

SENATE BILL 32

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SB 186/02 - EHE

2003 Regular Session
3r0441

By: **Senators Kelley, Hollinger, Britt, Colburn, Conway, Della, Giannetti,
Gladden, Grosfeld, Hooper, Jacobs, Jones, Lawlah, Mooney, Stoltzfus,
and Teitelbaum**

Introduced and read first time: January 13, 2003
Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Education - Children in Out-of-County Living Arrangements - Informal**
3 **Kinship Care**

4 FOR the purpose of requiring a superintendent of schools of a county to allow a child
5 to attend a public school in a county other than where the child was previously
6 domiciled in Maryland with the child's parent or legal guardian if the child lives
7 with a relative in the county due to a serious family hardship; altering a certain
8 definition; defining certain terms; requiring certain relatives of a child to file
9 certain affidavits and certain supporting documentation under certain
10 circumstances; establishing the contents and form of certain affidavits;
11 requiring certain affidavits to be provided free of charge at certain offices;
12 authorizing certain relatives to make educational decisions for children in their
13 custody; and generally relating to children in out-of-county living
14 arrangements who live with relatives who provide informal kinship care.

15 BY renumbering
16 Article - Education
17 Section 7-101(c)
18 to be Section 7-101(d)
19 Annotated Code of Maryland
20 (2001 Replacement Volume and 2002 Supplement)

21 BY repealing and reenacting, with amendments,
22 Article - Education
23 Section 4-122(a) and 7-101(b)
24 Annotated Code of Maryland
25 (2001 Replacement Volume and 2002 Supplement)

26 BY adding to
27 Article - Education
28 Section 7-101(c)

1 Annotated Code of Maryland
2 (2001 Replacement Volume and 2002 Supplement)

3 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
4 MARYLAND, That Section(s) 7-101(c) of Article - Education of the Annotated Code of
5 Maryland be renumbered to be Section(s) 7-101(d).

6 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
7 read as follows:

8 **Article - Education**

9 4-122.

10 (a) (1) In this section the following words shall have the meanings indicated.

11 (2) "Local current expense per student" means all expenditures made by
12 a county from county appropriations, except State, federal, and other aid, for public
13 elementary and secondary education in the prior fiscal year, divided by the full-time
14 equivalent enrollment, as defined in § 5-202(a) of this article.

15 (3) "Child in an out-of-county living arrangement" means a child who is:

16 (I) [placed] PLACED by a State agency, a licensed child placement
17 agency as provided by § 5-507 of the Family Law Article, or a court in a county other
18 than where the child's parent or legal guardian [resides. Child in an out-of-county
19 living arrangement does not include a child] RESIDES; OR

20 (II) [living] DOMICILED with a [relative, stepparent or a person
21 exercising temporary care, custody or control over a child at the request of a parent or
22 guardian of the child] RELATIVE WHO EXERCISES CARE, CUSTODY, AND CONTROL
23 OVER THE CHILD 24 HOURS A DAY AND 7 DAYS A WEEK AND WHO PROVIDES
24 INFORMAL KINSHIP CARE, AS DEFINED IN § 7-101 OF THIS ARTICLE, FOR THE CHILD.

25 (4) "Service providing local education agency" means the local education
26 agency for the county where a child in an out-of-county living arrangement is placed.

27 (5) "Financially responsible county" means the county where the parent
28 or legal guardian of a child in an out-of-county living arrangement resides. If the
29 parents of the child live apart, the financially responsible county is:

30 (i) The county where the parent who has been awarded custody of
31 the child resides;

32 (ii) If custody has not been awarded, the county where the parent
33 with whom the child lives when not in a foster care [home] HOME, IN THE HOME OF
34 AN INFORMAL KINSHIP CARE PROVIDER, or residential facility resides;

35 (iii) If custody has been awarded to both parents and the parents
36 reside in different counties, both counties shall be considered financially responsible

1 and shall pay one-half the amount as computed in accordance with subsection (c) of
 2 this section, except that if the child receives a public education in a county where a
 3 parent resides, this subparagraph shall not apply; or

4 (iv) If custody has been awarded to both parents and one parent
 5 resides in a county and the other resides out-of-state, the county shall be considered
 6 the financially responsible county.

7 7-101.

8 (b) (1) Except as provided in § 7-301 of this title and in paragraph (2) of this
 9 subsection, each child shall attend a public school in the county where the child is
 10 domiciled with the child's [parent or guardian] PARENT, GUARDIAN, OR RELATIVE
 11 PROVIDING INFORMAL KINSHIP CARE, AS DEFINED IN SUBSECTION (C) OF THIS
 12 SECTION.

13 (2) Upon request and in accordance with a county board's policies
 14 concerning residency, a county superintendent may allow a child to attend school in
 15 the county even if the child is not domiciled in that county with the child's parent or
 16 guardian.

17 (3) If a child fraudulently attends a public school in a county where the
 18 child is not domiciled with the child's parent or guardian, the child's parent or
 19 guardian shall be subject to a penalty payable to the county for the pro rata share of
 20 tuition for the time the child fraudulently attends a public school in the county.

21 [(4) Nothing in this section alters the requirements for out-of-county
 22 placements contained in § 4-122 and Title 8, Subtitles 3 and 4 of this article or in any
 23 other State or federal law.]

24 (C) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE
 25 MEANINGS INDICATED.

26 (II) "INFORMAL KINSHIP CARE" MEANS A LIVING ARRANGEMENT IN
 27 WHICH A RELATIVE OF A CHILD, WHO IS NOT IN THE CARE, CUSTODY, OR
 28 GUARDIANSHIP OF THE LOCAL DEPARTMENT OF SOCIAL SERVICES, PROVIDES FOR
 29 THE CARE AND CUSTODY OF THE CHILD DUE TO A SERIOUS FAMILY HARDSHIP.

30 (III) "RELATIVE" MEANS AN ADULT RELATED TO THE CHILD BY
 31 BLOOD OR MARRIAGE WITHIN THE FIFTH DEGREE OF CONSANGUINITY.

32 (IV) "SERIOUS FAMILY HARDSHIP" MEANS:

- 33 1. DEATH OF A PARENT OR LEGAL GUARDIAN OF THE CHILD;
- 34 2. SERIOUS ILLNESS OF A PARENT OR LEGAL GUARDIAN OF
 35 THE CHILD;
- 36 3. DRUG ADDICTION OF A PARENT OR LEGAL GUARDIAN OF
 37 THE CHILD;

1 4. INCARCERATION OF A PARENT OR LEGAL GUARDIAN OF
2 THE CHILD;

3 5. ABANDONMENT BY A PARENT OR LEGAL GUARDIAN OF
4 THE CHILD; OR

5 6. ASSIGNMENT OF A PARENT OR LEGAL GUARDIAN OF A
6 CHILD TO ACTIVE MILITARY DUTY.

7 (2) (I) A COUNTY SUPERINTENDENT SHALL ALLOW A CHILD WHO IS A
8 RESIDENT OF THIS STATE TO ATTEND A PUBLIC SCHOOL IN A COUNTY OTHER THAN
9 THE COUNTY WHERE THE CHILD IS DOMICILED WITH THE CHILD'S PARENT OR
10 LEGAL GUARDIAN IF THE CHILD LIVES WITH A RELATIVE PROVIDING INFORMAL
11 KINSHIP CARE IN THE COUNTY AND THE RELATIVE VERIFIES THE INFORMAL
12 KINSHIP CARE RELATIONSHIP THROUGH A SWORN AFFIDAVIT.

13 (II) THE AFFIDAVIT SHALL BE ACCOMPANIED BY SUPPORTING
14 DOCUMENTATION OF ONE OR MORE SERIOUS FAMILY HARDSHIPS AND, WHERE
15 POSSIBLE, THE TELEPHONE NUMBER AND ADDRESS OF ANY AUTHORITY WHO CAN
16 VERIFY THE ASSERTIONS IN THE AFFIDAVIT.

17 (3) THE AFFIDAVIT SHALL INCLUDE:

18 (I) THE NAME AND DATE OF BIRTH OF THE CHILD;

19 (II) THE NAME AND ADDRESS OF THE CHILD'S PARENT OR LEGAL
20 GUARDIAN;

21 (III) THE NAME AND ADDRESS OF THE RELATIVE PROVIDING
22 INFORMAL KINSHIP CARE;

23 (IV) THE DATE THE RELATIVE ASSUMED INFORMAL KINSHIP CARE;

24 (V) THE NATURE OF THE SERIOUS FAMILY HARDSHIP AND WHY IT
25 RESULTED IN INFORMAL KINSHIP CARE;

26 (VI) THE KINSHIP RELATION TO THE CHILD OF THE RELATIVE
27 PROVIDING INFORMAL KINSHIP CARE;

28 (VII) THE NAME AND ADDRESS OF THE SCHOOL THE CHILD
29 PREVIOUSLY ATTENDED;

30 (VIII) NOTICE THAT THE COUNTY SUPERINTENDENT MAY VERIFY
31 THE FACTS GIVEN BY THE RELATIVE PROVIDING INFORMAL KINSHIP CARE IN THE
32 AFFIDAVIT AND CONDUCT AN AUDIT OF THE CASE AFTER THE CHILD HAS BEEN
33 ENROLLED IN THE COUNTY PUBLIC SCHOOL SYSTEM;

34 (IX) NOTICE THAT IF FRAUD OR MISREPRESENTATION IS
35 DISCOVERED DURING AN AUDIT, THE COUNTY SUPERINTENDENT SHALL REMOVE
36 THE CHILD FROM THE COUNTY PUBLIC SCHOOL SYSTEM ROLL; AND

1 (X) NOTICE THAT ANY PERSON WHO WILLFULLY MAKES A
2 MATERIAL MISREPRESENTATION IN THE AFFIDAVIT SHALL BE SUBJECT TO A
3 PENALTY PAYABLE TO THE COUNTY FOR THREE TIMES THE PRO RATA SHARE OF
4 TUITION FOR THE TIME THE CHILD FRAUDULENTLY ATTENDS A PUBLIC SCHOOL IN
5 THE COUNTY.

6 (4) THE AFFIDAVIT SHALL BE IN THE FOLLOWING FORM:

7 (I) I, THE UNDERSIGNED, AM OVER EIGHTEEN (18) YEARS OF AGE
8 AND COMPETENT TO TESTIFY TO THE FACTS AND MATTERS SET FORTH HEREIN.

9 (II) _____ (NAME OF CHILD), WHOSE DATE OF BIRTH IS
10 _____, IS LIVING WITH ME BECAUSE OF THE FOLLOWING SERIOUS FAMILY
11 HARDSHIP: (CHECK EACH THAT IS APPLICABLE)

12 _____DEATH OF FATHER/MOTHER/LEGAL GUARDIAN

13 _____SERIOUS ILLNESS OF FATHER/MOTHER/LEGAL GUARDIAN

14 _____DRUG ADDICTION OF FATHER/MOTHER/LEGAL GUARDIAN

15 _____INCARCERATION OF FATHER/MOTHER/LEGAL GUARDIAN

16 _____ABANDONMENT BY FATHER/MOTHER/LEGAL GUARDIAN

17 _____ASSIGNMENT OF A PARENT OR LEGAL GUARDIAN OF A
18 CHILD TO ACTIVE MILITARY DUTY

19 (III) THE NAME AND LAST KNOWN ADDRESS OF THE CHILD'S
20 PARENT(S) OR LEGAL GUARDIAN IS:

21 _____
22 _____
23 _____

24 (IV) MY KINSHIP RELATION TO THE CHILD IS _____

25 (V) MY ADDRESS IS:

26 _____
27 STREET APT. NO.

28 _____
29 CITY STATE ZIP CODE

30 (VI) I ASSUMED INFORMAL KINSHIP CARE OF THIS CHILD FOR 24
31 HOURS A DAY AND 7 DAYS A WEEK ON _____(DAY/MONTH/YEAR).

1 (VII) THE NAME AND ADDRESS OF THE LAST SCHOOL THAT THE
2 CHILD ATTENDED IS: _____
3 _____

4 (VIII) THE COUNTY SUPERINTENDENT MAY VERIFY THE FACTS
5 CONTAINED IN THE FOREGOING AFFIDAVIT AND CONDUCT AN AUDIT ON A
6 CASE-BY-CASE BASIS AFTER THE CHILD HAS BEEN ENROLLED IN THE COUNTY
7 PUBLIC SCHOOL SYSTEM. IF THE COUNTY SUPERINTENDENT DISCOVERS FRAUD OR
8 MISREPRESENTATION, THE CHILD SHALL BE REMOVED FROM THE COUNTY PUBLIC
9 SCHOOL SYSTEM ROLL.

10 (IX) I SOLEMNLY AFFIRM UNDER THE PENALTIES OF PERJURY
11 THAT THE CONTENTS OF THE FOREGOING ARE TRUE TO THE BEST OF MY
12 KNOWLEDGE, INFORMATION, AND BELIEF.

13 _____
14 SIGNATURE OF AFFIANT

15 _____
16 (DAY/MONTH/YEAR)

17 (X) ANY PERSON WHO WILLFULLY MAKES A MATERIAL
18 MISREPRESENTATION IN THIS AFFIDAVIT SHALL BE SUBJECT TO A PENALTY
19 PAYABLE TO THE COUNTY FOR THREE TIMES THE PRO RATA SHARE OF TUITION FOR
20 THE TIME THE CHILD FRAUDULENTLY ATTENDS A PUBLIC SCHOOL IN THE COUNTY.

21 (5) (I) INSTRUCTIONS THAT EXPLAIN THE NECESSITY FOR BOTH AN
22 AFFIDAVIT AND SUPPORTING DOCUMENTATION OF THE SERIOUS FAMILY HARDSHIP
23 RESULTING IN INFORMAL KINSHIP CARE SHALL BE ATTACHED TO AFFIDAVIT FORMS
24 THAT COMPLY WITH SUBSECTION (C)(4) OF THIS SECTION.

25 (II) THE AFFIDAVIT FORMS, WITH ATTACHED INSTRUCTIONS,
26 SHALL BE MADE AVAILABLE FREE OF CHARGE AT THE OFFICES OF EACH COUNTY
27 BOARD OF EDUCATION, EACH LOCAL DEPARTMENT OF SOCIAL SERVICES, AND EACH
28 LOCAL AREA AGENCY ON AGING.

29 (6) IF A CHANGE OCCURS IN THE CARE OR IN THE SERIOUS FAMILY
30 HARDSHIP OF THE CHILD, THE RELATIVE PROVIDING INFORMAL KINSHIP CARE FOR
31 THE CHILD SHALL NOTIFY THE LOCAL SCHOOL SYSTEM IN WRITING WITHIN 30 DAYS
32 AFTER THE CHANGE OCCURS.

33 (7) (I) AN INFORMAL KINSHIP CARE AFFIDAVIT MAY BE FILED
34 DURING A SCHOOL YEAR.

35 (II) THE RELATIVE PROVIDING INFORMAL KINSHIP CARE SHALL
36 FILE AN AFFIDAVIT ANNUALLY AT LEAST 2 WEEKS PRIOR TO THE BEGINNING OF THE
37 SCHOOL YEAR FOR EACH YEAR THE CHILD CONTINUES TO LIVE WITH THE RELATIVE
38 BECAUSE OF A SERIOUS FAMILY HARDSHIP.

1 (8) UNLESS THE COURT APPOINTS A GUARDIAN FOR THE CHILD OR
2 AWARDS CUSTODY OF THE CHILD TO SOMEONE OTHER THAN THE RELATIVE
3 PROVIDING INFORMAL KINSHIP CARE, THE RELATIVE PROVIDING INFORMAL
4 KINSHIP CARE SHALL MAKE THE FULL RANGE OF EDUCATIONAL DECISIONS FOR
5 THE CHILD.

6 (9) THE RELATIVE PROVIDING INFORMAL KINSHIP CARE SHALL MAKE
7 REASONABLE EFFORTS TO INFORM THE PARENT OR LEGAL GUARDIAN OF THE CHILD
8 OF THE INFORMAL KINSHIP CARE RELATIONSHIP.

9 (10) THE PARENT OR LEGAL GUARDIAN OF A CHILD IN AN
10 OUT-OF-COUNTY LIVING ARRANGEMENT SHALL HAVE FINAL DECISION MAKING
11 AUTHORITY REGARDING THE EDUCATIONAL NEEDS OF THE CHILD.

12 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 July 1, 2003.