

By: Goodman

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. Section 153.432, Family Code, is amended to read  
24 as follows:

25 Sec. 153.432. SUIT FOR POSSESSION OR ACCESS. (a) A  
26 biological or adoptive grandparent may request possession of or  
27 access to a grandchild by filing:



- 1           (1) an original suit; or  
2           (2) a suit for modification as provided by Chapter  
3 156.

4           (b) A grandparent may request possession of or access to a  
5 grandchild in a suit filed for the sole purpose of requesting the  
6 relief, without regard to whether the appointment of a managing  
7 conservator is an issue in the suit.

8           SECTION 9. Section 154.433, Family Code, is amended to read  
9 as follows:

10           Sec. 153.433. POSSESSION OF OR [~~AND~~] ACCESS TO GRANDCHILD.  
11 The court shall order reasonable possession of or access to a  
12 grandchild by a grandparent if:

13           (1) at the time the relief is requested, at least one  
14 biological or adoptive parent of the child has not had that parent's  
15 parental rights terminated; and

16           (2) possession of or access to the child is in the best  
17 interest of the child, and at least one of the following facts is  
18 present:

19           (A) the grandparent requesting possession of or  
20 access to the child is a parent of a parent of the child and that  
21 parent of the child has been incarcerated in jail or prison during  
22 the three-month period preceding the filing of the petition or has  
23 been found by a court to be incompetent or is dead;

24           (B) the parents of the child are divorced [~~or~~  
25 ~~have been living apart for the three-month period preceding the~~  
26 ~~filing of the petition]~~ or a suit for the dissolution of the  
27 parents' marriage is pending;

1 (C) the child has been abused or neglected by a  
2 parent of the child;

3 (D) the child has been adjudicated to be a child  
4 in need of supervision or a delinquent child under Title 3;

5 (E) the grandparent requesting possession of or  
6 access to the child is the parent of a person whose parent-child  
7 relationship with the child has been terminated by court order; or

8 (F) the child has resided with the grandparent  
9 requesting possession of or access to the child for at least six  
10 months within the 24-month period preceding the filing of the  
11 petition.

12 SECTION 10. The heading to Section 153.434, Family Code, is  
13 amended to read as follows:

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

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

18 (a) On the filing of a motion showing that a suit for  
19 dissolution of the marriage of the child's parents has been filed in  
20 another court and requesting a transfer to that court, the court  
21 having continuing, exclusive jurisdiction of a suit affecting the  
22 parent-child relationship shall, within the time required by  
23 Section 155.204, transfer the proceedings to the court in which the  
24 dissolution of the marriage is pending. The motion must comply with  
25 the requirements of Section 155.204(a).

26 (b) If a suit to modify or a motion to enforce an order is  
27 filed in the court having continuing, exclusive jurisdiction of a

1 suit, on the timely motion of a party the court shall, within the  
2 time required by Section 155.204, transfer the proceeding to  
3 another county in this state if the child has resided in the other  
4 county for six months or longer.

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

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

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

19 (c) If a timely motion to transfer has been filed and no  
20 controverting affidavit is filed within the period allowed for its  
21 filing, the proceeding shall, not later than the 21st day after the  
22 final date of the period allowed for the filing of a controverting  
23 affidavit, be transferred [~~promptly~~] without a hearing to the  
24 proper court.

25 (d) [~~(b)~~] On or before the first Monday after the 20th day  
26 after the date of notice of a motion to transfer is served, a party  
27 desiring to contest the motion must file a controverting affidavit

1 denying that grounds for the transfer exist.

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

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

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

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

14 (i) [~~(f)~~] If a transfer order has been signed [~~rendered~~] by  
15 a court exercising jurisdiction under Chapter 262, a party may file  
16 the transfer order with the clerk of the court of continuing,  
17 exclusive jurisdiction. On receipt and without a hearing, the  
18 clerk of the court of continuing, exclusive jurisdiction shall  
19 transfer the files as provided by this subchapter.

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

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

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

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

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

6 [~~4~~] a certified copy of each final order [~~rendered~~].

7 (b) The clerk of the transferring court shall keep a copy of  
8 the transferred pleadings and other requested documents [~~files~~].  
9 If the transferring court retains jurisdiction of another child who  
10 was the subject of the suit, the clerk shall send a copy of the  
11 pleadings and other requested documents [~~complete files~~] to the  
12 court to which the transfer is made and shall keep the original  
13 pleadings and other requested documents [~~files~~].

14 (c) On receipt of the pleadings [~~files~~], documents, and  
15 orders from the transferring court, the clerk of the transferee  
16 court shall docket the suit and shall notify all parties, the clerk  
17 of the transferring court, and, if appropriate, the transferring  
18 court's local registry that the suit has been docketed.

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

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

25 (1) the order is necessary because the child's present  
26 circumstances would significantly impair [~~living environment may~~  
27 ~~endanger~~] the child's physical health or [~~significantly impair the~~

1 ~~child's]~~ emotional development;

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

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

11 SECTION 15. Section 160.102(2), Family Code, is amended to  
12 read as follows:

13 (2) "Assisted reproduction" means a medically  
14 supervised method of causing pregnancy other than sexual  
15 intercourse. The term includes:

16 (A) intrauterine insemination;

17 (B) donation of eggs;

18 (C) donation of embryos;

19 (D) in vitro fertilization and transfer of  
20 embryos; and

21 (E) intracytoplasmic sperm injection.

22 SECTION 16. Section 160.760, Family Code, is amended by  
23 adding Subsection (d) to read as follows:

24 (d) If the intended parents fail to file the notice required  
25 by Subsection (a), the gestational mother or an appropriate state  
26 agency may file the notice required by that subsection. On a  
27 showing that an order validating the gestational agreement was

1 rendered in accordance with Section 160.756, the court shall order  
2 that the intended parents are the child's parents and are  
3 financially responsible for the child.

4 SECTION 17. Section 162.017(d), Family Code, is amended to  
5 read as follows:

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

10 SECTION 18. Section 162.023(a), Family Code, is amended to  
11 read as follows:

12 (a) Except as otherwise provided by law, an adoption order  
13 rendered to a resident of this state that is made by a foreign  
14 country shall be accorded full faith and credit by the courts of  
15 this state and enforced as if the order were rendered by a court in  
16 this state unless it is shown that the adoption law or process of  
17 the foreign country violates the fundamental principles of human  
18 rights or the laws or public policy of this state.

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

26 SECTION 20. The changes in law made by this Act to Section  
27 153.009, Family Code, apply only to a suit affecting the

1 parent-child relationship pending before a trial court on or filed  
2 on or after the effective date of this Act.

3 SECTION 21. The changes in law made by this Act to Section  
4 153.134 and Subchapter H, Chapter 153, Family Code, apply only to an  
5 original suit affecting the parent-child relationship or a suit for  
6 modification filed on or after the effective date of this Act. An  
7 original suit affecting the parent-child relationship or a suit for  
8 modification filed before the effective date of this Act is  
9 governed by the law in effect on the date that the suit was filed,  
10 and the former law is continued in effect for that purpose.

11 SECTION 22. The changes in law made by this Act to Sections  
12 155.201, 155.204, and 155.207, Family Code, apply only to a motion  
13 to transfer a suit affecting the parent-child relationship filed on  
14 or after the effective date of this Act. A motion to transfer a suit  
15 affecting the parent-child relationship filed before the effective  
16 date of this Act is governed by the law in effect on the date that  
17 the motion was filed, and the former law is continued in effect for  
18 that purpose.

19 SECTION 23. The changes in law made by this Act to Section  
20 156.006, Family Code, apply only to a suit for modification filed on  
21 or after the effective date of this Act. A suit for modification  
22 filed before the effective date of this Act is governed by the law  
23 in effect on the date that the suit was filed, and the former law is  
24 continued in effect for that purpose.

25 SECTION 24. This Act takes effect September 1, 2005.