

By: West

S.B. No. 1245

A BILL TO BE ENTITLED

AN ACT

relating to child custody evaluations and adoption evaluations conducted and testimony provided in certain suits affecting the parent-child relationship; providing penalties; authorizing fees.

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

ARTICLE 1. CHILD CUSTODY EVALUATION

SECTION 1.01. Chapter 107, Family Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. CHILD CUSTODY EVALUATION

Sec. 107.101. DEFINITIONS. (a) In this subchapter:

(1) "Child custody evaluation" means an evaluative process ordered by a court in a suit through which information, opinions, recommendations, and answers to specific questions asked by the court are:

(A) made regarding:

(i) the conservatorship of a child, including the terms and conditions of the conservatorship;

(ii) the possession of or access to a child, including the terms and conditions of possession or access;

(iii) recommendations for therapeutic services; or

(iv) any other issue affecting the best interest of a child; and

(B) provided to:

1 (i) the court;
2 (ii) the parties to the suit;
3 (iii) the parties' attorneys; and
4 (iv) any other person appointed under this
5 chapter by the court in the suit.

6 (2) "Child custody evaluator" means a person who
7 conducts a child custody evaluation under this subchapter. The term
8 includes a private child custody evaluator.

9 (3) "Department" means the Department of Family and
10 Protective Services.

11 (4) "Private child custody evaluator" means a person
12 conducting a child custody evaluation who is not conducting the
13 evaluation as an employee of or contractor with a domestic
14 relations office.

15 (5) "Supervision" means the regular review of and
16 consultation with a person. Supervision does not require the
17 constant physical presence of the person providing supervision.

18 (b) For purposes of this subchapter, a child custody
19 evaluation does not include services provided in accordance with
20 the Interstate Compact on the Placement of Children adopted under
21 Subchapter B, Chapter 162, or an evaluation conducted in accordance
22 with Section 262.114 by an employee of or contractor with the
23 department.

24 Sec. 107.102. ORDER FOR CHILD CUSTODY EVALUATION. (a) The
25 court may order in a suit the preparation of a child custody
26 evaluation concerning:

27 (1) a child who is at issue in the suit;

1 (2) a party to the suit;

2 (3) the home of any person requesting conservatorship
3 of, possession of, or access to a child who is at issue in the suit;

4 or

5 (4) any issue or question relating to the suit and
6 requested by the court or agreed to by the parties to the suit
7 before or during the evaluation process.

8 (b) An order for a child custody evaluation must include:

9 (1) the name of each person who will conduct the
10 evaluation;

11 (2) the purpose of the evaluation; and

12 (3) the specific issues or questions to be addressed
13 in the evaluation.

14 (c) Except as provided by Section 107.105, each person who
15 conducts a child custody evaluation must be qualified under Section
16 107.104.

17 (d) The department may not conduct a child custody
18 evaluation.

19 Sec. 107.103. REQUIREMENTS OF CHILD CUSTODY EVALUATION.

20 (a) A child custody evaluator shall:

21 (1) review relevant information obtained from
22 collateral sources;

23 (2) review relevant school records;

24 (3) review relevant physical and mental health records
25 of each party to the suit and each child who is at issue in the suit;

26 (4) review relevant records of the department,
27 including those maintained as part of the central registry

1 established under Section 261.002, and law enforcement agencies
2 relating to each child who is at issue in the suit, each party to the
3 suit, and each person who lives with a party to the suit;

4 (5) interview each adult living in the home that is the
5 subject of the evaluation, if applicable;

6 (6) interview, in a developmentally appropriate
7 manner, each child who is at issue in the suit and who is at least
8 four years old;

9 (7) observe each child who is at issue in the suit,
10 regardless of the age of the child;

11 (8) observe each party to the suit with each child at
12 issue in the suit, including, as appropriate, during supervised
13 visitation, unless contact between a party and a child is
14 prohibited by court order or the person conducting the evaluation
15 has good cause for not making the observation and states the good
16 cause in writing provided to the parties to the suit before the
17 completion of the evaluation;

18 (9) assess the relationship between each child at
19 issue in the suit and each party seeking possession of or access to
20 the child, if applicable; and

21 (10) complete any other tasks ordered by the court or
22 agreed to by the parties.

23 (b) In addition to the requirements of a child custody
24 evaluation in Subsection (a), a court issuing an order for an
25 evaluation may order the child custody evaluator to:

26 (1) visit the home of a party to the suit;

27 (2) conduct a joint interview of the parties to the

1 suit;

2 (3) observe a child who is at issue in the suit with
3 each adult who lives in the home that is the subject of the
4 evaluation;

5 (4) interview or observe a child who is not at issue in
6 the suit but who lives on a full-time or part-time basis in the home
7 that is the subject of the evaluation;

8 (5) conduct valid and reliable psychological testing;

9 or

10 (6) review any other information that the court
11 determines is relevant.

12 Sec. 107.104. CHILD CUSTODY EVALUATOR: MINIMUM
13 QUALIFICATIONS. (a) In this section:

14 (1) "Full-time experience" means a period during which
15 a person works at least 30 hours per week.

16 (2) "Human services field of study" means a field of
17 study designed to prepare a person in the disciplined application
18 of counseling, family therapy, psychology, or social work values,
19 principles, and methods.

20 (b) To be qualified to conduct a child custody evaluation, a
21 person must:

22 (1) have at least a master's degree from an accredited
23 college or university in a human services field of study and a
24 license to practice in this state as a social worker, professional
25 counselor, marriage and family therapist, or psychologist and:

26 (A) after completing the degree required under
27 this subdivision, have two years of full-time experience or

1 equivalent part-time experience under professional supervision
2 during which the person performed functions involving the
3 evaluation of physical, intellectual, social, and psychological
4 functioning and needs and the potential of the social and physical
5 environment, both present and prospective, to meet those needs; and

6 (B) after obtaining the license required under
7 this subdivision, have participated in the performance of at least
8 10 court-ordered child custody evaluations under the supervision of
9 a person qualified under this section;

10 (2) have graduated medical school and be licensed to
11 practice medicine in this state and board certified in psychiatry
12 and:

13 (A) after completing medical school, have two
14 years of full-time experience or equivalent part-time experience
15 under professional supervision during which the person performed
16 functions involving the evaluation of physical, intellectual,
17 social, and psychological functioning and needs and the potential
18 of the social and physical environment, both present and
19 prospective, to meet those needs; and

20 (B) after obtaining the license and
21 certification required under this subdivision, have participated
22 in the performance of at least 10 court-ordered child custody
23 evaluations under the supervision of a person qualified under this
24 section;

25 (3) meet the requirements of Subdivision (1)(A) or
26 (2)(A) and be practicing under the direct supervision of a person
27 qualified under this section to complete at least 10 court-ordered

1 child custody evaluations under supervision; or

2 (4) be employed by or under contract with a domestic
3 relations office, provided that the person conducts child custody
4 evaluations relating only to families ordered to participate in
5 child custody evaluations conducted by that office.

6 (c) In addition to the other qualifications prescribed by
7 this section, a person must complete at least eight hours of family
8 violence dynamics training provided by a family violence service
9 provider to be qualified to conduct a child custody evaluation.

10 (d) In addition to the other qualifications prescribed by
11 this section, a person who conducts a child custody evaluation as an
12 employee of or contractor with a domestic relations office must
13 meet any qualifications required by that office.

14 Sec. 107.105. EXCEPTION TO QUALIFICATIONS REQUIRED TO
15 CONDUCT CHILD CUSTODY EVALUATION. In a county with a population of
16 less than 500,000, if a court finds that a qualified person is not
17 available to conduct a child custody evaluation in a timely manner,
18 the court may authorize a person the court determines to be
19 otherwise qualified to conduct the evaluation if the parties to the
20 suit agree to the appointment in writing.

21 Sec. 107.106. PRIVATE CHILD CUSTODY EVALUATOR: SPECIALIZED
22 KNOWLEDGE. A private child custody evaluator must demonstrate to
23 the court that the evaluator has sufficient specialized knowledge,
24 education, and training to conduct a child custody evaluation. In
25 making that demonstration, the evaluator must demonstrate that the
26 evaluator has completed at least 40 hours of education and training
27 on the following topics:

1 (1) the psychological and developmental needs of a
2 child, specifically as those needs relate to decisions about
3 conservatorship of, possession of, and access to the child;

4 (2) family dynamics, including parent-child
5 relationships, blended families, and extended family
6 relationships;

7 (3) the effects of divorce, domestic violence, abuse
8 and neglect, substance abuse, and parental conflict on the
9 psychological and developmental needs of a child;

10 (4) interviewing and assessing adults, children, and
11 infants;

12 (5) gathering information from collateral sources;

13 (6) collecting and assessing data;

14 (7) recognizing the limits of the reliability and
15 validity of data;

16 (8) addressing issues relating to mental health,
17 medication use, and physical and learning disabilities;

18 (9) applying to all parties comparable interview,
19 assessment, and testing procedures that meet generally accepted
20 clinical, diagnostic, forensic, scientific, and professional
21 standards;

22 (10) consulting with additional experts as needed;

23 (11) assessing parenting capacity and constructing
24 effective parenting plans;

25 (12) ethical standards relating to a child custody
26 evaluator's professional license and other applicable professional
27 guidelines;

1 (13) the legal standards and processes applicable in a
2 suit;

3 (14) understanding the distinctions in the roles of
4 evaluator, mediator, therapist, consulting expert, testifying
5 expert, parenting coordinator, and parenting facilitator;

6 (15) writing reports and making recommendations;

7 (16) mandatory reporting requirements and limitations
8 on confidentiality;

9 (17) preparing for and testifying at a court
10 proceeding;

11 (18) maintaining professional neutrality and
12 objectivity when conducting a child custody evaluation; and

13 (19) the importance of assessing the health, safety,
14 welfare, and best interest of a child.

15 Sec. 107.107. CHILD CUSTODY EVALUATOR: CONFLICTS OF
16 INTEREST AND BIAS. (a) Before accepting appointment as a child
17 custody evaluator in a suit, a person must disclose to the court,
18 each attorney for a party to the suit, any attorney for a child who
19 is at issue in the suit, and any party to the suit who does not have
20 an attorney:

21 (1) any conflict of interest that the person believes
22 that the person has with a party to the suit or a child who is at
23 issue in the suit;

24 (2) any previous knowledge that the person has of a
25 party to the suit or a child who is at issue in the suit;

26 (3) any pecuniary relationship that the person
27 believes that the person has with an attorney in the suit;

1 (4) any relationship of confidence or trust that the
2 person believes that the person has with an attorney in the suit;
3 and

4 (5) any other information relating to the person's
5 relationship with an attorney in the suit that a reasonable,
6 prudent person would believe would affect the ability of the person
7 to act impartially in conducting a child custody evaluation.

8 (b) The court may not appoint a person as a child custody
9 evaluator in a suit if the person makes any of the disclosures in
10 Subsection (a) unless:

11 (1) the court finds that:

12 (A) the person has no conflict of interest with a
13 party to the suit or a child who is at issue in the suit;

14 (B) the person's previous knowledge of a party to
15 the suit or a child who is at issue in the suit is not relevant;

16 (C) the person does not have a pecuniary
17 relationship with an attorney in the suit; and

18 (D) the person does not have a relationship of
19 trust or confidence with an attorney in the suit; or

20 (2) the parties and any attorney for a child who is at
21 issue in the suit agree in writing to the person's appointment as
22 the child custody evaluator.

23 (c) After being appointed as a child custody evaluator in a
24 suit, a person shall immediately disclose to the court, each
25 attorney for a party to the suit, any attorney for a child who is at
26 issue in the suit, and any party to the suit who does not have an
27 attorney any discovery of:

1 (1) a conflict of interest that the person believes
2 that the person has with a party to the suit or a child who is at
3 issue in the suit; and

4 (2) previous knowledge that the person has of a party
5 to the suit or a child who is at issue in the suit.

6 (d) An person shall resign from the person's appointment as
7 a child custody evaluator in a suit if the person makes any of the
8 disclosures in Subsection (c) unless:

9 (1) the court finds that:

10 (A) the person has no conflict of interest with a
11 party to the suit or a child who is at issue in the suit; and

12 (B) the person's previous knowledge of a party to
13 the suit or a child who is at issue in the suit is not relevant; or

14 (2) the parties and any attorney for a child who is at
15 issue in the suit agree in writing to the person's continued
16 appointment as the child custody evaluator.

17 (e) A person may not be appointed as a child custody
18 evaluator in a suit if the person has worked in a professional
19 capacity with a party to the suit, a child who is at issue in the
20 suit, or a member of the party's or child's family who is involved in
21 the suit. This subsection does not apply to a person who has worked
22 in a professional capacity with a party, a child, or a member of the
23 party's or child's family only as a teacher of parenting skills in a
24 group setting. For purposes of this subsection, "family" has the
25 meaning assigned by Section 71.003.

26 Sec. 107.108. COMMUNICATIONS AND RECORDKEEPING OF CHILD
27 CUSTODY EVALUATOR. (a) Notwithstanding any rule, standard of

1 care, or privilege applicable to the professional license held by a
2 child custody evaluator, a communication made by a participant in a
3 child custody evaluation is subject to disclosure and may be
4 offered in any judicial or administrative proceeding, if otherwise
5 admissible under the rules of evidence.

6 (b) A child custody evaluator shall keep a detailed record
7 regarding interviews that the evaluator conducts, observations
8 that the evaluator makes, and substantive interactions that the
9 evaluator has as part of a child custody evaluation.

10 (c) Except for information the disclosure of which is
11 governed by Section 261.201(f-2) or the disclosure of which is
12 prohibited by a court order, a private child custody evaluator
13 shall, after completion of an evaluation, make available in a
14 reasonable time the evaluator's records relating to the evaluation
15 on the written request of an attorney for a party, a party who does
16 not have an attorney, or any other person appointed by the court
17 under this chapter in the suit in which the evaluator conducted the
18 evaluation.

19 (d) Except for information the disclosure of which is
20 governed by Section 261.201(f-2), a child custody evaluator who
21 conducted a child custody evaluation as an employee of or
22 contractor with a domestic relations office shall, after completion
23 of the evaluation, make available the evaluator's records to the
24 persons described in Subsection (c) on written request according to
25 the rules and policies of the office.

26 (e) A person maintaining records subject to disclosure
27 under this section may charge a reasonable fee for producing copies

1 of the records.

2 (f) A private child custody evaluator shall retain records
3 relating to a child custody evaluation conducted by the evaluator
4 until the later of the seventh anniversary of the date the evaluator
5 filed the evaluator's report on the evaluation with the court or the
6 ending date of the retention period established by the licensing
7 authority that issues the professional license held by the
8 evaluator.

9 (g) A domestic relations office shall retain records
10 relating to a child custody evaluation conducted by a child custody
11 evaluator acting as an employee of or contractor with the office for
12 the retention period established by the office.

13 Sec. 107.109. CHILD CUSTODY EVALUATION REPORT REQUIRED.

14 (a) For each child custody evaluation, the child custody evaluator
15 who conducted the evaluation shall prepare a report containing the
16 evaluator's findings, opinions, recommendations, and answers to
17 specific questions asked by the court relating to the evaluation.

18 (b) A report prepared under this section must include the
19 name, license number, and basis for qualification of each child
20 custody evaluator who conducted any portion of the evaluation.

21 Sec. 107.110. GENERAL PROVISIONS APPLICABLE TO CONDUCT OF

22 CHILD CUSTODY EVALUATOR AND PREPARATION OF REPORT. (a) Unless
23 otherwise directed by a court or prescribed by this subchapter, a
24 child custody evaluator's actions in conducting a child custody
25 evaluation must be in conformance with the professional standard of
26 care applicable to the evaluator's licensure and any administrative
27 rules, ethical standards, or guidelines adopted by the licensing

1 authority that licenses the evaluator.

2 (b) In addition to the requirements prescribed by this
3 subchapter, a court may impose requirements or adopt local rules
4 applicable to a child custody evaluation or a child custody
5 evaluator.

6 (c) A child custody evaluator shall follow evidence-based
7 practice methods and make use of current best evidence in making
8 assessments and recommendations.

9 (d) A child custody evaluator shall disclose to each
10 attorney of record any communication regarding a substantive issue
11 between the evaluator and an attorney of record representing a
12 party in a disputed suit. This subsection does not apply to a
13 communication between a child custody evaluator and an amicus
14 attorney.

15 (e) To the extent possible, a child custody evaluator shall
16 conduct interviews and make observations in a balanced manner so
17 that if the evaluator interviews and observes a child at issue in
18 the suit while in the care of one party to the suit, the evaluator
19 also interviews and observes the child while in the care of the
20 other parties to the suit.

21 (f) To the extent possible, a child custody evaluator shall
22 verify each statement of fact pertinent to a child custody
23 evaluation and shall note the sources of verification and
24 information in the child custody evaluation report prepared under
25 Section 107.109.

26 (g) A child custody evaluator shall state the basis for and
27 the sources of the evaluator's conclusions or recommendations in

1 the child custody evaluation report prepared under Section 107.109.

2 (h) A child custody evaluation must be conducted in
3 compliance with this subchapter, regardless of whether the
4 evaluation is conducted by a single child custody evaluator or
5 multiple evaluators working separately or together.

6 Sec. 107.111. INTRODUCTION AND PROVISION OF CHILD CUSTODY
7 EVALUATION REPORT. (a) Disclosure to the court or jury of the
8 contents of a child custody evaluation report prepared under
9 Section 107.109 is subject to the rules of evidence.

10 (b) Unless the court has issued an order restricting
11 disclosure, a private child custody evaluator shall provide to the
12 attorneys of the parties to a suit, any party who does not have an
13 attorney, and any other person appointed by the court under this
14 chapter in the suit a copy of the child custody evaluation report
15 before the earlier of:

16 (1) the seventh day after the date the child custody
17 report is completed; or

18 (2) the 30th day before the date of the commencement of
19 the trial, if applicable.

20 (c) A child custody evaluator who conducts a child custody
21 evaluation as an employee of or contractor with a domestic
22 relations office shall provide to the attorneys of the parties to a
23 suit and any other person appointed by the court in the suit under
24 this chapter a copy of the child custody evaluation report in the
25 manner provided by Subsection (b). The evaluator shall provide a
26 copy of the report to a party to the suit as provided by the rules
27 and policies of the office or by a court order.

1 (d) A trial in a suit in which a child custody evaluation is
2 conducted may not begin before the 30th day after the date the child
3 custody evaluator provides copies of the child custody evaluation
4 report as provided by this section unless the parties to the suit
5 agree to an earlier date.

6 Sec. 107.112. CHILD CUSTODY EVALUATION FEE. If the court
7 orders a child custody evaluation to be conducted, the court shall
8 award the child custody evaluator a reasonable fee for the
9 performance of the evaluation that shall be imposed in the form of a
10 money judgment and paid directly to the evaluator. The evaluator
11 may enforce the judgment for the fee by any means available under
12 law for civil judgments.

13 Sec. 107.113. ACCESS TO RECORDS; OFFENSE. (a) A child
14 custody evaluator is entitled to obtain from the department any
15 report, record, working paper, or other information in the
16 possession, custody, or control of the department, including
17 information that is confidential under Section 40.005, Human
18 Resources Code, or other law, that pertains to an individual who is
19 a subject of the evaluation.

20 (b) Any confidential information obtained by a child
21 custody evaluator under this section remains confidential, subject
22 to Subsection (c), and is not subject to disclosure under Chapter
23 552, Government Code, or to subpoena or discovery.

24 (c) A child custody evaluator may disclose confidential
25 information obtained under this section in a child custody
26 evaluation report prepared under Section 107.109 only to the extent
27 that the evaluator determines that the information is relevant to

1 the evaluator's recommendations in the report.

2 (d) Except as provided by Subsection (c) or by an order of
3 the court that appointed the child custody evaluator, a child
4 custody evaluator commits an offense if the evaluator releases or
5 discloses confidential information obtained from the department
6 under this section. An offense under this section is a Class A
7 misdemeanor.

8 ARTICLE 2. ADOPTION EVALUATION

9 SECTION 2.01. Chapter 107, Family Code, is amended by
10 adding Subchapter F to read as follows:

11 SUBCHAPTER F. ADOPTION EVALUATION

12 Sec. 107.151. DEFINITIONS. In this subchapter:

13 (1) "Adoption evaluation" means a pre-placement or
14 post-placement evaluative process through which information and
15 recommendations regarding adoption of a child may be made to the
16 court, the parties, and the parties' attorneys. The term does not
17 include services provided in accordance with the Interstate Compact
18 on the Placement of Children adopted under Subchapter B, Chapter
19 162, or an evaluation conducted in accordance with Section 262.114
20 by an employee of or contractor with the department.

21 (2) "Adoption evaluator" means a person who conducts
22 an adoption evaluation under this subchapter.

23 (3) "Department" means the Department of Family and
24 Protective Services.

25 (4) "Supervision" means the regular review of and
26 consultation with a person. Supervision does not require the
27 constant physical presence of the person providing supervision.

1 Sec. 107.152. ORDER FOR ADOPTION EVALUATION. (a) The court
2 shall order the performance of an adoption evaluation to evaluate
3 each party who requests termination of the parent-child
4 relationship or an adoption in a suit for:

5 (1) termination of the parent-child relationship in
6 which a person other than a parent may be appointed managing
7 conservator of a child; or

8 (2) an adoption.

9 (b) The adoption evaluation required under Subsection (a)
10 must include an evaluation of the circumstances and the condition
11 of the home and social environment of any person requesting to adopt
12 a child who is at issue in the suit.

13 (c) If the department is not a party to the suit, the court
14 may appoint a qualified individual, a qualified private entity, or
15 a domestic relations office to conduct the adoption evaluation. If
16 the department is a party to the suit, the court may also appoint a
17 state agency, including the department, to conduct the adoption
18 evaluation.

19 (d) Except as provided by Section 107.156, a person who
20 conducts an adoption evaluation must be qualified under Section
21 107.155.

22 Sec. 107.153. REQUIREMENTS FOR PRE-PLACEMENT PART OF
23 ADOPTION EVALUATION. (a) This section does not apply to the
24 pre-placement part of an adoption evaluation conducted by a
25 licensed child-placing agency or the department. The pre-placement
26 part of an adoption evaluation conducted by a licensed
27 child-placing agency or the department is governed by rules adopted

1 by the executive commissioner of the Health and Human Services
2 Commission, including rules adopted under Chapter 42, Human
3 Resources Code.

4 (b) Except as provided by Subsection (f), a person who
5 conducts an adoption evaluation must file with the court a report
6 containing the person's findings and conclusions made before a
7 child who is at issue in the suit to which the subject of the
8 evaluation is a party begins residence in a prospective adoptive
9 home.

10 (c) The report required under Subsection (b) must be filed
11 with the court before the court renders a final order for
12 termination of the parent-child relationship.

13 (d) The costs of the pre-placement part of an adoption
14 evaluation in a suit for adoption must be paid by the prospective
15 adoptive parent.

16 (e) Unless otherwise agreed to by the court, the
17 pre-placement part of an adoption evaluation must comply with the
18 minimum requirements for the pre-placement part of an adoption
19 evaluation under rules adopted by the executive commissioner of the
20 Health and Human Services Commission.

21 (f) In a suit filed after a child who is at issue in the suit
22 begins residence in a prospective adoptive home, the report
23 required under this section and the report required under Section
24 107.154 may be combined in a single report.

25 Sec. 107.154. REQUIREMENTS FOR POST-PLACEMENT PART OF
26 ADOPTION EVALUATION. (a) An adoption evaluator shall file with the
27 court a report containing the person's findings and conclusions

1 made after a child who is at issue in the suit to which the subject
2 of the evaluation is a party begins residence in a prospective
3 adoptive home.

4 (b) The report required under Subsection (a) must be filed
5 with the court before the court renders a final order of adoption.

6 (c) Unless otherwise agreed to by the court, the
7 post-placement part of an adoption evaluation must comply with the
8 minimum requirements for the post-placement part of an adoption
9 evaluation under rules adopted by the executive commissioner of the
10 Health and Human Services Commission.

11 Sec. 107.155. ADOPTION EVALUATOR: MINIMUM QUALIFICATIONS.

12 (a) In this section:

13 (1) "Full-time experience" means a period during which
14 a person works at least 30 hours per week.

15 (2) "Human services field of study" means a field of
16 study designed to prepare a person in the disciplined application
17 of counseling, family therapy, psychology, or social work values,
18 principles, and methods.

19 (b) To be qualified to conduct an adoption evaluation, a
20 person must:

21 (1) have a degree from an accredited college or
22 university in a human services field of study and a license to
23 practice in this state as a social worker, professional counselor,
24 marriage and family therapist, or psychologist and:

25 (A) be qualified as a child custody evaluator
26 under Section 107.104;

27 (B) have one year of full-time experience working

1 at a child-placing agency conducting child-placing activities; or
2 (C) be practicing under the direct supervision of
3 a person qualified under this section to conduct adoption
4 evaluations; or

5 (2) be employed by a domestic relations office,
6 provided that the person conducts adoption evaluations relating
7 only to families ordered to participate in adoption evaluations
8 conducted by the office.

9 (c) In addition to the other qualifications prescribed by
10 this section, a person must complete at least eight hours of family
11 violence dynamics training provided by a family violence service
12 provider to be qualified to conduct an adoption evaluation.

13 Sec. 107.156. EXCEPTION TO QUALIFICATIONS REQUIRED TO
14 CONDUCT ADOPTION EVALUATION. If a court finds that a qualified
15 person is not available to conduct an adoption evaluation in the
16 county in which the court presides, the court may authorize a person
17 the court determines to be otherwise qualified to conduct the
18 evaluation.

19 Sec. 107.157. ADOPTION EVALUATOR: CONFLICTS OF INTEREST AND
20 BIAS. (a) Before accepting appointment as an adoption evaluator in
21 a suit, a person must disclose to the court, each attorney for a
22 party to the suit, any attorney for a child who is at issue in the
23 suit, and any party to the suit who does not have an attorney:

24 (1) any conflict of interest that the person believes
25 that the person has with a party to the suit or a child who is at
26 issue in the suit;

27 (2) any previous knowledge that the person has of a

1 party to the suit or a child who is at issue in the suit;

2 (3) any pecuniary relationship that the person
3 believes that the person has with an attorney in the suit;

4 (4) any relationship of confidence or trust that the
5 person believes that the person has with an attorney in the suit;
6 and

7 (5) any other information relating to the person's
8 relationship with an attorney in the suit that a reasonable,
9 prudent person would believe would affect the ability of the person
10 to act impartially in conducting an adoption evaluation.

11 (b) The court may not appoint a person as an adoption
12 evaluator in a suit if the person makes any of the disclosures in
13 Subsection (a) unless:

14 (1) the court finds that:

15 (A) the person has no conflict of interest with a
16 party to the suit or a child who is at issue in the suit;

17 (B) the person's previous knowledge of a party to
18 the suit or a child who is at issue in the suit is not relevant;

19 (C) the person does not have a pecuniary
20 relationship with an attorney in the suit; and

21 (D) the person does not have a relationship of
22 trust or confidence with an attorney in the suit; or

23 (2) the parties and any attorney for a child who is at
24 issue in the suit agree in writing to the person's appointment as
25 the adoption evaluator.

26 (c) After being appointed as an adoption evaluator in a
27 suit, a person shall immediately disclose to the court, each

1 attorney for a party to the suit, any attorney for a child who is at
2 issue in the suit, and any party to the suit who does not have an
3 attorney any discovery of:

4 (1) a conflict of interest that the person believes
5 that the person has with a party to the suit or a child who is at
6 issue in the suit; and

7 (2) previous knowledge that the person has of a party
8 to the suit or a child who is at issue in the suit.

9 (d) A person shall resign from the person's appointment as
10 an adoption evaluator in a suit if the person makes any of the
11 disclosures in Subsection (c) unless:

12 (1) the court finds that:

13 (A) the person has no conflict of interest with a
14 party to the suit or a child who is at issue in the suit; and

15 (B) the person's previous knowledge of a party to
16 the suit or a child who is at issue in the suit is not relevant; or

17 (2) the parties and any attorney for a child who is at
18 issue in the suit agree in writing to the person's continued
19 appointment as the adoption evaluator.

20 (e) A person may not be appointed as an adoption evaluator
21 in a suit if the person has worked in a professional capacity with a
22 party to the suit, a child who is at issue in the suit, or a member
23 of the party's or child's family who is involved in the suit. This
24 subsection does not apply to a person who has worked in a
25 professional capacity with a party, a child, or a member of the
26 party's or child's family only as a teacher of parenting skills in a
27 group setting. For purposes of this subsection, family has the

1 meaning assigned by Section 71.003.

2 Sec. 107.158. GENERAL PROVISIONS APPLICABLE TO CONDUCT OF
3 ADOPTION EVALUATOR AND PREPARATION OF REPORTS. (a) Unless
4 otherwise directed by a court or prescribed by this subchapter, an
5 adoption evaluator's actions in conducting an adoption evaluation
6 must be in conformance with the professional standard of care
7 applicable to the evaluator's licensure and any administrative
8 rules, ethical standards, or guidelines adopted by the licensing
9 authority that licenses the evaluator.

10 (b) In addition to the requirements prescribed by this
11 subchapter, a court may impose requirements or adopt local rules
12 applicable to an adoption evaluation or an adoption evaluator.

13 (c) An adoption evaluator shall follow evidence-based
14 practice methods and make use of current best evidence in making
15 assessments and recommendations.

16 (d) An adoption evaluator shall disclose to each attorney of
17 record any communication regarding a substantive issue between the
18 evaluator and an attorney of record representing a party in a
19 disputed suit. This subsection does not apply to a communication
20 between an adoption evaluator and an amicus attorney.

21 (e) To the extent possible, an adoption evaluator shall
22 verify each statement of fact pertinent to an adoption evaluation
23 and shall note the sources of verification and information in any
24 report prepared on the evaluation.

25 (f) An adoption evaluator shall state the basis for the
26 evaluator's conclusions or recommendations in any report prepared
27 on the evaluation.

1 (g) Any report prepared on an adoption evaluation must
2 include the name, license number, and basis for qualification of
3 each adoption evaluator who conducted any portion of the
4 evaluation.

5 Sec. 107.159. REPORTING CERTAIN PLACEMENTS FOR ADOPTION.
6 An adoption evaluator shall report to the department any adoptive
7 placement that appears to have been made by someone other than a
8 licensed child-placing agency or a child's parent or managing
9 conservator.

10 Sec. 107.160. ADOPTION EVALUATION REPORT REQUIRED. An
11 adoption evaluator shall file with the court on a date set by the
12 court a report containing the evaluator's findings and conclusions
13 relating to the evaluation. The report shall be made a part of the
14 record of the suit.

15 Sec. 107.161. PROSPECTIVE ADOPTIVE PARENTS ENTITLED TO
16 RECEIVE COPY OF ADOPTION EVALUATION REPORT. In a suit for adoption,
17 a copy of the report prepared under Section 107.160 must be made
18 available to the prospective adoptive parents before the court
19 renders a final order of adoption.

20 Sec. 107.162. INTRODUCTION AND PROVISION OF ADOPTION
21 EVALUATION REPORT AND TESTIMONY RELATING TO ADOPTION EVALUATION.

22 (a) Disclosure to the jury of the contents of an adoption
23 evaluation report prepared under Section 107.160 is subject to the
24 rules of evidence.

25 (b) An adoption evaluator shall provide to the attorneys of
26 the parties to a suit and any other person appointed by the court
27 under this chapter in the suit a copy of the report prepared under

1 Section 107.160 before the earlier of:

2 (1) the seventh day after the date the adoption
3 evaluation report is completed; or

4 (2) the 30th day before the date of the commencement of
5 the trial, if applicable.

6 (c) The court may compel the attendance of witnesses
7 necessary for the proper disposition of a suit, including a
8 representative of an agency that conducts an adoption evaluation,
9 who may be compelled to testify.

10 Sec. 107.163. ADOPTION EVALUATION FEE. If the court orders
11 an adoption evaluation to be conducted, the court shall award the
12 adoption evaluator a reasonable fee for the performance of the
13 evaluation that shall be imposed in the form of a money judgment and
14 paid directly to the evaluator. The evaluator may enforce the
15 judgment for the fee by any means available under law for civil
16 judgments.

17 Sec. 107.164. ACCESS TO RECORDS; OFFENSE. (a) An adoption
18 evaluator is entitled to obtain from the department any report,
19 record, working paper, or other information in the possession,
20 custody, or control of the department, including information that
21 is confidential under Section 40.005, Human Resources Code, or
22 other law, that pertains to a person who is a subject of the
23 evaluation.

24 (b) Any confidential information obtained by an adoption
25 evaluator under this section remains confidential, subject to
26 Subsection (c), and is not subject to disclosure under Chapter 552,
27 Government Code, or to subpoena or discovery.

1 (c) An adoption evaluator may disclose confidential
 2 information obtained under this section in a report prepared on the
 3 evaluation only to the extent that the evaluator determines that
 4 the information is relevant to the evaluator's recommendations in
 5 the report.

6 (d) Except as provided by Subsection (c) or by an order of
 7 the court that appointed the adoption evaluator, an adoption
 8 evaluator commits an offense if the evaluator releases or discloses
 9 confidential information obtained from the department under this
 10 section. An offense under this section is a Class A misdemeanor.

11 ARTICLE 3. TESTIMONY IN SUITS AFFECTING THE PARENT-CHILD
 12 RELATIONSHIP

13 SECTION 3.01. Chapter 104, Family Code, is amended by
 14 adding Section 104.008 to read as follows:

15 Sec. 104.008. CERTAIN TESTIMONY PROHIBITED. (a) A person
 16 may not offer an expert opinion relating to the conservatorship of
 17 or possession of or access to a child at issue in a suit unless the
 18 person:

19 (1) is appointed as the child's guardian ad litem under
 20 Subchapter A, Chapter 107; or

21 (2) has conducted a child custody evaluation relating
 22 to the child under Subchapter E, Chapter 107.

23 (b) In a disputed suit, a mental health professional may not
 24 make a recommendation regarding the conservatorship of or
 25 possession of or access to a child at issue in the suit unless the
 26 mental health professional:

27 (1) is appointed as the child's guardian ad litem under

1 Subchapter A, Chapter 107; or

2 (2) has conducted a child custody evaluation relating
3 to the child under Subchapter E, Chapter 107, and has evaluated all
4 of the parties to the suit.

5 (c) Subsection (b) does not apply to a mental health
6 professional who is providing other relevant information and
7 opinions relating to any party that the mental health professional
8 has evaluated.

9 ARTICLE 4. CONFORMING AMENDMENTS RELATING TO CHILD CUSTODY
10 EVALUATIONS AND ADOPTION EVALUATIONS

11 SECTION 4.01. The heading to Chapter 107, Family Code, is
12 amended to read as follows:

13 CHAPTER 107. SPECIAL APPOINTMENTS, CHILD CUSTODY EVALUATIONS, AND
14 ADOPTION EVALUATIONS [~~AND SOCIAL STUDIES~~]

15 SECTION 4.02. Section 153.605(d), Family Code, is amended
16 to read as follows:

17 (d) An individual appointed as a parenting coordinator may
18 not serve in any nonconfidential capacity in the same case,
19 including serving as an amicus attorney, guardian ad litem, child
20 custody [~~or social study~~] evaluator, or adoption evaluator under
21 Chapter 107, as a friend of the court under Chapter 202, or as a
22 parenting facilitator under this subchapter.

23 SECTION 4.03. Section 162.0025, Family Code, is amended to
24 read as follows:

25 Sec. 162.0025. ADOPTION SOUGHT BY MILITARY SERVICE MEMBER.
26 In a suit for adoption, the fact that a petitioner is a member of the
27 armed forces of the United States, a member of the Texas National

1 Guard or the National Guard of another state, or a member of a
2 reserve component of the armed forces of the United States may not
3 be considered by the court, or any person performing an adoption
4 evaluation [~~a social study~~] or home screening, as a negative factor
5 in determining whether the adoption is in the best interest of the
6 child or whether the petitioner would be a suitable parent.

7 SECTION 4.04. Section 162.003, Family Code, is amended to
8 read as follows:

9 Sec. 162.003. ADOPTION EVALUATION [~~PRE-ADOPTIVE AND~~
10 ~~POST-PLACEMENT SOCIAL STUDIES~~]. In a suit for adoption, an
11 adoption evaluation [~~pre-adoptive and post-placement social~~
12 ~~studies~~] must be conducted as provided in Chapter 107.

13 SECTION 4.05. Section 162.0045, Family Code, is amended to
14 read as follows:

15 Sec. 162.0045. PREFERENTIAL SETTING. The court shall grant
16 a motion for a preferential setting for a final hearing on an
17 adoption and shall give precedence to that hearing over all other
18 civil cases not given preference by other law if the adoption
19 evaluation [~~social study~~] has been filed and the criminal history
20 for the person seeking to adopt the child has been obtained.

21 SECTION 4.06. Section 203.004(a), Family Code, is amended
22 to read as follows:

23 (a) A domestic relations office may:

24 (1) collect and disburse child support payments that
25 are ordered by a court to be paid through a domestic relations
26 registry;

27 (2) maintain records of payments and disbursements

1 made under Subdivision (1);

2 (3) file a suit, including a suit to:

3 (A) establish paternity;

4 (B) enforce a court order for child support or
5 for possession of and access to a child; and

6 (C) modify or clarify an existing child support
7 order;

8 (4) provide an informal forum in which alternative
9 dispute resolution is used to resolve disputes under this code;

10 (5) prepare a court-ordered child custody evaluation
11 or adoption evaluation [~~social study~~] under Chapter 107;

12 (6) represent a child as an amicus attorney, an
13 attorney ad litem, or a guardian ad litem in a suit in which:

14 (A) termination of the parent-child relationship
15 is sought; or

16 (B) conservatorship of or access to a child is
17 contested;

18 (7) serve as a friend of the court;

19 (8) provide predivorce counseling ordered by a court;

20 (9) provide community supervision services under
21 Chapter 157;

22 (10) provide information to assist a party in
23 understanding, complying with, or enforcing the party's duties and
24 obligations under Subdivision (3);

25 (11) provide, directly or through a contract,
26 visitation services, including supervision of court-ordered
27 visitation, visitation exchange, or other similar services;

1 (12) issue an administrative writ of withholding under
2 Subchapter F, Chapter 158; and

3 (13) provide parenting coordinator services under
4 Chapter 153.

5 SECTION 4.07. Section 203.005(a), Family Code, is amended
6 to read as follows:

7 (a) The administering entity may authorize a domestic
8 relations office to assess and collect:

9 (1) an initial operations fee not to exceed \$15 to be
10 paid to the domestic relations office on each filing of an original
11 suit, motion for modification, or motion for enforcement;

12 (2) in a county that has a child support enforcement
13 cooperative agreement with the Title IV-D agency, an initial child
14 support service fee not to exceed \$36 to be paid to the domestic
15 relations office on the filing of an original suit;

16 (3) a reasonable application fee to be paid by an
17 applicant requesting services from the office;

18 (4) a reasonable attorney's fee and court costs
19 incurred or ordered by the court;

20 (5) a monthly service fee not to exceed \$3 to be paid
21 annually in advance by a managing conservator and possessory
22 conservator for whom the domestic relations office provides child
23 support services;

24 (6) community supervision fees as provided by Chapter
25 157 if community supervision officers are employed by the domestic
26 relations office;

27 (7) a reasonable fee for preparation of a

1 court-ordered child custody evaluation or adoption evaluation
2 ~~[social study]~~;

3 (8) in a county that provides visitation services
4 under Sections 153.014 and 203.004 a reasonable fee to be paid to
5 the domestic relations office at the time the visitation services
6 are provided;

7 (9) a fee to reimburse the domestic relations office
8 for a fee required to be paid under Section 158.503(d) for filing an
9 administrative writ of withholding;

10 (10) a reasonable fee for parenting coordinator
11 services; and

12 (11) a reasonable fee for alternative dispute
13 resolution services.

14 SECTION 4.08. Section 261.201, Family Code, is amended by
15 adding Subsection (f-2) to read as follows:

16 (f-2) Not later than the 31st day after the date the person
17 makes a request for information, the department shall provide to a
18 child custody evaluator or adoption evaluator appointed under
19 Chapter 107 any report, record, working paper, or other information
20 in the possession, custody, or control of the department that
21 pertains to an individual who is a subject of the evaluation.
22 Confidential information provided under this subsection remains
23 confidential, and the evaluator may disclose the information only
24 as provided by Section 107.113 or 107.164 or by an order of the
25 court that appointed the evaluator.

26 SECTION 4.09. Section 411.1285(c), Government Code, is
27 amended to read as follows:

1 (c) Criminal history record information requested under
2 this section, including information included in a report of a child
3 custody evaluation or adoption evaluation [~~social study~~] filed
4 under Chapter 107 [~~Section 107.054~~], Family Code, may not be
5 released or disclosed by a domestic relations office to a person
6 other than the court ordering the child custody evaluation or
7 adoption evaluation [~~social study~~] except on court order or with
8 the consent of the person who is the subject of the criminal history
9 record information.

10 SECTION 4.10. Section 152.06331(f), Human Resources Code,
11 is amended to read as follows:

12 (f) Fees for the preparation of a court-ordered child
13 custody evaluation or adoption evaluation [~~social study~~] or any
14 other services provided by the domestic relations office, other
15 than services related to the collection of child support, must be
16 reasonable and imposed on a sliding scale according to the
17 financial resources of the parties using the services.

18 ARTICLE 5. REPEALER

19 SECTION 5.01. Subchapter D, Chapter 107, Family Code, is
20 repealed.

21 ARTICLE 6. TRANSITION AND EFFECTIVE DATE

22 SECTION 6.01. (a) Not later than September 1, 2014, the
23 Texas State Board of Examiners of Psychologists, the Texas State
24 Board of Examiners of Professional Counselors, the Texas State
25 Board of Social Worker Examiners, the Texas State Board of
26 Examiners of Marriage and Family Therapists, and the Texas Medical
27 Board shall adopt any rules necessary for license holders to comply

1 with the requirements of Subchapters E and F, Chapter 107, Family
2 Code, as added by this Act, and specifying that a person licensed by
3 any of the boards is subject to the rules of the board that licensed
4 the person when appointed by a court to conduct a child custody
5 evaluation or adoption evaluation under Subchapter E or F, Chapter
6 107, Family Code, as added by this Act.

7 (b) As soon as possible after the effective date of this
8 Act, the Texas State Board of Examiners of Psychologists, the Texas
9 State Board of Examiners of Professional Counselors, and the Texas
10 State Board of Examiners of Marriage and Family Therapists shall
11 adopt rules prohibiting a psychological associate, a licensed
12 specialist in school psychology, a provisionally licensed
13 psychologist, a licensed professional counselor intern, and a
14 licensed marriage and family therapist associate from conducting a
15 child custody evaluation under Subchapter E, Chapter 107, Family
16 Code, as added by this Act, unless the person is otherwise qualified
17 to conduct the evaluation.

18 (c) As soon as possible after the effective date of this
19 Act, the executive commissioner of the Health and Human Services
20 Commission shall adopt rules prohibiting a licensed chemical
21 dependency counselor from conducting a child custody evaluation as
22 a child custody evaluator under Subchapter E, Chapter 107, Family
23 Code, as added by this Act, unless the person is otherwise qualified
24 to conduct the evaluation or is appointed by a court to conduct the
25 evaluation under Section 107.105, Family Code, as added by this
26 Act.

27 (d) Not later than September 1, 2014, the executive

1 commissioner of the Health and Human Services Commission shall
2 adopt any rules necessary to implement Subchapters E and F, Chapter
3 107, Family Code, as added by this Act, including rules that direct
4 a person to report any complaints relating to the outcome of a child
5 custody evaluation or adoption evaluation conducted under
6 Subchapters E and F, Chapter 107, Family Code, as added by this Act,
7 to the court that ordered the evaluation instead of to the licensing
8 authority that issued a professional license to the person who
9 conducted the evaluation.

10 SECTION 6.02. The changes in law made by this Act apply to a
11 suit affecting the parent-child relationship that is pending in a
12 court on the effective date of this Act or that is filed on or after
13 that date.

14 SECTION 6.03. This Act takes effect September 1, 2013.