

- SUBJECT:** Authorizing a child’s relative caregiver to enroll the child in school
- COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended
- VOTE:** 11 ayes — Jackson, Lewis, Bohac, Castro, S. Davis, Hartnett, Madden, Raymond, Scott, Thompson, Woolley
- 0 nays
- WITNESSES:** For — Jodie Smith, Texans Care for Children
- Against — None
- BACKGROUND:** Education Code, sec. 26.002 defines the term “parent” as a person standing in parental relation. It excludes a person whose rights in a parent-child relationship have been terminated, as well as a person whose access to or possession of a child has been prohibited by a court order.
- Relationships by consanguinity and affinity are explained in the Government Code, secs. 573.022 and 573.024, respectively. Consanguinity is established if two persons share a common ancestor or if one is a descendant of another. Affinity is established if two persons are married to each other or if the spouse of one person is related by consanguinity to the other person.
- Education Code, sec. 25.0002(f) requires a child to be enrolled in a public school by a parent or guardian.
- DIGEST:** CSHB 1359 would add ch. 35 to the Family Code to govern the rights of certain relative caregivers who would be able to enroll children in school. The bill would define a relative as someone related to a child by consanguinity or affinity.
- The bill would allow a relative caregiver to execute an affidavit stating that the caregiver’s home was the child’s primary residence and that the parent or legal guardian could not be reached to give authorization. The affidavit would have to be witnessed by two people who were at least 18 years old. CSHB 1359 would prohibit at least one of the witnesses from being related by blood or marriage to either the child or the caregiver.

Once completed, the affidavit would have to be notarized.

CSHB 1359 would authorize a qualified caregiver to present the affidavit to a school or school district in order to enroll the child. If the child's parent or guardian objected to the affidavit, the affidavit would become invalid, and the caregiver would have to notify anyone who received the affidavit, including the child's school. The bill would excuse anyone who relied on the affidavit from further investigating the matter. The authorization granted by CSHB 1359 would not affect the parent's or guardian's rights regarding the care, custody, or control of the child, nor would it grant legal custody to the relative caregiver.

The bill would list the information that would be included and requested on the affidavit. The Texas Education Agency (TEA) would be required to create the affidavit's form and make it available on its website. The commissioner of education would have to adopt rules to implement the bill's provisions and ensure the acceptance of the affidavit by schools and school districts.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011. The changes allowing a school to enroll a child with a caregiver affidavit would apply beginning with the 2011-2012 school year.

NOTES:

The companion bill, SB 1091 by Rodriguez, was referred to the Senate Education Committee on March 16.