(10) the person lives with a relative who resides in the school district and submits to the district an authorization agreement executed under Chapter 34, Family Code, or a caregiver's authorization affidavit executed under Chapter 35, Family Code.

SECTION 3. Same as introduced version.

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

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

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.

house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.