

BILL ANALYSIS

C.S.H.B. 2557

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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Ordinarily, a grandparent may not be granted custody of a child until the child's parents are shown to be unfit. However, laws relating to a grandparent's right to possession of a child may be used by a grandparent to take a child away from fit parents. In many cases, if the parents divorce or one of the parents is incarcerated or dies, a grandparent may sue for possession of a child. This is seen by some as discrimination against single parents and can leave fit parents fighting expensive court battles that can lead to financial ruin and the removal of their legal right to provide for their children. C.S.H.B. 2557 seeks to protect fit parents from losing custody of their children to 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

C.S.H.B. 2557 amends the Family Code to require a court to deny relief sought in a suit filed by a biological or adopted grandparent for possession of or access to a grandchild or a suit for modification and refuse to schedule a hearing unless the court determines that the facts stated in the affidavit required to be attached to the suit that contains an allegation that denial of possession of or access to the child by the petitioner would significantly impair the child's physical health or emotional well-being, if subsequently proven to be true, are adequate to support such an allegation. The bill requires the court to set a time and place for the initial hearing if the court determines that the facts stated, if subsequently proven to be true, are adequate to support such an allegation. The bill removes a requirement for the court to deny relief and dismiss the suit unless the court determines that the facts in the affidavit, if true, would be sufficient to support the relief.

C.S.H.B. 2557 requires the court to assess attorney's fees as costs against the offending party if the court finds that such a suit is filed frivolously or is designed to harass a party. The bill prohibits such a suit from being 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 and makes any order resulting from such a consolidated proceeding void.

C.S.H.B. 2557 changes from a preponderance of the evidence to clear and convincing evidence the evidentiary burden for a grandparent requesting possession of or access to a grandchild to overcome the presumption that a parent acts in the best interest of the parent's child by proving that denial of possession of or access to the child would significantly impair the child's physical health or emotional well-being. The bill authorizes a court to order reasonable possession of or access to a grandchild by a grandparent if, in addition to meeting certain other criteria, the grandparent is a parent of a parent of the child and that parent has not had, rather than does not have, actual or court-ordered possession of or access to the child.

C.S.H.B. 2557 requires the court, as a threshold issue, to conduct an initial hearing not later than the 45th day after the date of service of process at which the court is required to dismiss the suit unless the grandparent requesting possession of or access to the child proves by clear and convincing evidence that denial of possession of or access to the child would significantly impair the child's physical health or emotional well-being. The bill prohibits the court from rendering a temporary order in such a hearing. The bill prohibits a court, in a suit by a grandparent, from ordering the appointment of an amicus attorney, guardian ad litem, or attorney ad litem or ordering counseling, a social study, mental examination, physical examination, or parenting classes, except for a grandparent who files the suit, unless the grandparent meets the evidentiary burden at the initial hearing.

C.S.H.B. 2557 requires an order granting possession of or access to a child by a grandparent that is rendered over a parent's objections to state with specificity, in addition to other information, 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 from imposing a geographic restriction in a suit by a grandparent. The bill authorizes the court in a suit for possession of or access to a grandchild filed by a grandparent who fails to meet all of the evidentiary burdens required for such a suit to award a parent all costs, fees, and expenses incurred by the parent to defend the suit. The bill specifies that the provisions of law it amends relating to possession of or access to a grandchild do not prohibit a grandparent from filing a suit for managing conservatorship of a child under other state law.

C.S.H.B. 2557 specifies, in a provision of law prohibiting a grandparent from requesting possession of or access to a grandchild if, in addition to other conditions, each of the biological parents of the child has executed a certain affidavit of relinquishment of parental rights, that a grandparent is prohibited from making such a request if the affidavit of relinquishment of parental rights designates another person, rather than a person other than the child's stepparent, as the managing conservator of the child. The bill removes language specifying that a grandparent is prohibited from requesting access to a grandchild who has been adopted or is the subject of a pending suit for adoption only if the adoption is by a person other than the child's stepparent.

C.S.H.B. 2557 provides that provisions relating to a suit for possession or access by a grandparent, possession of or access to a grandchild, and limitation on the right to request possession or access apply equally to an original suit and a suit for modification filed by a grandparent seeking possession of or access to a grandchild. The bill makes conforming and nonsubstantive changes.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2557 differs from the original by retaining statutory language authorizing a biological or adoptive grandparent to request possession of or access to a grandchild, whereas the original removes the authorization for an adoptive grandparent to request possession of or access to a grandchild and removes the authorization for a biological grandparent to request possession of a grandchild.

C.S.H.B. 2557 differs from the original by retaining statutory language requiring the affidavit attached to a suit for possession or access to a grandchild filed by a grandparent to contain the allegation that denial of possession of or access to the child by the petitioner would significantly impair the child's physical health or emotional well-being, whereas the original requires the affidavit to contain the allegation that such denial endangers the child's physical health or

significantly impairs the child's emotional well-being and development.

C.S.H.B. 2557 differs from the original, in a bill provision requiring the court to deny relief sought and refuse to schedule a hearing unless the court determines that the facts stated in the affidavit are adequate to support the allegation, by specifying that a court is required to take such action if the facts stated in the allegation are subsequently proven to be true, whereas the original contains no such specification.

C.S.H.B. 2557 differs from the original by authorizing a court to order reasonable possession of or access to a grandchild if the grandparent is a parent of a parent of the child and that parent has not had, rather than does not have, actual or court-ordered possession of or access to the child and by retaining the court's authority in current statute to issue such an order if that parent has been incarcerated in jail or prison during the three-month period preceding the filing of the petition or has been found by a court to be incompetent; whereas the original authorizes a court to order reasonable access to a grandchild if the grandparent is a parent of a parent of the child, that parent of the child has not had parental rights terminated, and that parent, for not less than six months before commencing the suit, has been dead or has not had, rather than does not have, actual or court-ordered possession of or access to the child, and removes the court's authority in current statute to issue such an order based on whether that parent has been incarcerated in jail or prison during the three-month period preceding the filing of the petition or has been found by a court to be incompetent.

C.S.H.B. 2557 differs from the original by requiring a court to dismiss a grandparent's suit at the initial hearing unless the grandparent proves that denial of possession of or access to the child would significantly impair the child's physical health or emotional well-being, whereas the original requires the court to dismiss the suit unless the grandparent proves 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 well-being and development.

C.S.H.B. 2557 omits a provision included in the original requiring an order granting access to a child by a grandparent that is rendered over a parent's objections to state the court's findings regarding the fitness of the parent.

C.S.H.B. 2557 omits a provision included in the original prohibiting a court from awarding possession of a child to a grandparent in a suit for access by a grandparent.

C.S.H.B. 2557 differs from the original by authorizing a court to award a parent all costs, fees, and expenses incurred by the parent to defend a suit for possession of or access to a grandchild that is filed by a grandparent who fails to meet all of the evidentiary burdens, whereas the original requires the court to award the parent such costs, fees, and expenses for such a suit.

C.S.H.B. 2557 omits provisions included in the original prohibiting a biological grandparent from requesting access to a grandchild if a court does not already have continuing exclusive jurisdiction of a suit involving the child or if the child's parent who is the competent child of the grandparent opposes the suit. The substitute differs from the original in nonsubstantive and conforming ways.