

By: Thompson of Harris

H.B. No. 393

A BILL TO BE ENTITLED

1 AN ACT
2 relating to possession of or access to a child by a grandparent or
3 certain other persons.

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

5 SECTION 1. Sections 102.004(a) and (b), Family Code, are
6 amended to read as follows:

7 (a) In addition to the general standing to file suit
8 provided by Section 102.003, a grandparent, or another relative of
9 the child related within the third degree by consanguinity, may
10 file an original suit requesting managing conservatorship if there
11 is satisfactory proof to the court that:

12 (1) the order requested is necessary because the
13 child's present circumstances would significantly impair the
14 child's physical health or emotional development; or

15 (2) both parents, the surviving parent, or a ~~the~~
16 managing conservator or custodian either filed the petition or
17 consented to the suit.

18 (b) An original suit requesting possessory conservatorship
19 may not be filed by a grandparent or other person. However, the
20 court may grant a grandparent or other person deemed by the court to
21 have had substantial past contact with the child leave to intervene
22 in a pending suit filed by a person authorized to do so under this
23 subchapter if, after notice and hearing, there is satisfactory
24 proof to the court that appointment of a parent as a sole managing

1 conservator or both parents as joint managing conservators would
2 significantly impair the child's physical health or emotional
3 development.

4 SECTION 2. Section 153.432, Family Code, is amended by
5 adding Subsection (d) to read as follows:

6 (d) An affidavit submitted under Subsection (c) is not
7 required to contain expert opinion.

8 SECTION 3. Section 153.433, Family Code, is amended to read
9 as follows:

10 Sec. 153.433. POSSESSION OF OR ACCESS TO GRANDCHILD. (a)
11 The court may order reasonable possession of or access to a
12 grandchild by a grandparent if:

13 (1) at the time the relief is requested, at least one
14 biological or adoptive parent of the child has not had that parent's
15 parental rights terminated; and

16 (2) the grandparent requesting possession of or access
17 to the child overcomes the presumption that a parent acts in the
18 best interest of the parent's child by proving by a preponderance of
19 the evidence that denial of possession of or access to the child
20 would significantly impair the child's physical health or emotional
21 well-being[~~, and~~

22 [~~(3) the grandparent requesting possession of or~~
23 ~~access to the child is a parent of a parent of the child and that~~
24 ~~parent of the child.~~

25 [~~(A) has been incarcerated in jail or prison~~
26 ~~during the three-month period preceding the filing of the petition,~~

27 [~~(B) has been found by a court to be incompetent,~~

1 ~~[(C) is dead, or~~
2 ~~[(D) does not have actual or court-ordered~~
3 ~~possession of or access to the child].~~

4 (a-1) To meet the burden of proof under Subsection (a)(2), a
5 grandparent requesting possession of or access to a grandchild is
6 not required to offer expert testimony.

7 (b) An order granting possession of or access to a child by a
8 grandparent that is rendered over a parent's objections must state,
9 with specificity, that:

10 (1) at the time the relief was requested, at least one
11 biological or adoptive parent of the child had not had that parent's
12 parental rights terminated; and

13 (2) the grandparent requesting possession of or access
14 to the child has overcome the presumption that a parent acts in the
15 best interest of the parent's child by proving by a preponderance of
16 the evidence that the denial of possession of or access to the child
17 would significantly impair the child's physical health or emotional
18 well-being[~~, and~~

19 ~~[(3) the grandparent requesting possession of or~~
20 ~~access to the child is a parent of a parent of the child and that~~
21 ~~parent of the child.~~

22 ~~[(A) has been incarcerated in jail or prison~~
23 ~~during the three-month period preceding the filing of the petition,~~

24 ~~[(B) has been found by a court to be incompetent,~~

25 ~~[(C) is dead, or~~

26 ~~[(D) does not have actual or court-ordered~~
27 ~~possession of or access to the child].~~

1 SECTION 4. The changes in law made by this Act apply only to
2 a suit affecting the parent-child relationship filed on or after
3 the effective date of this Act. A suit filed before that date is
4 governed by the law in effect on the date the suit was filed, and the
5 former law is continued in effect for that purpose.

6 SECTION 5. This Act takes effect September 1, 2013.