

BILL ANALYSIS

H.B. 2084
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Human Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

As one of the only preconstitutional rights recognized by courts under the due process clause of the Fourteenth Amendment, parental rights have been deemed one of the most sacred liberties in our nation. When Title 2 of the Texas Family Code was first enacted in 1973, a committee amendment to the bill was introduced granting the trial court discretionary power to "allow reasonable visitation rights to either the maternal or parental grandparents of the child and issue any necessary orders to enforce said decree." Since 1973 grandparents have had an independent cause of action to request access to their grandchildren. Under current law parents may be subjected to litigation initiated by the grandparents. The statute makes no provision for a dispositive conclusion to a grandparent access suit, which potentially subjects parents to open-ended litigation.

In 2004, Senator Jeff Wentworth requested an attorney general's opinion to answer his questions about the rights or limitations on grandparental visitation. Attorney General Greg Abbot issued opinion GA-0260 which H.B. 261, 79th Legislature, Regular Session, 2005, sought to codify in the Family Code. Despite these efforts, challenges to the constitutionality of the law persist.

H.B. 2084 authorizes a court to grant access to a grandchild by the grandparent if the grandparent meets certain criteria and removes a request for possession from a suit or suit for modification and the limitations on a grandparent's request. The bill removes an adoptive grandparent from consideration under a suit for access to a child and the limitations on the right to request access to a child by a grandparent.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 2084 amends the Family Code to remove a grandparent as a person with standing to file a suit for possession of a grandchild. The bill removes an adoptive grandparent as a person with standing to file a suit for possession of or access to a grandchild. The bill requires a grandparent filing a suit for access to or for modification of access to the child to execute and attach an affidavit that contains, along with supporting facts, the allegation that denial of access to the child by the petitioner endangers the child's physical health or significantly impairs the child's emotional well-being and development. The bill requires the court to deny the relief sought and refuse to schedule a hearing unless the court determines, on the basis of the affidavit, that facts adequate to support an allegation are stated in the affidavit and requires the court, if it determines that the facts stated are adequate, to set a time and place for the initial hearing. The bill requires the court, if it finds that a suit for access or for modification is filed frivolously or is designed to harass a party, to assess attorney's fees as costs against the offending party. The bill prohibits a suit for access or for modification to be tried or consolidated with any other suit for conservatorship of the child or any other proceeding involving or arising from a claim involving the parent-child relationship. The bill establishes that any order resulting from a prohibited

consolidated proceeding is void.

H.B. 2084 authorizes, rather than requires, a court to grant access to a grandchild by the grandparent under certain conditions. The bill, in a provision establishing that the grandparent must overcome the presumption that the parent by denying the grandparent access to the child is acting in the best interest of the child, requires the grandparent to prove by clear and convincing evidence, rather than by a preponderance of the evidence, that the denial of access to a child impairs the child's physical health or emotional well-being. The bill removes the provision that a grandparent requesting access to a child may be granted reasonable access if the grandparent is a parent of a parent of the child and that parent of the child has been incarcerated in jail or prison during the three-month period preceding the filing of the petition or has been found by the court to be incompetent. The bill authorizes the court to order reasonable access if the grandparent is the parent of a parent who has not had parental rights terminated and, for not less than six months before commencing the suit has been dead or has not had actual or court-ordered possession of or access to the child.

H.B. 2084 requires, as a threshold issue, the court to conduct an initial hearing not later than the 45th day after the date of service of process at which the court shall dismiss the suit unless the grandparent requesting access to the child proves by clear and convincing evidence that the child's parent does not provide adequate care for the child and has engaged in culpable conduct that endangers the child's physical health or significantly impairs the child's emotional development. The bill prohibits a court, in an initial hearing, to render a temporary order. The bill prohibits a court in a suit for access by a grandparent, unless the grandparent meets the evidentiary burden at the initial hearing, to order the appointment of an amicus attorney, guardian ad litem, or attorney ad litem, or counseling, a social study, mental examination, physical examination, or parenting classes, except for a grandparent who files the suit. The bill requires an order granting access to a child by a grandparent that is rendered over a parent's objections to state, with specificity, the court's findings regarding the fitness of the parent, the parent's objections, the fact that the court gave special weight to the parent's objections, the manner in which the court gave special weight to the parent's objections, and the specific grounds for overriding the parent's objections. The bill prohibits a court in a suit for access by a grandparent from imposing a geographic restriction or awarding possession of a child to a grandparent. The bill requires a court, if the grandparent requesting access to a child fails to meet all of the evidentiary burdens, to award the parent all costs, fees, and expenses incurred by the parent to defend the suit. The bill specifies that a suit for access by a grandparent does not prohibit a grandparent from filing a suit for managing conservatorship of a child under certain provisions of law.

H.B. 2084, in a provision establishing the conditions under which a biological grandparent is prohibited from requesting access to a grandchild, adds the following conditions: if a court does not already have continuing exclusive jurisdiction of a suit involving the child; or the child's parent who is the competent child of the grandparent opposes the suit. The bill establishes that a biological grandparent may not request access to a child who has been adopted or is subject to a pending suit for adoption if each of the biological parents has executed an affidavit of waiver of interest in the child or an affidavit of relinquishment of parental rights and the affidavit designates another person, rather than a person other than the child's stepparent, or an authorized agency or licensed child-placing agency as the managing conservator of a child.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.