

AN ACT

relating to possession of or access to a grandchild and designation of other relatives as managing conservators.

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

SECTION 1. The heading to Subchapter H, Chapter 153, Family Code, is amended to read as follows:

SUBCHAPTER H. RIGHTS OF GRANDPARENT, AUNT, OR UNCLE

SECTION 2. Section 153.431, Family Code, is amended to read as follows:

Sec. 153.431. [~~GRANDPARENTAL~~] APPOINTMENT OF GRANDPARENT, AUNT, OR UNCLE AS MANAGING CONSERVATOR [~~CONSERVATORS~~]. If both of the parents of a child are deceased, the court may consider appointment of a parent, sister, or brother of a deceased parent [~~grandparents may be considered for appointment~~] as a managing conservator of the child [~~conservators~~], but that consideration does not alter or diminish the discretionary power of the court.

SECTION 3. Section 153.432, Family Code, is amended to read as follows:

Sec. 153.432. SUIT FOR POSSESSION OR ACCESS BY GRANDPARENT.

(a) A biological or adoptive grandparent may request possession of or access to a grandchild by filing:

(1) an original suit; or

(2) a suit for modification as provided by Chapter

156.

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

5 SECTION 4. Section 153.433, Family Code, is amended to read
6 as follows:

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

10 (1) at the time the relief is requested, at least one
11 biological or adoptive parent of the child has not had that parent's
12 parental rights terminated; [~~and~~]

13 (2) the grandparent requesting possession of or access
14 to the child overcomes the presumption that a parent acts in the
15 best interest of the parent's child by proving by a preponderance of
16 the evidence that denial of possession of or access to the child
17 would significantly impair the child's physical health or emotional
18 well-being; [access is in the best interest of the child,] and

19 (3) [~~at least one of the following facts is present:~~

20 [(A)] the grandparent requesting possession of
21 or access to the child is a parent of a parent of the child and that
22 parent of the child:

23 (A) has been incarcerated in jail or prison
24 during the three-month period preceding the filing of the petition;

25 (B) [~~or~~] has been found by a court to be
26 incompetent;

27 (C) [~~or~~] is dead; or

1 (D) does not have actual or court-ordered
2 possession of or access to the child

3 [~~(B) the parents of the child are divorced or~~
4 ~~have been living apart for the three-month period preceding the~~
5 ~~filing of the petition or a suit for the dissolution of the parents'~~
6 ~~marriage is pending;~~

7 [~~(C) the child has been abused or neglected by a~~
8 ~~parent of the child;~~

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

11 [~~(E) the grandparent requesting access to the~~
12 ~~child is the parent of a person whose parent-child relationship~~
13 ~~with the child has been terminated by court order; or~~

14 [~~(F) the child has resided with the grandparent~~
15 ~~requesting access to the child for at least six months within the~~
16 ~~24-month period preceding the filing of the petition].~~

17 SECTION 5. The heading to Section 153.434, Family Code, is
18 amended to read as follows:

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

21 SECTION 6. The change in law made by this Act to Section
22 153.431, Family Code, applies to a suit affecting the parent-child
23 relationship that is pending in a trial court on the effective date
24 of this Act or that is filed on or after the effective date of this
25 Act.

26 SECTION 7. The changes in law made by this Act to Sections
27 153.432 and 153.433, Family Code, apply to a suit under Section

H.B. No. 261

1 153.432, Family Code, that is pending in a trial court on the
2 effective date of this Act or that is filed on or after the
3 effective date of this Act.

4 SECTION 8. This Act takes effect September 1, 2005.

President of the Senate

Speaker of the House

I certify that H.B. No. 261 was passed by the House on April 29, 2005, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 261 on May 19, 2005, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 261 on May 27, 2005, by a non-record vote.

Chief Clerk of the House

H.B. No. 261

I certify that H.B. No. 261 was passed by the Senate, with amendments, on May 17, 2005, by the following vote: Yeas 30, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 261 on May 26, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor