

By: Goodman

H.B. No. 260

Substitute the following for H.B. No. 260:

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C.S.H.B. No. 260

A BILL TO BE ENTITLED

AN ACT

relating to suits affecting the parent-child relationship.

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

SECTION 1. Section 102.004, Family Code, is amended to read as follows:

Sec. 102.004. STANDING FOR GRANDPARENT OR OTHER PERSON.

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

(1) the order requested is necessary because the child's present circumstances would significantly impair [~~environment presents a serious question concerning~~] the child's physical health or emotional development [~~welfare~~]; or

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

(b) An original suit requesting possessory conservatorship may not be filed by a grandparent or other person. However, the court may grant a grandparent or other person deemed by the court to have had substantial past contact with the child leave to intervene in a pending suit filed by a person authorized to do so under this subchapter if there is satisfactory proof to the court that appointment of a parent as a sole managing conservator or both

1 parents as joint managing conservators would significantly impair  
2 the child's physical health or emotional development.

3 (c) Possession of or access [~~Access~~] to a child by a  
4 grandparent is governed by the standards established by Chapter  
5 153.

6 SECTION 2. Section 102.009(a), Family Code, is amended to  
7 read as follows:

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

- 11 (1) a managing conservator;
- 12 (2) a possessory conservator;
- 13 (3) a person having possession of or access to the  
14 child under an order;
- 15 (4) a person required by law or by order to provide for  
16 the support of the child;
- 17 (5) a guardian of the person of the child;
- 18 (6) a guardian of the estate of the child;
- 19 (7) each parent as to whom the parent-child  
20 relationship has not been terminated or process has not been waived  
21 under Chapter 161;
- 22 (8) an alleged father, unless there is attached to the  
23 petition an affidavit of waiver of interest in a child executed by  
24 the alleged father as provided by Chapter 161 or unless the  
25 petitioner has complied with the provisions of Section  
26 161.002(b)(2) or (b)(3);
- 27 (9) a man who has filed a notice of intent to claim

1 paternity as provided by Chapter 160;

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

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

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

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

14 SECTION 3. Section 105.008(a), Family Code, is amended to  
15 read as follows:

16 (a) The clerk of the court shall provide the state case  
17 registry with a record of a court order for child support [~~as~~  
18 ~~required by procedures adopted under Section 234.003~~]. The record  
19 of an order shall include information provided by the parties on a  
20 form developed by the Title IV-D agency. The form shall be  
21 completed by the petitioner and submitted to the clerk at the time  
22 the order is filed for record.

23 SECTION 4. Section 153.009, Family Code, is amended to read  
24 as follows:

25 Sec. 153.009. INTERVIEW OF CHILD IN CHAMBERS. (a) In a  
26 nonjury trial or at a hearing, on the application of a party, the  
27 amicus attorney, or the attorney ad litem for the child, the court

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

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

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

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

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

26 (f) [~~(d)~~] On the motion of a party, the amicus attorney, or  
27 the attorney ad litem for the child, or on the court's own motion,

1 the court shall cause a record of the interview to be made when the  
2 child is 12 years of age or older. A record of the interview shall  
3 be part of the record in the case.

4 SECTION 5. Section 153.132, Family Code, is amended to read  
5 as follows:

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

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

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

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

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

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

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

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

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

1           (9) [~~(8)~~] except when a guardian of the child's estate  
2 or a guardian or attorney ad litem has been appointed for the child,  
3 the right to act as an agent of the child in relation to the child's  
4 estate if the child's action is required by a state, the United  
5 States, or a foreign government.

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

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

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

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

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

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

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

24           (6) if the child is 12 years of age or older, the  
25 child's preference, if any, regarding the person to have the  
26 exclusive right to designate the primary residence of the child

27 [~~appointment of joint managing conservators~~]; and

1           (7) any other relevant factor.

2           SECTION 7. Section 153.312(b), Family Code, is amended to  
3 read as follows:

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

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

15           (2) if a possessory conservator:

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

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

1 p.m. on July 1 and ending at 6 p.m. on July 31;

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

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

23 SECTION 8. Sections 155.201(a) and (b), Family Code, are  
24 amended to read as follows:

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



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

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

12 SECTION 9. Section 155.204, Family Code, is amended to read  
13 as follows:

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

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

26 (c) If a timely motion to transfer has been filed and no  
27 controverting affidavit is filed within the period allowed for its

1 filing, the proceeding shall, not later than the 21st day after the  
2 final date of the period allowed for the filing of a controverting  
3 affidavit, be transferred [~~promptly~~] without a hearing to the  
4 proper court.

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

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

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

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

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

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

27 SECTION 10. Sections 155.207(a), (b), and (c), Family Code,

1 are amended to read as follows:

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

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

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

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

13 [~~4~~] a certified copy of each final order [~~rendered~~].

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

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

26 SECTION 11. Section 156.006(b), Family Code, is amended to  
27 read as follows:

1 (b) While a suit for modification is pending, the court may  
2 not render a temporary order that has the effect of changing the  
3 designation of the person who has the exclusive right to designate  
4 the primary residence of the child under the final order unless:

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

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

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

18 SECTION 12. Section 160.102(2), Family Code, is amended to  
19 read as follows:

20 (2) "Assisted reproduction" means a medically  
21 supervised method of causing pregnancy other than sexual  
22 intercourse. The term includes:

- 23 (A) intrauterine insemination;  
24 (B) donation of eggs;  
25 (C) donation of embryos;  
26 (D) in vitro fertilization and transfer of  
27 embryos; and

1 (E) intracytoplasmic sperm injection.

2 SECTION 13. Section 160.760, Family Code, is amended by  
3 adding Subsection (d) to read as follows:

4 (d) If the intended parents fail to file the notice required  
5 by Subsection (a), the gestational mother or an appropriate state  
6 agency may file the notice required by that subsection. On a  
7 showing that an order validating the gestational agreement was  
8 rendered in accordance with Section 160.756, the court shall order  
9 that the intended parents are the child's parents and are  
10 financially responsible for the child.

11 SECTION 14. Section 162.017(d), Family Code, is amended to  
12 read as follows:

13 (d) Nothing in this chapter precludes or affects the rights  
14 of a biological or adoptive maternal or paternal grandparent to  
15 reasonable possession of or access to a grandchild, as provided in  
16 Chapter 153.

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

24 SECTION 16. The changes in law made by this Act to Section  
25 153.009, Family Code, apply only to a suit affecting the  
26 parent-child relationship pending before a trial court on or filed  
27 on or after the effective date of this Act.

1           SECTION 17. The change in law made by this Act to Section  
2 153.134, Family Code, applies only to an original suit affecting  
3 the parent-child relationship or a suit for modification filed on  
4 or after the effective date of this Act. An original suit affecting  
5 the parent-child relationship or a suit for modification filed  
6 before the effective date of this Act is governed by the law in  
7 effect on the date that the suit was filed, and the former law is  
8 continued in effect for that purpose.

9           SECTION 18. The changes in law made by this Act to Sections  
10 155.201, 155.204, and 155.207, Family Code, apply only to a motion  
11 to transfer a suit affecting the parent-child relationship filed on  
12 or after the effective date of this Act. A motion to transfer a suit  
13 affecting the parent-child relationship filed before the effective  
14 date of this Act is governed by the law in effect on the date that  
15 the motion was filed, and the former law is continued in effect for  
16 that purpose.

17           SECTION 19. The changes in law made by this Act to Section  
18 156.006, Family Code, apply only to a suit for modification filed on  
19 or after the effective date of this Act. A suit for modification  
20 filed before the effective date of this Act is governed by the law  
21 in effect on the date that the suit was filed, and the former law is  
22 continued in effect for that purpose.

23           SECTION 20. This Act takes effect September 1, 2005.