

By: Goodman

H.B. No. 260

A BILL TO BE ENTITLED

AN ACT

1
2 relating to suits affecting the parent-child relationship and
3 protective orders.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Chapter 81, Family Code, is amended by adding
6 Section 81.009 to read as follows:

7 Sec. 81.009. APPEAL. (a) A protective order rendered under
8 this subtitle is a final, appealable order.

9 (b) An appeal of a protective order rendered under this
10 subtitle, with or without a supersedeas bond, does not suspend the
11 order. The court that rendered the protective order retains
12 jurisdiction to enforce the order until the appellate court
13 supersedes the order.

14 (c) On the motion of a party or on the court's own motion,
15 the appellate court in its opinion may identify the parties by
16 fictitious names or by the parties' initials only.

17 SECTION 2. Section 102.004, Family Code, is amended to read
18 as follows:

19 Sec. 102.004. STANDING FOR GRANDPARENT OR OTHER PERSON.

20 (a) In addition to the general standing to file suit provided by
21 Section 102.003[~~(13)~~], a grandparent may file an original suit
22 requesting managing conservatorship if there is satisfactory proof
23 to the court that:

24 (1) the order requested is necessary because the

1 child's present circumstances would significantly impair
2 [~~environment presents a serious question concerning~~] the child's
3 physical health or emotional development [~~welfare~~]; or

4 (2) both parents, the surviving parent, or the
5 managing conservator or custodian either filed the petition or
6 consented to the suit.

7 (b) An original suit requesting possessory conservatorship
8 may not be filed by a grandparent or other person. However, the
9 court may grant a grandparent or other person deemed by the court to
10 have had substantial past contact with the child leave to intervene
11 in a pending suit filed by a person authorized to do so under this
12 subchapter if there is satisfactory proof to the court that
13 appointment of a parent as a sole managing conservator or both
14 parents as joint managing conservators would significantly impair
15 the child's physical health or emotional development.

16 (c) Possession of or access [~~Access~~] to a child by a
17 grandparent is governed by the standards established by Chapter
18 153.

19 SECTION 3. Section 102.009(a), Family Code, is amended to
20 read as follows:

21 (a) Except as provided by Subsection (b), the following are
22 entitled to service of citation on the filing of a petition in an
23 original suit:

- 24 (1) a managing conservator;
- 25 (2) a possessory conservator;
- 26 (3) a person having possession of or access to the
27 child under an order;

1 (4) a person required by law or by order to provide for
2 the support of the child;

3 (5) a guardian of the person of the child;

4 (6) a guardian of the estate of the child;

5 (7) each parent as to whom the parent-child
6 relationship has not been terminated or process has not been waived
7 under Chapter 161;

8 (8) an alleged father, unless there is attached to the
9 petition an affidavit of waiver of interest in a child executed by
10 the alleged father as provided by Chapter 161 or unless the
11 petitioner has complied with the provisions of Section
12 161.002(b)(2) or (b)(3);

13 (9) a man who has filed a notice of intent to claim
14 paternity as provided by Chapter 160;

15 (10) the Department of Family and Protective [~~and~~
16 ~~Regulatory~~] Services, if the petition requests that the department
17 be appointed as managing conservator of the child; [~~and~~]

18 (11) the Title IV-D agency, if the petition requests
19 the termination of the parent-child relationship and support rights
20 have been assigned to the Title IV-D agency under Chapter 231;

21 (12) a prospective adoptive parent to whom standing
22 has been conferred under Section 102.0035; and

23 (13) a person designated as the managing conservator
24 in a revoked or unrevoked affidavit of relinquishment under
25 Chapter 161 or to whom consent to adoption has been given in writing
26 under Chapter 162.

27 SECTION 4. Section 105.008(a), Family Code, is amended to

1 read as follows:

2 (a) The clerk of the court shall provide the state case
3 registry with a record of a court order for child support [~~as~~
4 ~~required by procedures adopted under Section 234.003~~]. The record
5 of an order shall include information provided by the parties on a
6 form developed by the Title IV-D agency. The form shall be
7 completed by the petitioner and submitted to the clerk at the time
8 the order is filed for record.

9 SECTION 5. Section 105.009, Family Code, is amended by
10 adding Subsection (m) to read as follows:

11 (m) A course under this section must be available in both
12 English and Spanish.

13 SECTION 6. Section 153.0071, Family Code, is amended by
14 adding Subsection (e-1) to read as follows:

15 (e-1) Notwithstanding Subsections (d) and (e), a court may
16 decline to enter a judgment on a mediated settlement agreement if
17 the court finds that:

18 (1) a party to the agreement was a victim of family
19 violence, and that circumstance impaired the party's ability to
20 make decisions; and

21 (2) the agreement is not in the child's best interest.

22 SECTION 7. Section 153.009, Family Code, is amended to read
23 as follows:

24 Sec. 153.009. INTERVIEW OF CHILD IN CHAMBERS. (a) In a
25 nonjury trial or at a hearing, on the application of a party, the
26 amicus attorney, or the attorney ad litem for the child, the court
27 shall [~~may~~] interview [~~the child~~] in chambers a child 12 years of

1 age or older and may interview in chambers a child under 12 years of
2 age to determine the child's wishes as to conservatorship or as to
3 the person who shall have the exclusive right to determine the
4 child's primary residence. The court may also interview a child in
5 chambers on the court's own motion for a purpose specified by this
6 subsection.

7 (b) In a nonjury trial or at a hearing, on the application of
8 a party, the amicus attorney, or the attorney ad litem for the child
9 or on the court's own motion, the court may interview the child in
10 chambers to determine the child's wishes as to possession, access,
11 or any other issue in the suit affecting the parent-child
12 relationship [~~When the issue of managing conservatorship is~~
13 ~~contested, on the application of a party, the court shall interview~~
14 ~~a child 12 years of age or older and may interview a child under 12~~
15 ~~years of age].~~

16 (c) Interviewing a child does not diminish the discretion of
17 the court in determining the best interests of the child.

18 (d) In a jury trial, the court may not interview the child in
19 chambers regarding an issue on which a party is entitled to a jury
20 verdict.

21 (e) In any trial or hearing, the [~~(c) The~~] court may permit
22 the attorney for a party, the amicus attorney, the guardian ad litem
23 for the child, or the attorney ad litem for the child to be present
24 at the interview.

25 (f) [~~(d)~~] On the motion of a party, the amicus attorney, or
26 the attorney ad litem for the child, or on the court's own motion,
27 the court shall cause a record of the interview to be made when the

1 child is 12 years of age or older. A record of the interview shall
2 be part of the record in the case.

3 SECTION 8. Section 153.132, Family Code, is amended to read
4 as follows:

5 Sec. 153.132. RIGHTS AND DUTIES OF PARENT APPOINTED SOLE
6 MANAGING CONSERVATOR. Unless limited by court order, a parent
7 appointed as sole managing conservator of a child has the rights and
8 duties provided by Subchapter B and the following exclusive rights:

9 (1) the right to designate the primary residence of
10 the child;

11 (2) the right to consent to medical, dental, and
12 surgical treatment involving invasive procedures;

13 (3) the right [~~, and~~] to consent to psychiatric and
14 psychological treatment;

15 (4) [~~(3)~~] the right to receive and give receipt for
16 periodic payments for the support of the child and to hold or
17 disburse these funds for the benefit of the child;

18 (5) [~~(4)~~] the right to represent the child in legal
19 action and to make other decisions of substantial legal
20 significance concerning the child;

21 (6) [~~(5)~~] the right to consent to marriage and to
22 enlistment in the armed forces of the United States;

23 (7) [~~(6)~~] the right to make decisions concerning the
24 child's education;

25 (8) [~~(7)~~] the right to the services and earnings of
26 the child; and

27 (9) [~~(8)~~] except when a guardian of the child's estate

1 or a guardian or attorney ad litem has been appointed for the child,
2 the right to act as an agent of the child in relation to the child's
3 estate if the child's action is required by a state, the United
4 States, or a foreign government.

5 SECTION 9. Section 153.134(a), Family Code, is amended to
6 read as follows:

7 (a) If a written agreement of the parents is not filed with
8 the court, the court may render an order appointing the parents
9 joint managing conservators only if the appointment is in the best
10 interest of the child, considering the following factors:

11 (1) whether the physical, psychological, or emotional
12 needs and development of the child will benefit from the
13 appointment of joint managing conservators;

14 (2) the ability of the parents to give first priority
15 to the welfare of the child and reach shared decisions in the
16 child's best interest;

17 (3) whether each parent can encourage and accept a
18 positive relationship between the child and the other parent;

19 (4) whether both parents participated in child rearing
20 before the filing of the suit;

21 (5) the geographical proximity of the parents'
22 residences;

23 (6) if the child is 12 years of age or older, the
24 child's preference, if any, regarding the person to have the
25 exclusive right to designate the primary residence of the child
26 [~~appointment of joint managing conservators~~]; and

27 (7) any other relevant factor.

1 SECTION 10. Section 153.312(b), Family Code, is amended to
2 read as follows:

3 (b) The following provisions govern possession of the child
4 for vacations and certain specific holidays and supersede
5 conflicting weekend or Thursday [~~Wednesday~~] periods of possession.
6 The possessory conservator and the managing conservator shall have
7 rights of possession of the child as follows:

8 (1) the possessory conservator shall have possession
9 in even-numbered years, beginning at 6 p.m. on the day the child is
10 dismissed from school for the school's spring vacation and ending
11 at 6 p.m. on the day before school resumes after that vacation, and
12 the managing conservator shall have possession for the same period
13 in odd-numbered years;

14 (2) if a possessory conservator:

15 (A) gives the managing conservator written
16 notice by April 1 of each year specifying an extended period or
17 periods of summer possession, the possessory conservator shall have
18 possession of the child for 30 days beginning not earlier than the
19 day after the child's school is dismissed for the summer vacation
20 and ending not later than seven days before school resumes at the
21 end of the summer vacation, to be exercised in not more than two
22 separate periods of at least seven consecutive days each; or

23 (B) does not give the managing conservator
24 written notice by April 1 of each year specifying an extended period
25 or periods of summer possession, the possessory conservator shall
26 have possession of the child for 30 consecutive days beginning at 6
27 p.m. on July 1 and ending at 6 p.m. on July 31;

1 (3) if the managing conservator gives the possessory
2 conservator written notice by April 15 of each year, the managing
3 conservator shall have possession of the child on any one weekend
4 beginning Friday at 6 p.m. and ending at 6 p.m. on the following
5 Sunday during one period of possession by the possessory
6 conservator under Subdivision (2), provided that the managing
7 conservator picks up the child from the possessory conservator and
8 returns the child to that same place; and

9 (4) if the managing conservator gives the possessory
10 conservator written notice by April 15 of each year or gives the
11 possessory conservator 14 days' written notice on or after April 16
12 of each year, the managing conservator may designate one weekend
13 beginning not earlier than the day after the child's school is
14 dismissed for the summer vacation and ending not later than seven
15 days before school resumes at the end of the summer vacation, during
16 which an otherwise scheduled weekend period of possession by the
17 possessory conservator will not take place, provided that the
18 weekend designated does not interfere with the possessory
19 conservator's period or periods of extended summer possession or
20 with Father's Day if the possessory conservator is the father of the
21 child.

22 SECTION 11. Sections 155.201(a) and (b), Family Code, are
23 amended to read as follows:

24 (a) On the filing of a motion showing that a suit for
25 dissolution of the marriage of the child's parents has been filed in
26 another court and requesting a transfer to that court, the court
27 having continuing, exclusive jurisdiction of a suit affecting the

1 parent-child relationship shall, within the time required by
2 Section 155.204, transfer the proceedings to the court in which the
3 dissolution of the marriage is pending. The motion must comply with
4 the requirements of Section 155.204(a).

5 (b) If a suit to modify or a motion to enforce an order is
6 filed in the court having continuing, exclusive jurisdiction of a
7 suit, on the timely motion of a party the court shall, within the
8 time required by Section 155.204, transfer the proceeding to
9 another county in this state if the child has resided in the other
10 county for six months or longer.

11 SECTION 12. Section 155.204, Family Code, is amended to
12 read as follows:

13 Sec. 155.204. PROCEDURE FOR TRANSFER. (a) A motion to
14 transfer under Section 155.201(a) may be filed at any time. The
15 motion must contain a certification that all other parties,
16 including the attorney general, if applicable, have been informed
17 of the filing of the motion.

18 (b) Except as provided by Subsection (a) or Section 262.203,
19 a motion to transfer by a petitioner or movant is timely if it is
20 made at the time the initial pleadings are filed. A motion to
21 transfer by another party is timely if it is made on or before the
22 first Monday after the 20th day after the date of service of
23 citation or notice of the suit or before the commencement of the
24 hearing, whichever is sooner.

25 (c) If a timely motion to transfer has been filed and no
26 controverting affidavit is filed within the period allowed for its
27 filing, the proceeding shall, not later than the 21st day after the

1 final date of the period allowed for the filing of a controverting
2 affidavit, be transferred [~~promptly~~] without a hearing to the
3 proper court.

4 (d) [~~(b)~~] On or before the first Monday after the 20th day
5 after the date of notice of a motion to transfer is served, a party
6 desiring to contest the motion must file a controverting affidavit
7 denying that grounds for the transfer exist.

8 (e) [~~(c)~~] If a controverting affidavit contesting the
9 motion to transfer is filed, each party is entitled to notice not
10 less than 10 days before the date of the hearing on the motion to
11 transfer.

12 (f) [~~(d)~~] Only evidence pertaining to the transfer may be
13 taken at the hearing.

14 (g) If the court finds after the hearing on the motion to
15 transfer that grounds for the transfer exist, the proceeding shall
16 be transferred to the proper court not later than the 21st day after
17 the date the hearing is concluded.

18 (h) [~~(e)~~] An order transferring or refusing to transfer the
19 proceeding is not subject to interlocutory appeal.

20 (i) [~~(f)~~] If a transfer order has been signed [~~rendered~~] by
21 a court exercising jurisdiction under Chapter 262, a party may file
22 the transfer order with the clerk of the court of continuing,
23 exclusive jurisdiction. On receipt and without a hearing, the
24 clerk of the court of continuing, exclusive jurisdiction shall
25 transfer the files as provided by this subchapter.

26 SECTION 13. Sections 155.207(a), (b), and (c), Family Code,
27 are amended to read as follows:

1 (a) On the signing [~~rendition~~] of an order of transfer, the
2 clerk of the court transferring a proceeding shall send to the
3 proper court in the county to which transfer is being made:

4 (1) the pleadings in the [~~complete files in all~~
5 ~~matters affecting the child in any~~] pending proceeding and any
6 other document specifically requested by a party;

7 (2) certified copies of all entries in the minutes;
8 and

9 (3) [~~a certified copy of any order of dissolution of~~
10 ~~marriage rendered in a suit joined with the suit affecting the~~
11 ~~parent-child relationship; and~~

12 [~~4~~] a certified copy of each final order [~~rendered~~].

13 (b) The clerk of the transferring court shall keep a copy of
14 the transferred pleadings and other requested documents [~~files~~].
15 If the transferring court retains jurisdiction of another child who
16 was the subject of the suit, the clerk shall send a copy of the
17 pleadings and other requested documents [~~complete files~~] to the
18 court to which the transfer is made and shall keep the original
19 pleadings and other requested documents [~~files~~].

20 (c) On receipt of the pleadings [~~files~~], documents, and
21 orders from the transferring court, the clerk of the transferee
22 court shall docket the suit and shall notify all parties, the clerk
23 of the transferring court, and, if appropriate, the transferring
24 court's local registry that the suit has been docketed.

25 SECTION 14. Section 156.006(b), Family Code, is amended to
26 read as follows:

27 (b) While a suit for modification is pending, the court may

1 not render a temporary order that has the effect of changing the
2 designation of the person who has the exclusive right to designate
3 the primary residence of the child under the final order unless:

4 (1) the order is necessary because the child's present
5 circumstances would significantly impair [~~living environment may~~
6 ~~endanger~~] the child's physical health or [~~significantly impair the~~
7 ~~child's~~] emotional development;

8 (2) the person designated in the final order has
9 voluntarily relinquished the primary care and possession of the
10 child for more than six months and the temporary order is in the
11 best interest of the child; or

12 (3) the child is 12 years of age or older and has filed
13 with the court in writing the name of the person who is the child's
14 preference to have the exclusive right to designate the primary
15 residence of the child and the temporary order designating that
16 person is in the best interest of the child.

17 SECTION 15. Section 156.401, Family Code, is amended by
18 amending Subsections (a) and (d) and adding Subsection (a-1) to
19 read as follows:

20 (a) Except as provided by Subsection (a-1) or (b), the court
21 may modify an order that provides for the support of a child if:

22 (1) the circumstances of the child or a person
23 affected by the order have materially and substantially changed
24 since the earlier of:

25 (A) the date of the order's rendition; or

26 (B) the date of the signing of a mediated or
27 collaborative law settlement agreement on which the order is based;

1 or

2 (2) it has been three years since the order was
3 rendered or last modified and the monthly amount of the child
4 support award under the order differs by either 20 percent or \$100
5 from the amount that would be awarded in accordance with the child
6 support guidelines.

7 (a-1) If the parties agree to an order under which the
8 amount of child support differs from the amount that would be
9 awarded in accordance with the child support guidelines, the court
10 may modify the order only if the circumstances of the child or a
11 person affected by the order have materially and substantially
12 changed since the date of the order's rendition.

13 (d) Release of a child support obligor from incarceration is
14 a material and substantial change in circumstances for purposes of
15 this section [~~Subsection (a)(1)~~] if the obligor's child support
16 obligation was abated, reduced, or suspended during the period of
17 the obligor's incarceration.

18 SECTION 16. Sections 156.410(a) and (c), Family Code, are
19 amended to read as follows:

20 (a) For purposes of Section 156.401 [~~156.401(a)(1)~~], the
21 fact that an obligor has been called into active military service in
22 any branch of the United States armed forces is a material and
23 substantial change in circumstances if that active military
24 service:

25 (1) is for at least 30 consecutive days; and

26 (2) results in a decrease in the obligor's net
27 resources during the period of service.

1 (c) Return of the obligor from the active military service
2 described by Subsection (a) is a material and substantial change in
3 circumstances for purposes of Section 156.401 [~~156.401(a)(1)~~] for
4 which an obligee may file a motion for modification of a child
5 support order if the court previously modified the order on the
6 grounds described by Subsection (a).

7 SECTION 17. Section 157.005(b), Family Code, is amended to
8 read as follows:

9 (b) The court retains jurisdiction to confirm the total
10 amount of child support arrearages and render judgment for past-due
11 child support if a motion for enforcement requesting a money
12 judgment is filed not later than the 10th anniversary after the
13 date:

14 (1) the child becomes an adult; or

15 (2) on which the child support obligation terminates
16 under the child support order or by operation of law [~~until the date~~
17 ~~all current child support and medical support and child support~~
18 ~~arrearages, including interest and any applicable fees and costs,~~
19 ~~have been paid~~].

20 SECTION 18. Section 160.760, Family Code, is amended by
21 adding Subsection (d) to read as follows:

22 (d) If the intended parents fail to file the notice required
23 by Subsection (a), the gestational mother or an appropriate state
24 agency may file the notice required by that subsection. On a
25 showing that an order validating the gestational agreement was
26 rendered in accordance with Section 160.756, the court shall order
27 that the intended parents are the child's parents and are

1 financially responsible for the child.

2 SECTION 19. Section 162.017(d), Family Code, is amended to
3 read as follows:

4 (d) Nothing in this chapter precludes or affects the rights
5 of a biological or adoptive maternal or paternal grandparent to
6 reasonable possession of or access to a grandchild, as provided in
7 Chapter 153.

8 SECTION 20. Section 81.009, Family Code, as added by this
9 Act, applies only to a protective order rendered on or after the
10 effective date of this Act. A protective order rendered before the
11 effective date of this Act is governed by the law in effect on the
12 date the order was rendered, and the former law is continued in
13 effect for that purpose.

14 SECTION 21. The changes in law made by this Act to Sections
15 102.004 and 102.009, Family Code, apply only to an original suit
16 affecting the parent-child relationship filed on or after the
17 effective date of this Act. An original suit affecting the
18 parent-child relationship filed before the effective date of this
19 Act is governed by the law in effect on the date that the suit was
20 filed, and the former law is continued in effect for that purpose.

21 SECTION 22. The changes in law made by this Act to Sections
22 153.0071 and 153.009, Family Code, apply only to a suit affecting
23 the parent-child relationship pending before a trial court on or
24 filed on or after the effective date of this Act.

25 SECTION 23. The change in law made by this Act to Section
26 153.134, Family Code, applies only to an original suit affecting
27 the parent-child relationship or a suit for modification filed on

1 or after the effective date of this Act. An original suit affecting
2 the parent-child relationship or a suit for modification filed
3 before the effective date of this Act is governed by the law in
4 effect on the date that the suit was filed, and the former law is
5 continued in effect for that purpose.

6 SECTION 24. The changes in law made by this Act to Sections
7 155.201, 155.204, and 155.207, Family Code, apply only to a motion
8 to transfer a suit affecting the parent-child relationship filed on
9 or after the effective date of this Act. A motion to transfer a suit
10 affecting the parent-child relationship filed before the effective
11 date of this Act is governed by the law in effect on the date that
12 the motion was filed, and the former law is continued in effect for
13 that purpose.

14 SECTION 25. The change in law made by this Act to Section
15 156.006, Family Code, applies only to a suit for modification filed
16 on or after the effective date of this Act. A suit for modification
17 filed before the effective date of this Act is governed by the law
18 in effect on the date that the suit was filed, and the former law is
19 continued in effect for that purpose.

20 SECTION 26. The change in law made by this Act to Section
21 156.401, Family Code, applies only to a suit for modification
22 pending before a trial court on or filed on or after the effective
23 date of this Act.

24 SECTION 27. The change in law made by this Act to Section
25 157.005, Family Code, relating to the enforcement of a child
26 support order rendered before the effective date of this Act
27 applies only to a proceeding for enforcement that is commenced on or

1 after the effective date of this Act. A proceeding for enforcement
2 that is commenced before the effective date of this Act is governed
3 by the law in effect on the date the proceeding was commenced, and
4 the former law is continued in effect for that purpose.

5 SECTION 28. This Act takes effect immediately if it
6 receives a vote of two-thirds of all the members elected to each
7 house, as provided by Section 39, Article III, Texas Constitution.
8 If this Act does not receive the vote necessary for immediate
9 effect, this Act takes effect September 1, 2005.