

By: Dukes

H.B. No. 2247

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 E, Title 2, Education Code, is amended by adding Chapter 27 to read as follows:

CHAPTER 27. RIGHTS OF CERTAIN RELATIVE CAREGIVERS TO ENROLL CHILD
IN SCHOOL

Sec. 27.001. 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. 27.002. 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. 27.003. 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 legal 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. 27.004. 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, Family Code.

Sec. 27.005. 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 27, Education 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 (see portion of this form that provides
16 description of "reasonably diligent effort").

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 Witnesses:

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

5 Signature: _____

6 Printed Name: _____

7 Date: _____

8 I am 18 years of age or older.

9 Signature: _____

10 Printed Name: _____

11 Date: _____

12 Notary:

13 State of _____

14 County of _____

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

17 Printed Name of Notary: _____

18 Commission Expires: _____

19 Notices:

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

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

26 Additional Information:

27 TO CAREGIVERS:

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

4 2. For purposes of Item 6 of the affidavit, "reasonably
5 diligent effort" means making a good faith effort to make contact
6 with each parent or guardian of the child and giving reasonable
7 opportunity for the parent or guardian to respond. Based on the
8 person's knowledge of the circumstances of the parent or guardian,
9 the person should use the method or methods of contact that the
10 person considers the most likely to be effective. A reasonably
11 diligent effort may include a personal visit to the residence of the
12 parent or guardian or multiple notifications by telephone, mail, or
13 e-mail and a reasonable opportunity for the parent or guardian to
14 respond based on the method of communication used.

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

19 TO SCHOOL OFFICIALS:

20 1. Section 25.001, Education Code, provides that this
21 affidavit constitutes a sufficient basis for a determination of
22 residency of the child 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. 27.006. RULES. (a) The commissioner shall adopt rules

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

4 (b) The agency shall develop the form required by Section
5 27.005 and make that form available on the agency's Internet
6 website.

7 Sec. 27.007. OTHER ENROLLMENT PROVISIONS NOT AFFECTED. The
8 provisions in this chapter for enrolling a student into the public
9 schools free of tuition are in addition to and do not affect
10 enrollment provisions under other law, including provisions under
11 Section 25.001(b) that do not refer to a caregiver's authorization
12 affidavit.

13 SECTION 2. Section 25.001, Education Code, is amended by
14 amending Subsection (b) and adding Subsection (d-1) to read as
15 follows:

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

23 (1) the person and either parent of the person reside
24 in the school district;

25 (2) the person does not reside in the school district
26 but a parent of the person resides in the school district and that
27 parent is a joint managing conservator or the sole managing

1 conservator or possessory conservator of the person;

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

5 (4) the person has established a separate residence
6 under Subsection (d);

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

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

16 (7) the person resides at a residential facility
17 located in the district;

18 (8) the person resides in the school district and is 18
19 years of age or older or the person's disabilities of minority have
20 been removed; ~~or~~

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

23 (A) resides in the school district; and

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

26 (10) the person lives with a relative who resides in
27 the school district and who submits to the district a caregiver's

1 authorization affidavit executed under Chapter 27 of this code or
2 an authorization agreement executed under Chapter 34, Family Code.

3 (d-1) For purposes of establishing eligibility for
4 admission into the public schools of a district free of tuition
5 under this section, the submission of a caregiver's authorization
6 affidavit or authorization agreement under Subsection (b)(10) is
7 not the exclusive method by which a person under the age of 18 years
8 may establish a residence separate and apart from the person's
9 parent, guardian, or other person having lawful control of the
10 person under a court order.

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

13 (f) Unless a child is authorized by Section 25.001(b)(4) or
14 (5) or other law to enroll in public school without the
15 participation of another person, a [~~Except as otherwise provided by~~
16 ~~this subsection, for a child to be enrolled in a public school, the~~
17 ~~child must be enrolled by the child's parent or by the child's~~
18 ~~guardian or other person with legal control of the child under a~~
19 ~~court order.~~ A] school district shall record the name, address, and
20 date of birth of the person enrolling the [a] child.

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

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

1 authorization agreement executed under Chapter 34, Family Code. The
2 term does not include a person as to whom the parent-child
3 relationship has been terminated or a person not entitled to
4 possession of or access to a child under a court order. Except as
5 provided by federal law, all rights of a parent under Title 2 of
6 this code and all educational rights under Section 151.001(a)(10)
7 [~~151.003(a)(10)~~], Family Code, shall be exercised by a student who
8 is 18 years of age or older or whose disabilities of minority have
9 been removed for general purposes under Chapter 31, Family Code,
10 unless the student has been determined to be incompetent or the
11 student's rights have been otherwise restricted by a court order.

12 SECTION 5. Sections 25.001, 25.002, and 26.002, Education
13 Code, as amended by this Act, apply beginning with the 2017-2018
14 school year.

15 SECTION 6. To the extent of any conflict, this Act prevails
16 over another Act of the 85th Legislature, Regular Session, 2017,
17 relating to nonsubstantive additions to and corrections in enacted
18 codes.

19 SECTION 7. This Act takes effect immediately if it receives
20 a vote of two-thirds of all the members elected to each house, as
21 provided by Section 39, Article III, Texas Constitution. If this
22 Act does not receive the vote necessary for immediate effect, this
23 Act takes effect September 1, 2017.