

1-1 By: Aycock, et al. (Senate Sponsor - Nelson) H.B. No. 63
1-2 (In the Senate - Received from the House April 27, 2009;
1-3 May 12, 2009, read first time and referred to Committee on
1-4 Administration; May 21, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 5, Nays 0;
1-6 May 21, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 63 By: Shapiro

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the conservatorship or possession of, or access to, a
1-11 child by a parent who is deployed by the military.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 153, Family Code, is amended by adding
1-14 Subchapter L to read as follows:

1-15 SUBCHAPTER L. MILITARY DUTY

1-16 Sec. 153.701. DEFINITIONS. In this subchapter:

1-17 (1) "Designated person" means the person ordered by
1-18 the court to temporarily exercise a conservator's rights, duties,
1-19 and periods of possession and access with regard to a child during
1-20 the conservator's military deployment, military mobilization, or
1-21 temporary military duty.

1-22 (2) "Military deployment" means the temporary
1-23 transfer of a service member of the armed forces of this state or
1-24 the United States serving in an active-duty status to another
1-25 location in support of combat or some other military operation.

1-26 (3) "Military mobilization" means the call-up of a
1-27 National Guard or Reserve service member of the armed forces of this
1-28 state or the United States to extended active duty status. The term
1-29 does not include National Guard or Reserve annual training.

1-30 (4) "Temporary military duty" means the transfer of a
1-31 service member of the armed forces of this state or the United
1-32 States from one military base to a different location, usually
1-33 another base, for a limited time for training or to assist in the
1-34 performance of a noncombat mission.

1-35 Sec. 153.702. TEMPORARY ORDERS. (a) If a conservator is
1-36 ordered to military deployment, military mobilization, or
1-37 temporary military duty that involves moving a substantial distance
1-38 from the conservator's residence so as to materially affect the
1-39 conservator's ability to exercise the conservator's rights and
1-40 duties in relation to a child, either conservator may file for an
1-41 order under this subchapter.

1-42 (b) The court may render a temporary order in a proceeding
1-43 under this subchapter regarding:

1-44 (1) possession of or access to the child; or

1-45 (2) child support.

1-46 (c) A temporary order rendered by the court under this
1-47 subchapter may grant rights to and impose duties on a designated
1-48 person regarding the child, except the court may not require the
1-49 designated person to pay child support.

1-50 (d) After a conservator's military deployment, military
1-51 mobilization, or temporary military duty is concluded, and the
1-52 conservator returns to the conservator's usual residence, the
1-53 temporary orders under this section terminate and the rights of all
1-54 affected parties are governed by the terms of any court order
1-55 applicable when the conservator is not ordered to military
1-56 deployment, military mobilization, or temporary military duty.

1-57 Sec. 153.703. APPOINTING DESIGNATED PERSON FOR CONSERVATOR
1-58 WITH EXCLUSIVE RIGHT TO DESIGNATE PRIMARY RESIDENCE OF CHILD. (a)
1-59 If the conservator with the exclusive right to designate the
1-60 primary residence of the child is ordered to military deployment,
1-61 military mobilization, or temporary military duty, the court may
1-62 render a temporary order to appoint a designated person to exercise
1-63 the exclusive right to designate the primary residence of the child

2-1 during the military deployment, military mobilization, or
2-2 temporary military duty in the following order of preference:
2-3 (1) the conservator who does not have the exclusive
2-4 right to designate the primary residence of the child;
2-5 (2) if appointing the conservator described by
2-6 Subdivision (1) is not in the child's best interest, a designated
2-7 person chosen by the conservator with the exclusive right to
2-8 designate the primary residence of the child; or
2-9 (3) if appointing the conservator described by
2-10 Subdivision (1) or the person chosen under Subdivision (2) is not in
2-11 the child's best interest, another person chosen by the court.
2-12 (b) A designated person named in a temporary order rendered
2-13 under this section has the rights and duties of a nonparent
2-14 appointed as sole managing conservator under Section 153.371.
2-15 (c) The court may limit or expand the rights of a nonparent
2-16 named as a designated person in a temporary order rendered under
2-17 this section as appropriate to the best interest of the child.
2-18 Sec. 153.704. APPOINTING DESIGNATED PERSON TO EXERCISE
2-19 VISITATION FOR CONSERVATOR WITH EXCLUSIVE RIGHT TO DESIGNATE
2-20 PRIMARY RESIDENCE OF CHILD IN CERTAIN CIRCUMSTANCES. (a) If the
2-21 court appoints the conservator without the exclusive right to
2-22 designate the primary residence of the child under Section
2-23 153.703(a)(1), the court may award visitation with the child to a
2-24 designated person chosen by the conservator with the exclusive
2-25 right to designate the primary residence of the child.
2-26 (b) The periods of visitation shall be the same as the
2-27 visitation to which the conservator without the exclusive right to
2-28 designate the primary residence of the child was entitled under the
2-29 court order in effect immediately before the date the temporary
2-30 order is rendered.
2-31 (c) The temporary order for visitation must provide that:
2-32 (1) the designated person under this section has the
2-33 right to possession of the child for the periods and in the manner
2-34 in which the conservator without the exclusive right to designate
2-35 the primary residence of the child is entitled under the court order
2-36 in effect immediately before the date the temporary order is
2-37 rendered;
2-38 (2) the child's other conservator and the designated
2-39 person under this section are subject to the requirements of
2-40 Section 153.316, with the designated person considered for purposes
2-41 of that section to be the possessory conservator;
2-42 (3) the designated person under this section has the
2-43 rights and duties of a nonparent possessory conservator under
2-44 Section 153.376(a) during the period that the person has possession
2-45 of the child; and
2-46 (4) the designated person under this section is
2-47 subject to any provision in a court order restricting or
2-48 prohibiting access to the child by any specified individual.
2-49 (d) The court may limit or expand the rights of a nonparent
2-50 designated person named in a temporary order rendered under this
2-51 section as appropriate to the best interest of the child.
2-52 Sec. 153.705. APPOINTING DESIGNATED PERSON TO EXERCISE
2-53 VISITATION FOR CONSERVATOR WITHOUT EXCLUSIVE RIGHT TO DESIGNATE
2-54 PRIMARY RESIDENCE OF CHILD. (a) If the conservator without the
2-55 exclusive right to designate the primary residence of the child is
2-56 ordered to military deployment, military mobilization, or
2-57 temporary military duty, the court may award visitation with the
2-58 child to a designated person chosen by the conservator, if the
2-59 visitation is in the best interest of the child.
2-60 (b) The temporary order for visitation must provide that:
2-61 (1) the designated person under this section has the
2-62 right to possession of the child for the periods and in the manner
2-63 in which the conservator described by Subsection (a) would be
2-64 entitled if not ordered to military deployment, military
2-65 mobilization, or temporary military duty;
2-66 (2) the child's other conservator and the designated
2-67 person under this section are subject to the requirements of
2-68 Section 153.316, with the designated person considered for purposes
2-69 of that section to be the possessory conservator;

3-1 (3) the designated person under this section has the
 3-2 rights and duties of a nonparent possessory conservator under
 3-3 Section 153.376(a) during the period that the designated person has
 3-4 possession of the child; and

3-5 (4) the designated person under this section is
 3-6 subject to any provision in a court order restricting or
 3-7 prohibiting access to the child by any specified individual.

3-8 (c) The court may limit or expand the rights of a nonparent
 3-9 designated person named in a temporary order rendered under this
 3-10 section as appropriate to the best interest of the child.

3-11 Sec. 153.706. TEMPORARY ORDER FOR CHILD SUPPORT. A
 3-12 temporary order rendered under this subchapter may result in a
 3-13 change of circumstances sufficient to justify a temporary order
 3-14 modifying the child support obligations of a party.

3-15 Sec. 153.707. EXPEDITED HEARING. (a) On a motion by the
 3-16 conservator who has been ordered to military deployment, military
 3-17 mobilization, or temporary military duty, the court shall, for good
 3-18 cause shown, hold an expedited hearing if the court finds that the
 3-19 conservator's military duties have a material effect on the
 3-20 conservator's ability to appear in person at a regularly scheduled
 3-21 hearing.

3-22 (b) A hearing under this section shall, if possible, take
 3-23 precedence over other suits affecting the parent-child
 3-24 relationship not involving a conservator who has been ordered to
 3-25 military deployment, military mobilization, or temporary military
 3-26 duty.

3-27 (c) On a motion by any party, the court shall, after
 3-28 reasonable advance notice and for good cause shown, allow a party to
 3-29 present testimony and evidence by electronic means, including by
 3-30 teleconference or through the Internet.

3-31 Sec. 153.708. ENFORCEMENT. Temporary orders rendered under
 3-32 this subchapter may be enforced by or against the designated person
 3-33 to the same extent that an order would be enforceable against the
 3-34 conservator who has been ordered to military deployment, military
 3-35 mobilization, or temporary military duty.

3-36 Sec. 153.709. ADDITIONAL PERIODS OF POSSESSION OR ACCESS.
 3-37 (a) Not later than the 90th day after the date a conservator
 3-38 without the exclusive right to designate the primary residence of
 3-39 the child who is a member of the armed services concludes the
 3-40 conservator's military deployment, military mobilization, or
 3-41 temporary military duty, the conservator may petition the court to:

3-42 (1) compute the periods of possession of or access to
 3-43 the child to which the conservator would have otherwise been
 3-44 entitled during the conservator's deployment; and

3-45 (2) award the conservator additional periods of
 3-46 possession of or access to the child to compensate for the periods
 3-47 described by Subdivision (1).

3-48 (b) If the conservator described by Subsection (a)
 3-49 petitions the court under Subsection (a), the court:

3-50 (1) shall compute the periods of possession or access
 3-51 to the child described by Subsection (a)(1); and

3-52 (2) may award to the conservator additional periods of
 3-53 possession of or access to the child for a length of time and under
 3-54 terms the court considers reasonable, if the court determines that:

3-55 (A) the conservator was on military deployment,
 3-56 military mobilization, or temporary military duty in a location
 3-57 where access to the child was not reasonably possible; and

3-58 (B) the award of additional periods of possession
 3-59 of or access to the child is in the best interest of the child.

3-60 (c) In making the determination under Subsection (b)(2),
 3-61 the court:

3-62 (1) shall consider:

3-63 (A) the periods of possession of or access to the
 3-64 child to which the conservator would otherwise have been entitled
 3-65 during the conservator's military deployment, military
 3-66 mobilization, or temporary military duty, as computed under
 3-67 Subsection (b)(1);

3-68 (B) whether the court named a designated person
 3-69 under Section 153.705 to exercise limited possession of the child

4-1 during the conservator's deployment; and
4-2 (C) any other factor the court considers
4-3 appropriate; and

4-4 (2) is not required to award additional periods of
4-5 possession of or access to the child that equals the possession or
4-6 access to which the conservator would have been entitled during the
4-7 conservator's military deployment, military mobilization, or
4-8 temporary military duty, as computed under Subsection (b)(1).

4-9 (d) After the conservator described by Subsection (a) has
4-10 exercised all additional periods of possession or access awarded
4-11 under this section, the rights of all affected parties are governed
4-12 by the terms of the court order applicable when the conservator is
4-13 not ordered to military deployment, military mobilization, or
4-14 temporary military duty.

4-15 SECTION 2. Section 156.006, Family Code, is amended by
4-16 adding Subsection (c) to read as follows:

4-17 (c) Subsection (b)(2) does not apply to a conservator who
4-18 has the exclusive right to designate the primary residence of the
4-19 child and who has temporarily relinquished the primary care and
4-20 possession of the child to another person during the conservator's
4-21 military deployment, military mobilization, or temporary military
4-22 duty, as those terms are defined by Section 153.701.

4-23 SECTION 3. Section 156.101, Family Code, is amended to read
4-24 as follows:

4-25 Sec. 156.101. GROUNDS FOR MODIFICATION OF ORDER
4-26 ESTABLISHING CONSERVATORSHIP OR POSSESSION AND ACCESS. (a) The
4-27 court may modify an order that provides for the appointment of a
4-28 conservator of a child, that provides the terms and conditions of
4-29 conservatorship, or that provides for the possession of or access
4-30 to a child if modification would be in the best interest of the
4-31 child and:

4-32 (1) the circumstances of the child, a conservator, or
4-33 other party affected by the order have materially and substantially
4-34 changed since the earlier of:

4-35 (A) the date of the rendition of the order; or

4-36 (B) the date of the signing of a mediated or
4-37 collaborative law settlement agreement on which the order is based;

4-38 (2) the child is at least 12 years of age and has filed
4-39 with the court, in writing, the name of the person who is the
4-40 child's preference to have the exclusive right to designate the
4-41 primary residence of the child; or

4-42 (3) the conservator who has the exclusive right to
4-43 designate the primary residence of the child has voluntarily
4-44 relinquished the primary care and possession of the child to
4-45 another person for at least six months.

4-46 (b) Subsection (a)(3) does not apply to a conservator who
4-47 has the exclusive right to designate the primary residence of the
4-48 child and who has temporarily relinquished the primary care and
4-49 possession of the child to another person during the conservator's
4-50 military deployment, military mobilization, or temporary military
4-51 duty, as those terms are defined by Section 153.701.

4-52 SECTION 4. Section 156.102, Family Code, is amended by
4-53 adding Subsection (d) to read as follows:

4-54 (d) Subsection (b)(3) does not apply to a person who has the
4-55 exclusive right to designate the primary residence of the child and
4-56 who has temporarily relinquished the primary care and possession of
4-57 the child to another person during the conservator's military
4-58 deployment, military mobilization, or temporary military duty, as
4-59 those terms are defined by Section 153.701.

4-60 SECTION 5. Section 156.105, Family Code, is amended to read
4-61 as follows:

4-62 Sec. 156.105. MODIFICATION OF ORDER BASED ON MILITARY DUTY
4-63 [~~DEPLOYMENT~~]. [~~(a) In this section, "military deployment" means~~
4-64 ~~military duty ordered for a period of more than six months during~~
4-65 ~~which the person ordered to duty:~~

4-66 [~~(1) is not provided the option of being accompanied~~
4-67 ~~by the person's child; and~~

4-68 [~~(2) is serving in a location where access to the~~
4-69 ~~person's child is not reasonably possible.~~

5-1 ~~[(b)]~~ The military duty of a conservator who is ordered to
5-2 military deployment, military mobilization, or temporary military
5-3 duty, as those terms are defined by Section 153.701, does not by
5-4 itself constitute ~~[of a person who is a possessory conservator or a~~
5-5 ~~joint managing conservator without the exclusive right to designate~~
5-6 ~~the primary residence of the child is]~~ a material and substantial
5-7 change of circumstances sufficient to justify a modification of an
5-8 existing court order or portion of a decree that sets the terms and
5-9 conditions for the possession of or access to a child except that
5-10 the court may render a temporary order under Subchapter L, Chapter
5-11 153.

5-12 ~~[(c) If the court determines that modification is in the~~
5-13 ~~best interest of the child, the court may modify the order or decree~~
5-14 ~~to provide in a manner consistent with Section 153.3161 for~~
5-15 ~~possession of the child during the period of the military~~
5-16 ~~deployment by a person designated by the deployed conservator.]~~

5-17 SECTION 6. Sections 153.3161 and 156.410, Family Code, are
5-18 repealed.

5-19 SECTION 7. Sections 156.006, 156.101, 156.102, and 156.105,
5-20 Family Code, as amended by this Act, apply only to a suit affecting
5-21 the parent-child relationship pending in a trial court on or filed
5-22 on or after the effective date of this Act.

5-23 SECTION 8. This Act takes effect September 1, 2009.

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