

BILL ANALYSIS

C.S.H.B. 807
By: Dukes
Juvenile Justice & Family Issues
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, interested parties note, a child may be enrolled in a public school only by a legal guardian. A child can be enrolled in school by a relative if the parent authorizes the enrollment but if a parent has abandoned his or her child and is unable to be contacted a relative who takes the child in does not have legal authority to enroll the child in school. The parties suggest that many relative caregivers are unable to obtain child custody due to the expense of hiring a lawyer and the scarcity of legal aid resources. Children in this situation, the parties explain, are either unable to be enrolled in school and experience lapses in their education or are sometimes flagged as homeless in order to be enrolled in school, which is not an accurate depiction of the child's residency status with a relative. C.S.H.B. 807 seeks to address this issue by providing authorization for a caregiver of a child who is a relative of the child to enroll the child in school.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 807 amends the Education Code to authorize a caregiver of a child who is related to the child by consanguinity or affinity to enroll the child in school by providing to a school or school district an executed 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. The bill requires the affidavit to be notarized and to be witnessed by two witnesses who are at least 18 years of age or older and at least one of whom is not related to the child or caregiver by blood or marriage.

C.S.H.B. 807 establishes that, 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 is required to notify all parties to whom the caregiver provided the affidavit, including the child's school. The bill establishes that a person who relies on an affidavit that complies with the bill's provisions has no obligation to make any further inquiry or investigation. The bill specifies 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 the execution of a caregiver's authorization affidavit does not confer or affect standing or a right of intervention in any proceeding relating to the parent-child relationship.

C.S.H.B. 807 sets out the required form of the caregiver's authorization affidavit and requires the Texas Education Agency (TEA) to develop the form and make it available on the TEA website. The bill requires the commissioner of education to adopt rules to implement the bill's provisions relating to a relative caregiver's right to enroll a child in school and to ensure that the caregiver's authorization affidavit is accepted by schools and school districts. The bill establishes that its provisions relating to enrolling a student into the public schools free of tuition are in addition to and do not affect enrollment provisions under other law, including provisions that do not refer to a caregiver's authorization affidavit.

C.S.H.B. 807 removes the requirement that a child be enrolled in a public school by the child's parent or by the child's guardian or other person with legal control of the child under a court order and makes a person who meets certain age requirements, lives with a relative who resides in the school district, and submits to the school district an authorization agreement for a nonparent relative or a caregiver's authorization affidavit eligible for admittance into a school district free of tuition. The bill establishes that, for purposes of establishing eligibility for admission into the public schools of a district free of tuition, the submission of a caregiver's authorization affidavit or authorization agreement is not the exclusive method by which a person under the age of 18 years may establish a residence separate and apart from the person's parent, guardian, or other person having lawful control of the person under a court order. The bill adds an exception with regard to the requirement that a school district record the name, address, and date of birth of the person enrolling a child in school for a child authorized by law to enroll without the participation of another person. The bill redefines "parent," for purposes of statutory provisions relating to parental rights and responsibilities, to include a relative with whom the child resides and who is authorized to enroll the child in school under an authorization agreement for a nonparent relative or a caregiver's authorization affidavit. The bill's provisions apply beginning with the 2015–2016 school year.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 807 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted 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.

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

HOUSE COMMITTEE SUBSTITUTE

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.

Sec. 27.002. AFFIDAVIT OF CAREGIVER.

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 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.

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:

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.

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.

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. 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 sufficient basis for a determination of residency of the child, without the requirement of a

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 unless the school district determines

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;

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. 27.006. RULES.

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

SECTION 2. Section 25.001, Education Code, is amended by amending Subsection (b) and adding Subsection (d-1) 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 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. Section 25.002(f), Education Code, is amended to read as follows:
(f) ~~[Except as otherwise provided by this subsection, for a child to be enrolled in a public school, the child must be enrolled by the child's parent or by the child's guardian or other person with legal control of the child under a court order.]~~ A school district shall record the name, address, and date of birth of the person enrolling a child.

SECTION 4. Section 26.002, Education Code, is amended.

SECTION 5. Sections 25.001, 25.002, and

(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 resides in the school district and submits to the district a caregiver's authorization affidavit executed under Chapter 27 of this code or an authorization agreement executed under Chapter 34, Family Code.

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

SECTION 3. Section 25.002(f), Education Code, is amended to read as follows:
(f) Unless a child is authorized by Section 25.001(b)(4) or (5) or other law to enroll without the participation of another person, ~~a~~ ~~[Except as otherwise provided by this subsection, for a child to be enrolled in a public school, the child must be enrolled by the child's parent or by the child's guardian or other person with legal control of the child under a court order.]~~ A school district shall record the name, address, and date of birth of the person enrolling the ~~[a]~~ child.

SECTION 4. Substantially the same as introduced version.

SECTION 5. Same as introduced version.

26.002, Education Code, as amended by this Act, apply beginning with the 2015-2016 school year.

SECTION 6. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each 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, 2015.

SECTION 6. Same as introduced version.