

By: Gonzalez Toureilles

H.B. No. 1012

A BILL TO BE ENTITLED

AN ACT

relating to the conservatorship or possession of, or access to, a child in a suit affecting the parent-child relationship.

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

SECTION 1. Section 102.0045(b), Family Code, is amended to read as follows:

(b) Access to a child by a sibling of the child is governed by the standards established by Section 153.551 [~~Subchapter J, Chapter 153~~].

SECTION 2. Section 153.133, Family Code, is amended by adding Subsection (c) to read as follows:

(c) Notwithstanding Subsection (a)(1), the court shall render an order adopting the provisions of a written agreed parenting plan appointing the parents as joint managing conservators if the parenting plan:

(1) meets all the requirements of Subsections (a)(2) through (6); and

(2) provides that the child's primary residence shall be within a specified geographic area.

SECTION 3. Subchapter F, Chapter 153, Family Code, is amended by adding Section 153.3101 to read as follows:

Sec. 153.3101. REFERENCE TO "SCHOOL" IN STANDARD POSSESSION ORDER. In a standard possession order, "school" means the primary or secondary school in which the child is enrolled or, if the child

1 is not enrolled in a primary or secondary school, the public school
2 district in which the child primarily resides.

3 SECTION 4. Section 153.311, Family Code, is amended to read
4 as follows:

5 Sec. 153.311. MUTUAL AGREEMENT OR SPECIFIED TERMS FOR
6 POSSESSION. The court shall specify in a standard possession order
7 that the parties may have possession of the child at times mutually
8 agreed to in advance by the parties and, in the absence of mutual
9 agreement, shall have possession of the child under the specified
10 terms set out in the standard possession order.

11 SECTION 5. Section 153.312, Family Code, is amended to read
12 as follows:

13 Sec. 153.312. PARENTS WHO RESIDE 100 MILES OR LESS APART.

14 (a) If the possessory conservator resides 100 miles or less from
15 the primary residence of the child, the possessory conservator
16 shall have the right to possession of the child as follows:

17 (1) on weekends throughout the year beginning at 6
18 p.m. on the first, third, and fifth Friday of each month and ending
19 at 6 p.m. on the following Sunday [~~except that, at the possessory~~
20 ~~conservator's election made before or at the time of the rendition~~
21 ~~of the original or modification order, and as specified in the~~
22 ~~original or modification order, the weekend periods of possession~~
23 ~~specified by this subdivision that occur during the regular school~~
24 ~~term shall begin at the time the child's school is regularly~~
25 ~~dismissed and end at 6 p.m. on the following Sunday]; and~~

26 (2) on Thursdays of each week during the regular
27 school term beginning at 6 p.m. and ending at 8 p.m. [~~or, at the~~

~~possessory conservator's election made before or at the time of the~~
~~rendition of the original or modification order, and as specified~~
~~in the original or modification order, beginning at the time the~~
~~child's school is regularly dismissed and ending at the time the~~
~~child's school resumes]~~, unless the court finds that visitation
under this subdivision is not in the best interest of the child.

(b) The following provisions govern possession of the child
for vacations and certain specific holidays and supersede
conflicting weekend or Thursday periods of possession. The
possessory conservator and the managing conservator shall have
rights of possession of the child as follows:

(1) the possessory conservator shall have possession
in even-numbered years, beginning at 6 p.m. on the day the child is
dismissed from school for the school's spring vacation and ending
at 6 p.m. on the day before school resumes after that vacation, and
the managing conservator shall have possession for the same period
in odd-numbered years;

(2) if a possessory conservator:

(A) gives the managing conservator written
notice by April 1 of each year specifying an extended period or
periods of summer possession, the possessory conservator shall have
possession of the child for 30 days beginning not earlier than the
day after the child's school is dismissed for the summer vacation
and ending not later than seven days before school resumes at the
end of the summer vacation, to be exercised in not more than two
separate periods of at least seven consecutive days each, with each
period of possession beginning and ending at 6 p.m. on each

1 applicable day; or

2 (B) does not give the managing conservator
3 written notice by April 1 of each year specifying an extended period
4 or periods of summer possession, the possessory conservator shall
5 have possession of the child for 30 consecutive days beginning at 6
6 p.m. on July 1 and ending at 6 p.m. on July 31;

7 (3) if the managing conservator gives the possessory
8 conservator written notice by April 15 of each year, the managing
9 conservator shall have possession of the child on any one weekend
10 beginning Friday at 6 p.m. and ending at 6 p.m. on the following
11 Sunday during one period of possession by the possessory
12 conservator under Subdivision (2), provided that the managing
13 conservator picks up the child from the possessory conservator and
14 returns the child to that same place; and

15 (4) if the managing conservator gives the possessory
16 conservator written notice by April 15 of each year or gives the
17 possessory conservator 14 days' written notice on or after April 16
18 of each year, the managing conservator may designate one weekend
19 beginning not earlier than the day after the child's school is
20 dismissed for the summer vacation and ending not later than seven
21 days before school resumes at the end of the summer vacation, during
22 which an otherwise scheduled weekend period of possession by the
23 possessory conservator will not take place, provided that the
24 weekend designated does not interfere with the possessory
25 conservator's period or periods of extended summer possession or
26 with Father's Day if the possessory conservator is the father of the
27 child.

SECTION 6. Section 153.313, Family Code, is amended to read as follows:

Sec. 153.313. PARENTS WHO RESIDE OVER 100 MILES APART. If the possessory conservator resides more than 100 miles from the residence of the child, the possessory conservator shall have the right to possession of the child as follows:

(1) either regular weekend possession beginning on the first, third, and fifth Friday as provided under the terms applicable to parents who reside 100 miles or less apart or not more than one weekend per month of the possessory conservator's choice beginning at 6 p.m. on the day school recesses for the weekend and ending at 6 p.m. on the day before school resumes after the weekend, provided that the possessory conservator gives the managing conservator 14 days' written or telephonic notice preceding a designated weekend, and provided that the possessory conservator elects an option for this alternative period of possession by written notice given to the managing conservator within 90 days after the parties begin to reside more than 100 miles apart, as applicable;

(2) each year beginning at 6 p.m. on the day the child is dismissed from school for the school's spring vacation and ending at 6 p.m. on the day before school resumes after that vacation;

(3) if the possessory conservator:

(A) gives the managing conservator written notice by April 1 of each year specifying an extended period or periods of summer possession, the possessory conservator shall have

1 possession of the child for 42 days beginning not earlier than the
2 day after the child's school is dismissed for the summer vacation
3 and ending not later than seven days before school resumes at the
4 end of the summer vacation, to be exercised in not more than two
5 separate periods of at least seven consecutive days each, with each
6 period of possession beginning and ending at 6 p.m. on each
7 applicable day; or

8 (B) does not give the managing conservator
9 written notice by April 1 of each year specifying an extended period
10 or periods of summer possession, the possessory conservator shall
11 have possession of the child for 42 consecutive days beginning at 6
12 p.m. on June 15 and ending at 6 p.m. on July 27;

13 (4) if the managing conservator gives the possessory
14 conservator written notice by April 15 of each year the managing
15 conservator shall have possession of the child on one weekend
16 beginning Friday at 6 p.m. and ending at 6 p.m. on the following
17 Sunday during one period of possession by the possessory
18 conservator under Subdivision (3), provided that if a period of
19 possession by the possessory conservator exceeds 30 days, the
20 managing conservator may have possession of the child under the
21 terms of this subdivision on two nonconsecutive weekends during
22 that time period, and further provided that the managing
23 conservator picks up the child from the possessory conservator and
24 returns the child to that same place; and

25 (5) if the managing conservator gives the possessory
26 conservator written notice by April 15 of each year, the managing
27 conservator may designate 21 days beginning not earlier than the

1 day after the child's school is dismissed for the summer vacation
2 and ending not later than seven days before school resumes at the
3 end of the summer vacation, to be exercised in not more than two
4 separate periods of at least seven consecutive days each, with each
5 period of possession beginning and ending at 6 p.m. on each
6 applicable day, during which the possessory conservator may not
7 have possession of the child, provided that the period or periods so
8 designated do not interfere with the possessory conservator's
9 period or periods of extended summer possession or with Father's
10 Day if the possessory conservator is the father of the child.

11 SECTION 7. Section 153.314, Family Code, is amended to read
12 as follows:

13 Sec. 153.314. HOLIDAY POSSESSION UNAFFECTED BY DISTANCE
14 PARENTS RESIDE APART. The following provisions govern possession
15 of the child for certain specific holidays and supersede
16 conflicting weekend or Thursday periods of possession without
17 regard to the distance the parents reside apart. The possessory
18 conservator and the managing conservator shall have rights of
19 possession of the child as follows:

20 (1) the possessory conservator shall have possession
21 of the child in even-numbered years beginning at 6 p.m. on the day
22 the child is dismissed from school for the Christmas school
23 vacation and ending at noon on December 28, and the managing
24 conservator shall have possession for the same period in
25 odd-numbered years;

26 (2) the possessory conservator shall have possession
27 of the child in odd-numbered years beginning at noon on December 28

1 and ending at 6 p.m. on the day before school resumes after that
2 vacation, and the managing conservator shall have possession for
3 the same period in even-numbered years;

4 (3) the possessory conservator shall have possession
5 of the child in odd-numbered years, beginning at 6 p.m. on the day
6 the child is dismissed from school before Thanksgiving and ending
7 at 6 p.m. on the following Sunday, and the managing conservator
8 shall have possession for the same period in even-numbered years;

9 (4) the parent not otherwise entitled under this
10 standard possession order to present possession of a child on the
11 child's birthday shall have possession of the child beginning at 6
12 p.m. and ending at 8 p.m. on that day, provided that the parent
13 picks up the child from the residence of the conservator entitled to
14 possession and returns the child to that same place;

15 (5) if a conservator, the father shall have possession
16 of the child beginning at 6 p.m. on the Friday preceding Father's
17 Day and ending on Father's Day at 6 p.m., provided that, if he is not
18 otherwise entitled under this standard possession order to present
19 possession of the child, he picks up the child from the residence of
20 the conservator entitled to possession and returns the child to
21 that same place; and

22 (6) if a conservator, the mother shall have possession
23 of the child beginning at 6 p.m. on the Friday preceding Mother's
24 Day and ending on Mother's Day at 6 p.m., provided that, if she is
25 not otherwise entitled under this standard possession order to
26 present possession of the child, she picks up the child from the
27 residence of the conservator entitled to possession and returns the

1 child to that same place.

2 SECTION 8. Section 153.315, Family Code, is amended to read
3 as follows:

4 Sec. 153.315. WEEKEND POSSESSION EXTENDED BY HOLIDAY.

5 (a) If a weekend period of possession of the possessory
6 conservator coincides with a student ~~[school]~~ holiday or teacher
7 in-service day that falls on a Monday during the regular school
8 term, as determined by the school in which the child is enrolled, or
9 with a federal, state, or local holiday that falls on a Monday
10 during the summer months in which school is not in session, the
11 weekend possession shall end at 6 p.m. on ~~[a] Monday~~ ~~[holiday or~~
12 ~~school holiday or shall begin at 6 p.m. Thursday for a Friday~~
13 ~~holiday or school holiday, as applicable]~~.

14 (b) If a weekend period of possession of the possessory
15 conservator coincides with a student holiday or teacher in-service
16 day that falls on a Friday during the regular school term, as
17 determined by the school in which the child is enrolled, or with a
18 federal, state, or local holiday that falls on a Friday during the
19 summer months in which school is not in session, the weekend
20 possession shall begin at 6 p.m. on Thursday ~~[At the possessory~~
21 ~~conservator's election, made before or at the time of the rendition~~
22 ~~of the original or modification order, and as specified in the~~
23 ~~original or modification order, periods of possession extended by a~~
24 ~~holiday may begin at the time the child's school is regularly~~
25 ~~dismissed]~~.

26 SECTION 9. Section 153.317, Family Code, is amended to read
27 as follows:

1 Sec. 153.317. ALTERNATIVE BEGINNING AND ENDING POSSESSION
2 TIMES. (a) If elected by a conservator, the court shall alter the
3 standard possession order under Sections 153.312, 153.314, and
4 153.315 to provide for one or more of the following alternative
5 beginning and ending possession times for the described periods of
6 possession, unless the court finds that the election is not in the
7 best interest of the child:

8 (1) for weekend periods of possession under Section
9 153.312(a)(1) during the regular school term:

10 (A) beginning at the time the child's school is
11 regularly dismissed; or

12 (B) ending at the time the child's school resumes
13 after the weekend;

14 (2) for Thursday periods of possession under Section
15 153.312(a)(2):

16 (A) beginning at the time the child's school is
17 regularly dismissed; or

18 (B) ending at the time the child's school resumes
19 on Friday;

20 (3) for spring vacation periods of possession under
21 Section 153.312(b)(1), beginning at the time the child's school is
22 dismissed for those vacations;

23 (4) for Christmas school vacation periods of
24 possession under Section 153.314(1), beginning at the time the
25 child's school is dismissed for the vacation;

26 (5) for Thanksgiving holiday periods of possession
27 under Section 153.314(3), beginning at the time the child's school

1 is dismissed for the holiday;

2 (6) for Father's Day periods of possession under
3 Section 153.314(5), ending at 8 a.m. on the Monday after Father's
4 Day weekend;

5 (7) for Mother's Day periods of possession under
6 Section 153.314(6):

7 (A) beginning at the time the child's school is
8 regularly dismissed on the Friday preceding Mother's Day; or

9 (B) ending at the time the child's school resumes
10 after Mother's Day; or

11 (8) for weekend periods of possession that are
12 extended under Section 153.315(b) by a student holiday or teacher
13 in-service day that falls on a Friday, beginning at the time the
14 child's school is regularly dismissed on Thursday.

15 (b) A conservator must make an election under Subsection (a)
16 before or at the time of the rendition of a possession order. The
17 election may be made:

18 (1) in a written document filed with the court; or

19 (2) through an oral statement made in open court on the
20 record. [~~If a child is enrolled in school and the possessory~~
21 ~~conservator elects before or at the time of the rendition of the~~
22 ~~original or modification order, the standard order must expressly~~
23 ~~provide that the possessory conservator's period of possession~~
24 ~~shall begin or end, or both, at a different time expressly set in~~
25 ~~the standard order under and within the range of alternative times~~
26 ~~provided by one or both of the following subdivisions:~~

27 ~~[(1) instead of a period of possession by a possessory~~

~~conservator beginning at 6 p.m. on the day school recesses, the period of possession may be set in the standard possession order to begin at the time the child's school is regularly dismissed or at any time between the time the child's school is regularly dismissed and 6 p.m.; and~~

~~[(2) except for Thursday evening possession, instead of a period of possession by a possessory conservator ending at 6 p.m. on the day before school resumes, the period of possession may be set in the standard order to end at the time school resumes.]~~

SECTION 10. Section 153.551, Family Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) A [The] sibling described by Subsection (a) [of a child] may request access to the child 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.

(c) The court shall order reasonable access to the child by the child's sibling described by Subsection (a) if the court finds that access is in the best interest of the child.

SECTION 11. Section 156.002, Family Code, is amended by adding Subsection (c) to read as follows:

(c) The sibling of a child who is separated from the child because of the actions of the Department of Family and Protective Services may file a suit for modification requesting access to the child in the court with continuing, exclusive jurisdiction.

SECTION 12. Sections 153.137 and 153.552, Family Code, are repealed.

1 SECTION 13. (a) Sections 102.0045, 153.551, and 156.002,
2 Family Code, as amended by this Act, apply only to a suit affecting
3 the parent-child relationship pending in a trial court on or filed
4 on or after the effective date of this Act.

5 (b) Sections 153.311, 153.312, 153.313, 153.314, 153.315,
6 and 153.317, Family Code, as amended by this Act, and Section
7 153.3101, Family Code, as added by this Act, apply only to a court
8 order providing for possession of or access to a child rendered on
9 or after the effective date of this Act. A court order rendered
10 before the effective date of this Act is governed by the law in
11 effect on the date the order was rendered, and the former law is
12 continued in effect for that purpose.

13 SECTION 14. This Act takes effect September 1, 2009.