

BILL ANALYSIS

Senate Research Center

H.B. 261
By: Goodman (Wentworth)
Jurisprudence
5/6/2005
Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Current Texas law requires a court to order reasonable access to a grandchild by a grandparent, if certain circumstances exist.

In 2000, the United States Supreme Court issued a ruling in *Troxel v. Granville*, 530 U.S. 57 (2000), a case involving the visitation rights of grandparents. After several conflicting opinions by Texas appellate courts, Texas Attorney General Greg Abbott issued an opinion in October 2004 addressing the constitutionality of the Texas grandparent visitation statute following the *Troxel* decision. In that opinion, the attorney general concluded that in order for the Texas statute to be applied constitutionally, a court would have to require a grandparent to overcome a presumption that a parent acts in the best interest of his or her child by proving by a preponderance of the evidence that the parent is not fit or that denial of access by a grandparent would impair the child's well-being.

H.B. 261 requires a court to grant reasonable possession of or access to a grandchild by a grandparent, if the grandparent can overcome the presumption that the parent acted in the best interest of the child. It also makes additional changes to comply with the *Troxel* ruling.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Subchapter H, Chapter 153, Family Code, to read as follows:

SUBCHAPTER H. RIGHTS OF GRANDPARENT, AUNT, OR UNCLE

SECTION 2. Amends Section 153.431, Family Code, as follows:

Sec. 153.431. New heading: APPOINTMENT OF GRANDPARENT, AUNT, OR UNCLE AS MANAGING CONSERVATOR. Authorizes the court, if both of the parents of a child are deceased, to consider appointment of a parent, sister, or brother of a deceased parent, rather than solely the grandparents, as a managing conservator of the child, but that consideration does not alter or diminish the discretionary power of the court.

SECTION 3. Amends Section 153.432, Family Code, as follows:

Sec. 153.432. New heading: SUIT FOR POSSESSION OR ACCESS BY GRANDPARENT. Authorizes a biological or adoptive grandparent to request the possession of or access to a grandchild by filing specific suits. Makes a conforming change.

SECTION 4. Amends Section 153.433, Family Code, as follows:

Sec. 153.433. New heading: POSSESSION OF OR ACCESS TO GRANDCHILD. Requires the court to order reasonable possession of or access to a grandchild by a

grandparent if the grandparent requesting possession of or access to the child overcomes the presumption that a parent acts in the best interest of the parent's child by proving by a preponderance of the evidence that denial of possession of or access to the child would significantly impair the child's physical health or emotional well-being. Deletes existing text referring to access to the grandparents if it is in the best interest of the child and certain other conditions related to parental situations preventing custody of that child.

SECTION 5. Amends the heading to Section 153.434, Family Code, to read as follows:

Sec. 153.434. LIMITATION ON RIGHT TO REQUEST POSSESSION OR ACCESS.

SECTION 6. Makes application of Section 153.431, Family Code, as amended by this Act, prospective.

SECTION 7. Makes application of Sections 153.432 and 153.433, Family Code, as amended by this Act, prospective.

SECTION 8. Effective date: September 1, 2005.