

By: Goodman

H.B. No. 261

Substitute the following for H.B. No. 261:

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C.S.H.B. No. 261

A BILL TO BE ENTITLED

AN ACT

relating to possession of or access to a grandchild.

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

SECTION 1. 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.

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

SECTION 2. Section 153.433, Family Code, is amended to read as follows:

Sec. 153.433. POSSESSION OF OR [~~AND~~] ACCESS TO GRANDCHILD.

The court shall order reasonable possession of or access to a grandchild by a grandparent if:

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

(2) the grandparent requesting possession of or access

1 to the child overcomes the presumption that a parent acts in the
2 best interest of the parent's child by proving by a preponderance of
3 the evidence that denial of possession of or access to the child
4 would significantly impair the child's physical health or emotional
5 well-being; [~~access is in the best interest of the child,~~] and

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

7 [~~(A)~~] the grandparent requesting possession of
8 or access to the child is a parent of a parent of the child and that
9 parent of the child;

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

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

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

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

17 [~~(B) the parents of the child are divorced or~~
18 ~~have been living apart for the three-month period preceding the~~
19 ~~filing of the petition or a suit for the dissolution of the parents'~~
20 ~~marriage is pending,~~

21 [~~(C) the child has been abused or neglected by a~~
22 ~~parent of the child,~~

23 [~~(D) the child has been adjudicated to be a child~~
24 ~~in need of supervision or a delinquent child under Title 3,~~

25 [~~(E) the grandparent requesting access to the~~
26 ~~child is the parent of a person whose parent-child relationship~~
27 ~~with the child has been terminated by court order, or~~

1 ~~[(F) the child has resided with the grandparent~~
2 ~~requesting access to the child for at least six months within the~~
3 ~~24-month period preceding the filing of the petition].~~

4 SECTION 3. The heading to Section 153.434, Family Code, is
5 amended to read as follows:

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

8 SECTION 4. The changes in law made by this Act to Sections
9 153.432 and 153.433, Family Code, apply to a suit under Section
10 153.432, Family Code, that is pending in a trial court on the
11 effective date of this Act or that is filed on or after the
12 effective date of this Act.

13 SECTION 5. This Act takes effect September 1, 2005.