

1 HOUSE BILL NO. 288

2 INTRODUCED BY D. SANDS

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE RESIDENCY OF A CHILD ENROLLED IN
5 SCHOOL WHO IS RESIDING WITH A LEGAL GUARDIAN, CUSTODIAN, OR CARETAKER RELATIVE IS THE
6 RESIDENCE OF THE LEGAL GUARDIAN, CUSTODIAN, OR CARETAKER RELATIVE; CLARIFYING THE
7 LANGUAGE OF THE CARETAKER RELATIVE AFFIDAVIT; MAKING FINANCIAL RESPONSIBILITY FOR
8 SPECIAL EDUCATION CONSISTENT WITH OTHER PROVISIONS REGARDING RESIDENCY; AMENDING
9 SECTIONS 1-1-215, 20-5-502, 20-5-503, AND 20-7-420, MCA; AND PROVIDING AN EFFECTIVE DATE."

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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 **Section 1.** Section 1-1-215, MCA, is amended to read:
14 **"1-1-215. Residence -- rules for determining.** Every person has, in law, a residence. In determining
15 the place of residence, the following rules are to be observed:

16 (1) It is the place where a person remains when not called elsewhere for labor or other special or
17 temporary purpose and to which the person returns in seasons of repose.

18 (2) There may be only one residence. If a person claims a residence within Montana for any purpose,
19 then that location is the person's residence for all purposes unless there is a specific statutory exception.

20 (3) A residence cannot be lost until another is gained.

21 (4) The residence of an unmarried minor is:

22 (a) the residence of the minor's parents;

23 (b) if one of the parents is deceased or the parents do not share the same residence, the residence of
24 the parent having legal custody;

25 (c) if neither parent has legal custody, the residence of the ~~parent with whom the minor customarily~~
26 ~~resides~~ legal guardian or custodian appointed by a court of competent jurisdiction; or

27 (d) if the conditions in 20-5-502 are met, ~~the last-known residence of the parent with whom the minor~~
28 ~~normally resided immediately prior to residing with~~ the residence of the caretaker relative.

29 (5) In the case of a controversy, the district court may declare which ~~parental~~
30 of an unmarried minor.

1 (6) In the case of a controversy over the residence of an unmarried minor, the trustees of the school
 2 district in which the minor is to be enrolled shall determine the residence of the minor in accordance with
 3 subsections (4)(c) and (4)(d), subject to the right to appeal the decision pursuant to 20-3-210.

4 ~~(6) Except as provided in Title 20, chapter 5, part 5, the residence of an unmarried minor who has a~~
 5 ~~parent living cannot be changed by either the minor's own act or that of the minor's guardian.~~

6 (7) The residence can be changed only by the union of act and intent."
 7

8 **Section 2.** Section 20-5-502, MCA, is amended to read:

9 **"20-5-502. Enrollment by caretaker relative -- residency -- affidavit.** (1) A caretaker relative of a child
 10 who has voluntarily been given custody of the child by a parent of the child may, in accordance with this section,
 11 enroll the child in school using the rules of residence provided in 1-1-215 if:

12 (a) in leaving the child with the caretaker relative, the parent expressed no definite time period in which
 13 the parent would return for the child;

14 (b) the child is residing with the caretaker relative on a full-time basis;

15 (c) the caretaker relative is unable to contact either of the parents ~~following the~~ after voluntary voluntarily
 16 ~~leaving of the child with the caretaker relative or the a parent or parents whom the caretaker relative is able to~~
 17 ~~contact refuse is unable to~~ regain custody of the child ~~after a written or oral request by the relative to do so;~~

18 (d) no adequate provision, such as the appointment of a guardian ad litem or execution of a power of
 19 attorney, has otherwise been made for the educational needs of the child; and

20 (e) a caretaker relative educational authorization affidavit is completed in compliance with 20-5-503.

21 (2) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the
 22 child may enroll the child in school unless the child's residency with the caretaker relative is primarily for the
 23 purpose of:

24 (a) attending a particular school; or

25 (b) participating in athletics at a particular school.

26 (3) ~~If~~ Except for a child with an individualized education program, if the child was subject to formal
 27 disciplinary action, including suspension or expulsion, at the child's previous school, the school in which the child
 28 is to be enrolled may require the child to comply with a behavior contract as a condition of enrollment.

29 (4) The school district may require additional reasonable evidence that the caretaker relative lives at the
 30 address provided in the affidavit."

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2 **Section 3.** Section 20-5-503, MCA, is amended to read:

3 **"20-5-503. Caretaker relative educational authorization affidavit -- use -- immunity -- format. (1)**

4 A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child has the
5 same authority as a custodial parent of the child to discuss with an educator the educational progress of the child,
6 consent to an educational service, and consent to medical care related to an educational service for the child for
7 which parental consent is usually required if a caretaker relative educational authorization affidavit is completed
8 in compliance with this section.

9 (2) An affidavit is effective only if it is signed by the caretaker relative, under oath, before a notary
10 public. A clear photographic copy of an affidavit completed in compliance with this section is sufficient in any
11 instance in which an original is required by a school official or health care provider.

12 (3) Unless parental rights have been judicially terminated or unless the ability to give legal consent for
13 the child to receive an educational service and any medical care related to the educational service for which
14 parental consent is usually required has been granted to the caretaker relative pursuant to 40-4-211 and
15 40-4-228, a decision by a parent of the child communicated to a school official, a health care provider, or both,
16 regarding the child supersedes a conflicting decision by a caretaker relative made pursuant to an affidavit
17 completed in compliance with this section. However, a decision by a parent does not supersede a decision by
18 a caretaker relative pursuant to an affidavit completed in compliance with this section if the decision by the parent
19 endangers the life of the child. A school official or health care provider may require reasonable proof of
20 authenticity of a decision by a parent intended to supersede a decision by a caretaker relative.

21 (4) (a) A public or private entity or individual who acts in good faith reliance on a caretaker relative
22 educational authorization affidavit completed in compliance with this section and who has no actual knowledge
23 of facts contrary to those indicated in the affidavit is not subject to civil liability or criminal prosecution or to a
24 professional disciplinary procedure for an action that would have been proper if the facts had been as the entity
25 or individual believed them to be.

26 (b) This subsection (4) applies even if an educational service or educationally related medical care, or
27 both, are provided to a child against the wishes of a parent of that child if the person rendering the service does
28 not have actual knowledge of the parent's wishes.

29 (5) A person who relies on an affidavit completed in compliance with this section has no obligation to
30 make further inquiry or investigation.

- 1 (6) An affidavit completed in compliance with this section is effective for the earlier of:
- 2 (a) the end of the first school year after delivery of the affidavit to a school district;
- 3 (b) until it has been revoked by the caretaker relative; or
- 4 (c) until the child no longer resides with the caretaker relative.
- 5 (7) If the child ceases to live with the caretaker relative or the caretaker relative revokes the affidavit, the
- 6 caretaker relative shall provide written notice of that fact to all persons to whom the caretaker relative has given
- 7 the affidavit or to whom the caretaker relative has caused the affidavit to be given.
- 8 (8) This section does not relieve a person from a violation of other law, and this section does not affect
- 9 the rights of a child's parent except as provided in this section.
- 10 (9) A caretaker relative educational authorization affidavit is invalid unless it is written in substantially the
- 11 following form and contains the warning provided for in paragraph 5 of the format below:

12 CARETAKER RELATIVE'S
 13 EDUCATIONAL AUTHORIZATION AFFIDAVIT
 14 Use of this affidavit is authorized by 20-5-503, MCA.

15 1. INSTRUCTIONS: The completion and signing of the affidavit before a notary public are sufficient to
 16 authorize educational enrollment and services and school-related medical care for the named child. Please print
 17 clearly.

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

- 19 a. Name of child:
- 20 b. Child's date of birth:
- 21 c. My name (caretaker relative):
- 22 d. My home address:
- 23 e. My relationship to the child (the caretaker relative must be an individual related by blood, marriage,
- 24 or adoption by another individual to the child whose care is undertaken by the caretaker relative, but who is not
- 25 a parent, foster parent, stepparent, or legal guardian of the child):

26 2. I hereby certify that this affidavit is not being used for the purpose of circumventing school residency
 27 laws, to take advantage of a particular academic program or athletic activity, to circumvent a disciplinary action
 28 of a previous school, or for an otherwise unlawful purpose.

- 29 3. My date and year of birth:
- 30 4. Check the following if true (all must be checked for this affidavit to apply):

1 [] A parent of the child identified in paragraph 1a of this affidavit has left the child with me and has
2 expressed no definite time period when the parent will return for the child.

3 [] The child is now residing with me on a full-time basis.

4 ~~[] I am unable to locate or contact the parents of the child at this time to notify the parents of my intended
5 authorization, or the parents refuse to regain custody of the child even though I have asked in writing that the
6 parents do so.~~

7 [] No adequate provision, such as appointment of a legal custodian or guardian ad litem or execution
8 of a notarized power of attorney, has been made for enrollment of the child in school, other educational services,
9 or educationally related medical services.

10 5. WARNING: DO NOT SIGN THIS FORM IF ANY OF THE STATEMENTS ABOVE ARE INCORRECT
11 OR YOU WILL BE COMMITTING A CRIME PUNISHABLE BY A FINE, IMPRISONMENT, OR BOTH.

12 6. I declare under penalty of false swearing under the laws of Montana that the foregoing is true and
13 correct. Signed this day of, 20.... (Signature of caretaker
14 relative) (Signature, county, state, and seal of notary public)

15 7. NOTICES TO CARETAKER RELATIVE:

16 a. Completion of this affidavit does not affect the rights of the child's parents or legal guardian regarding
17 the care, custody, and control of the child and does not mean that the caretaker relative has legal custody of the
18 child.

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

20 c. This affidavit is effective until the earlier of:

21 i. the end of the first school year after delivery of the affidavit to a school district;

22 ii. revocation by the caretaker relative; or

23 iii. the child no longer resides with the caretaker relative.

24 ~~8. ADDITIONAL INFORMATION:~~

25 ~~a.d. TO CARETAKER RELATIVES: If the child stops living with you, you shall notify anyone to whom
26 you have given this affidavit, as well as anyone who received the affidavit from someone else.~~

27 ~~b. TO PUBLIC AND PRIVATE SCHOOL OFFICIALS AND PUBLIC AND PRIVATE HEALTH CARE
28 PROVIDERS:~~

29 ~~(1) A public or private school official or a public school district official may require additional reasonable
30 evidence that the caretaker relative lives at the address provided in item 1d of the affidavit form.~~



1 ~~———— (2) A public or private entity or individual who acts in good faith reliance upon a caretaker relative~~
 2 ~~educational authorization affidavit to enroll a child in school or to provide educational services or educationally~~
 3 ~~related medical care, or both, without actual knowledge of facts contrary to those indicated in the affidavit, is not~~
 4 ~~subject to criminal prosecution or civil liability to any person, or subject to any professional disciplinary action, for~~
 5 ~~reliance on an affidavit completed in compliance with 20-5-503, MCA."~~

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7 **Section 4.** Section 20-7-420, MCA, is amended to read:

8 **"20-7-420. Residency requirements -- financial responsibility for special education.** (1) Except for
 9 a pupil attending the Montana youth challenge program or a job corps program pursuant to 20-9-707, a child's
 10 district of residence for special education purposes must be determined in accordance with the provisions of
 11 1-1-215, ~~unless otherwise determined by the court. This applies to a child living at home, in an institution, or~~
 12 ~~under foster care. If the parent has left the state, the parent's last-known district of residence is the child's district~~
 13 ~~of residence.~~

14 (2) The superintendent of public instruction is financially responsible for tuition and transportation as
 15 established under 20-5-323 and 20-5-324 for a child with a disability, as defined in 20-7-401, who attends school
 16 outside the district and county of residence because the student has been placed in a foster care or group home
 17 licensed by the state. The superintendent of public instruction is not financially responsible for tuition and
 18 transportation for a child who is placed by a state agency in an out-of-state public school or an out-of-state private
 19 residential facility.

20 (3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state residential
 21 treatment facility or children's psychiatric hospital, as defined in 20-7-436, and the educational services are
 22 provided by a public school district under the provisions of 20-7-411 or 20-7-435, the superintendent of public
 23 instruction shall reimburse the district providing the services for the negotiated amount, as established pursuant
 24 to 20-7-435(5), that represents the district's costs of providing education and related services. Payments must
 25 be made from funds appropriated for this purpose. If the negotiated amount exceeds the daily membership rate
 26 under 20-7-435(3) and any per-ANB amount of direct state aid, the superintendent of public instruction shall pay
 27 the remaining balance from available funds. However, the amount spent from available funds for this purpose
 28 may not exceed \$500,000 during a biennium.

29 (4) A state agency that makes a placement of a child with a disability is responsible for the financial costs
 30 of room and board and the treatment of the child. The state agency that makes an out-of-state placement of a

1 child with a disability is responsible for the education fees required to provide a free appropriate public education
2 that complies with the requirements of Title 20, chapter 7, part 4."

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4 NEW SECTION. **Section 5. Effective date.** [This act] is effective July 1, 2011.

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- END -