

By: Dukes, Guillen, Miles

H.B. No. 454

Substitute the following for H.B. No. 454:

By: Farney

C.S.H.B. No. 454

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

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.

(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.

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

3 1. Name of child: _____.

4 2. Child's birth date: _____.

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

6 4. My home address: _____

7 _____

8 _____.

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

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

16 7. My date of birth: _____.

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

19 _____.

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

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

25 Dated: _____

26 Signed: _____

27 Witnesses:

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

4 Signature: _____

5 Printed Name: _____

6 Date: _____

7 I am 18 years of age or older.

8 Signature: _____

9 Printed Name: _____

10 Date: _____

11 Notary:

12 State of _____

13 County of _____

14 Subscribed and sworn to before me, a notary public, by
15 _____ this _____ day of _____, 2_____.

16 Printed Name of Notary: _____

17 Commission Expires: _____

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 person related to the child by consanguinity or
2 affinity (blood, marriage, or adoption).

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

7 TO SCHOOL OFFICIALS:

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

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

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

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

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

25 (b) The board of trustees of a school district or its
26 designee shall admit into the public schools of the district free of
27 tuition a person who is over five and younger than 21 years of age on

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

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

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

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

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

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

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

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

27 (8) the person resides in the school district and is 18

1 years of age or older or the person's disabilities of minority have
2 been removed; [~~or~~]

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

5 (A) resides in the school district; and

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

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

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

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

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

22 Sec. 26.002. DEFINITION. In this chapter, "parent"
23 includes a person standing in parental relation. The term includes
24 a relative with whom the child resides and who is authorized to
25 enroll the child in school pursuant to an authorization agreement
26 executed under Chapter 34, Family Code, or a caregiver's
27 authorization affidavit executed under Chapter 35, Family Code.

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

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

14 SECTION 6. This Act takes effect immediately if it receives
15 a vote of two-thirds of all the members elected to each house, as
16 provided by Section 39, Article III, Texas Constitution. If this
17 Act does not receive the vote necessary for immediate effect, this
18 Act takes effect September 1, 2013.