

1-1 By: Goodman (Senate Sponsor - Wentworth) H.B. No. 261
1-2 (In the Senate - Received from the House May 2, 2005;
1-3 May 3, 2005, read first time and referred to Committee on
1-4 Jurisprudence; May 13, 2005, reported favorably by the following
1-5 vote: Yeas 5, Nays 0; May 13, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to possession of or access to a grandchild and designation
1-9 of other relatives as managing conservators.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. The heading to Subchapter H, Chapter 153, Family
1-12 Code, is amended to read as follows:

1-13 SUBCHAPTER H. RIGHTS OF GRANDPARENT, AUNT, OR UNCLE

1-14 SECTION 2. Section 153.431, Family Code, is amended to read
1-15 as follows:

1-16 Sec. 153.431. [~~GRANDPARENTAL~~] APPOINTMENT OF GRANDPARENT,
1-17 AUNT, OR UNCLE AS MANAGING CONSERVATOR [~~CONSERVATORS~~]. If both of
1-18 the parents of a child are deceased, the court may consider
1-19 appointment of a parent, sister, or brother of a deceased parent
1-20 [~~grandparents may be considered for appointment~~] as a managing
1-21 conservator of the child [~~conservators~~], but that consideration
1-22 does not alter or diminish the discretionary power of the court.

1-23 SECTION 3. Section 153.432, Family Code, is amended to read
1-24 as follows:

1-25 Sec. 153.432. SUIT FOR POSSESSION OR ACCESS BY GRANDPARENT.

1-26 (a) A biological or adoptive grandparent may request possession of
1-27 or access to a grandchild by filing:

1-28 (1) an original suit; or

1-29 (2) a suit for modification as provided by Chapter
1-30 156.

1-31 (b) A grandparent may request possession of or access to a
1-32 grandchild in a suit filed for the sole purpose of requesting the
1-33 relief, without regard to whether the appointment of a managing
1-34 conservator is an issue in the suit.

1-35 SECTION 4. Section 153.433, Family Code, is amended to read
1-36 as follows:

1-37 Sec. 153.433. POSSESSION OF OR [~~AND~~] ACCESS TO GRANDCHILD.
1-38 The court shall order reasonable possession of or access to a
1-39 grandchild by a grandparent if:

1-40 (1) at the time the relief is requested, at least one
1-41 biological or adoptive parent of the child has not had that parent's
1-42 parental rights terminated; [~~and~~]

1-43 (2) the grandparent requesting possession of or access
1-44 to the child overcomes the presumption that a parent acts in the
1-45 best interest of the parent's child by proving by a preponderance of
1-46 the evidence that denial of possession of or access to the child
1-47 would significantly impair the child's physical health or emotional
1-48 well-being; [~~access is in the best interest of the child,~~] and

1-49 (3) [~~at least one of the following facts is present:~~

1-50 [~~(A)~~] the grandparent requesting possession of
1-51 or access to the child is a parent of a parent of the child and that
1-52 parent of the child:

1-53 (A) has been incarcerated in jail or prison
1-54 during the three-month period preceding the filing of the petition;

1-55 (B) [~~or~~] has been found by a court to be
1-56 incompetent;

1-57 (C) [~~or~~] is dead; or

1-58 (D) does not have actual or court-ordered
1-59 possession of or access to the child

1-60 [~~(B) the parents of the child are divorced or~~
1-61 ~~have been living apart for the three-month period preceding the~~
1-62 ~~filing of the petition or a suit for the dissolution of the parents'~~
1-63 ~~marriage is pending;~~

1-64 [~~(C) the child has been abused or neglected by a~~

2-1 ~~parent of the child,~~

2-2 ~~[(D) the child has been adjudicated to be a child~~
2-3 ~~in need of supervision or a delinquent child under Title 3,~~

2-4 ~~[(E) the grandparent requesting access to the~~
2-5 ~~child is the parent of a person whose parent-child relationship~~
2-6 ~~with the child has been terminated by court order, or~~

2-7 ~~[(F) the child has resided with the grandparent~~
2-8 ~~requesting access to the child for at least six months within the~~
2-9 ~~24-month period preceding the filing of the petition].~~

2-10 SECTION 5. The heading to Section 153.434, Family Code, is
2-11 amended to read as follows:

2-12 Sec. 153.434. LIMITATION ON RIGHT TO REQUEST POSSESSION OR
2-13 ACCESS.

2-14 SECTION 6. The change in law made by this Act to Section
2-15 153.431, Family Code, applies to a suit affecting the parent-child
2-16 relationship that is pending in a trial court on the effective date
2-17 of this Act or that is filed on or after the effective date of this
2-18 Act.

2-19 SECTION 7. The changes in law made by this Act to Sections
2-20 153.432 and 153.433, Family Code, apply to a suit under Section
2-21 153.432, Family Code, that is pending in a trial court on the
2-22 effective date of this Act or that is filed on or after the
2-23 effective date of this Act.

2-24 SECTION 8. This Act takes effect September 1, 2005.

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