

BILL ANALYSIS

H.B. 2547
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Ordinarily, a grandparent may not be granted custody of a child until the child's parents are shown to be unfit. Interested parties assert, however, that laws relating to a grandparent's right to possession of a child do not adequately protect against a grandparent taking a child away from a fit parent. In many cases, if a child's 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 this situation 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. H.B. 2547 seeks to protect fit parents from unjustly losing custody of a child 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

H.B. 2547 amends the Family Code to remove language requiring a court, in an original suit or a suit for modification filed by a biological or adoptive grandparent requesting possession of or access to a grandchild, to deny the relief sought and dismiss the suit unless the court determines that the facts stated in the grandparent's affidavit, alleging 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 true, would be sufficient to support the relief. The bill instead requires a court, in such a suit, to deny the relief sought and refuse to schedule a hearing unless the court determines that the facts stated in that affidavit, if subsequently proven to be true, are adequate to support the allegation in the affidavit. The bill requires the court, upon such a determination, to set a time and place for the initial hearing and requires the court, if the court finds that such a suit is filed frivolously or is designed to harass a party, to assess attorney's fees as costs against the offending 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 establishes that any order resulting from a prohibited consolidated proceeding is void.

H.B. 2547 specifies, in a statutory provision establishing the conditions under which the court may order reasonable possession of or access to a grandchild by a grandparent, that the grandparent requesting possession of or access to the child overcomes the presumption that a parent acts in the best interest of the parent's child by proving by clear and convincing evidence, rather than by a preponderance of the evidence, that denial of possession of or access to the child would significantly impair the child's physical health or emotional well-being, and that the grandparent requesting possession or access is a parent of a parent of the child and that parent of the child has not had, rather than does not have, actual or court-ordered possession of or access to the child.

H.B. 2547 requires the court as a threshold issue, in a suit for possession of or access to a

grandchild by a grandparent, 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 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 and, unless the grandparent meets the evidentiary burden at the initial hearing, prohibits the court 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.

H.B. 2547 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 required statements, 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 the court from imposing a geographic restriction in a suit by a grandparent. The bill authorizes the court, if the grandparent requesting possession of or access to a child fails to meet all of the evidentiary burdens required for an order, to award the parent all costs, fees, and expenses incurred by the parent to defend the suit. The bill establishes that its provisions do not prohibit a grandparent from filing an original suit or a suit for modification for managing conservatorship of a child.

H.B. 2547 removes from a statutory provision prohibiting a biological or adoptive grandparent from requesting possession of or access to a grandchild if the child has been adopted or is the subject of a pending suit for adoption the specification that the child has been adopted or is the subject of such a suit by a person other than the child's stepparent. The bill establishes that its provisions apply equally to an original suit and a suit for modification filed by a grandparent seeking possession of or access to a grandchild.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.