

By: Talton

H.B. No. 3388

A BILL TO BE ENTITLED

AN ACT

relating to court-ordered possession of or access to a child by the child's grandparent, aunt, or uncle.

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

SECTION 1. Section 102.004(c), Family Code, is amended to read as follows:

(c) Possession of or access [~~Access~~] to a child by a grandparent is governed by the standards established by Chapter 153.

SECTION 2. Chapter 102, Family Code, is amended by adding Section 102.0041 to read as follows:

Sec. 102.0041. STANDING FOR AUNT OR UNCLE. (a) In addition to the general standing to file suit provided by Section 102.003(13), an aunt or uncle of a child 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 environment presents a serious question concerning the child's physical health or welfare; or

(2) both parents, the surviving parent, or the managing conservator or custodian either filed the petition or consented to the suit.

(b) Possession of or access to a child by an aunt or uncle of the child is governed by the standards established by Subchapter H,

1 Chapter 153.

2 SECTION 3. Subchapter H, Chapter 153, Family Code, is
3 amended to read as follows:

4 SUBCHAPTER H. RIGHTS OF GRANDPARENT, AUNT, OR UNCLE

5 Sec. 153.431. [~~GRANDPARENTAL~~] APPOINTMENT OF GRANDPARENTS,
6 AUNTS, OR UNCLES AS MANAGING CONSERVATORS. If the parents of a
7 child are deceased, the parents, sisters, and brothers of the
8 deceased parents [~~grandparents~~] may be considered for appointment
9 as managing conservators of the child, but consideration does not
10 alter or diminish the discretionary power of the court.

11 Sec. 153.432. SUIT BY GRANDPARENT FOR POSSESSION OF OR
12 ACCESS TO CHILD. (a) A biological or adoptive grandparent may
13 request reasonable possession of or access to a grandchild by
14 filing:

- 15 (1) an original suit; or
16 (2) a suit for modification as provided by Chapter
17 156.

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

22 Sec. 153.4325. SUIT BY AUNT OR UNCLE FOR POSSESSION OF OR
23 ACCESS TO CHILD. (a) If a parent of a child is deceased, a sister
24 or brother of the deceased parent may request reasonable possession
25 of or access to the child by filing:

- 26 (1) an original suit; or
27 (2) a suit for modification as provided by Chapter

1 156.

2 (b) A sister or brother of the deceased parent may request
3 reasonable possession of or access to the child in a suit filed for
4 the sole purpose of requesting the relief, without regard to
5 whether the appointment of a managing conservator is an issue in the
6 suit.

7 Sec. 153.433. POSSESSION OF AND ACCESS TO CHILD BY
8 GRANDPARENT, AUNT, OR UNCLE [~~GRANDCHILD~~]. (a) The court shall
9 order reasonable possession of or access to a child [~~grandchild~~] by
10 the child's [~~a~~] grandparent if:

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

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

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

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

26 (C) the child has been abused or neglected by a
27 parent of the child;

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

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

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

11 (b) If a parent of a child is deceased, the court shall order
12 reasonable possession of or access to the child by a parent, sister,
13 or brother of the deceased parent if:

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

17 (2) the court finds that:

18 (A) reasonable possession of or access to the
19 child by the parent, sister, or brother of the deceased parent, as
20 applicable, is in the best interest of the child; and

21 (B) the combined times of possession of or access
22 to the child by the child's grandparents, aunts, and uncles under
23 this subchapter will not exceed the guidelines established under
24 Subchapter E for the possession of a child by a parent named as a
25 possessory conservator.

26 Sec. 153.434. LIMITATION ON RIGHT TO REQUEST POSSESSION OF
27 OR ACCESS TO CHILD. A biological or adoptive parent, sister, or

1 brother of a parent of a child [~~grandparent~~] may not request
2 possession of or access to the child [~~a grandchild~~] if:

3 (1) each of the biological parents of the child
4 [~~grandchild~~] has:

5 (A) died;

6 (B) had the person's parental rights terminated;

7 or

8 (C) executed an affidavit of waiver of interest
9 in child or an affidavit of relinquishment of parental rights under
10 Chapter 161 and the affidavit designates an authorized agency,
11 licensed child-placing agency, or person other than the child's
12 stepparent as the managing conservator of the child; and

13 (2) the child [~~grandchild~~] has been adopted, or is the
14 subject of a pending suit for adoption, by a person other than the
15 child's stepparent.

16 SECTION 4. The changes in law made by this Act apply only to
17 a suit for possession of or access to a child filed on or after the
18 effective date of this Act. A suit filed before the effective date
19 of this Act is governed by the law in effect on the date the suit was
20 filed, and the former law is continued in effect for that purpose.

21 SECTION 5. This Act takes effect immediately if it receives
22 a vote of two-thirds of all the members elected to each house, as
23 provided by Section 39, Article III, Texas Constitution. If this
24 Act does not receive the vote necessary for immediate effect, this
25 Act takes effect September 1, 2005.