

By: Goodman

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 fit parent acts in the  
2 best interest of the parent's child by proving by a preponderance of  
3 the evidence that:

4 (A) the parent is not fit; or

5 (B) denial of possession of or access to the  
6 child would significantly impair the child's physical health or  
7 emotional well-being; [~~access is in the best interest of the~~  
8 child,] and

9 (3) at least one of the following facts is present:

10 (A) the grandparent requesting possession of or  
11 access to the child is a parent of a parent of the child and that  
12 parent of the child:

13 (i) has been incarcerated in jail or prison  
14 during the three-month period preceding the filing of the petition;

15 (ii) [~~or~~] has been found by a court to be  
16 incompetent;

17 (iii) [~~or~~] is dead;

18 (iv) does not have actual or court-ordered  
19 possession of or access to the child and has been divorced from the  
20 other parent or a suit for dissolution of the parents' marriage is  
21 pending;

22 (v) has abused or neglected the child; or

23 (vi) has had the parent-child relationship  
24 with respect to the child terminated by court order;

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

1 ~~marriage is pending;~~

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

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

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

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

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

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

17 SECTION 4. The changes in law made by this Act to Sections  
18 153.432 and 153.433, Family Code, apply only to an original suit or  
19 suit for modification filed under Section 153.432, Family Code, on  
20 or after the effective date of this Act. An original suit or suit  
21 for modification filed under Section 153.432, Family Code, before  
22 the effective date of this Act is governed by the law in effect on  
23 the date that the suit was filed, and the former law is continued in  
24 effect for that purpose.

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