

By: Ramos

H.B. No. 3841

A BILL TO BE ENTITLED

AN ACT

1
2 relating to military duty of a conservator of a child in a suit
3 affecting the parent-child relationship.

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

5 SECTION 1. Section 153.701, Family Code, is amended to read
6 as follows:

7 Sec. 153.701. DEFINITIONS. In this subchapter:

8 (1) "Designated person" means the person ordered by
9 the court to temporarily exercise a conservator's rights, duties,
10 and periods of possession and access with regard to a child during
11 the conservator's military deployment or military obligation [~~7~~
12 ~~military mobilization, or temporary military duty~~].

13 (2) "Long-term military obligation" means any
14 military obligation of a service member that prevents the service
15 member from exercising parental duties because of geographic
16 factors or other credible factors for a period of more than 90 days
17 but less than 18 months. The term does not include a permanent
18 change of station.

19 (3) [(2)] "Military deployment" means the temporary
20 transfer of a service member of the armed forces of this state or
21 the United States [serving in an active-duty status] to another
22 location in support of combat or some other military operation for a
23 period of more than 90 days but less than 18 months under a
24 uniformed service order.

1 (4) [~~(3)~~] "Military obligation" means any requirement
2 of a service member to fulfill necessary duties, including:

3 (A) training activities;

4 (B) preparations for deployment or training;

5 (C) administrative or supervisory requirements;

6 or

7 (D) occupational school attendance

8 ~~[mobilization" means the call-up of a National Guard or Reserve~~
9 ~~service member of the armed forces of this state or the United~~
10 ~~States to extended active duty status. The term does not include~~
11 ~~National Guard or Reserve annual training].~~

12 (5) "Record" means information that is inscribed on a
13 tangible medium or that is stored in an electronic or other medium
14 and is retrievable in perceivable form. The term includes a letter,
15 an e-mail, a text message, and social media messaging.

16 (6) "Short-term military obligation" means any
17 military obligation of a service member that prevents the service
18 member from exercising parental duties because of geographic
19 factors or other credible factors for a period of 90 days or less.

20 (7) "Standing intermittent" means a long-term plan for
21 a child's care during repeated periods of absence of a conservator
22 of the child because of short-term military obligations.

23 (8) "Uniformed service" means:

24 (A) active and reserve components of the army,
25 navy, air force, marine corps, or coast guard of the United States;

26 (B) the United States Merchant Marine;

27 (C) the commissioned corps of the United States

1 Public Health Service;

2 (D) the commissioned corps of the National
3 Oceanic and Atmospheric Administration of the United States; or

4 (E) the National Guard of a state.

5 [~~(4) "Temporary military duty" means the transfer of a~~
6 ~~service member of the armed forces of this state or the United~~
7 ~~States from one military base to a different location, usually~~
8 ~~another base, for a limited time for training or to assist in the~~
9 ~~performance of a noncombat mission.]~~

10 SECTION 2. Sections 153.702(a), (c), and (d), Family Code,
11 are amended to read as follows:

12 (a) If a conservator is ordered to military deployment[~~or~~
13 ~~military mobilization,~~] or long-term military obligation
14 [~~temporary military duty~~] that involves moving a substantial
15 distance from the conservator's residence so as to materially
16 affect the conservator's ability to exercise the conservator's
17 rights and duties in relation to a child, either conservator may
18 file for an order under this subchapter without the necessity of
19 showing a material and substantial change of circumstances other
20 than the military deployment or obligation[~~, military~~
21 ~~mobilization, or temporary military duty~~].

22 (c) A temporary order rendered by the court under this
23 subchapter may grant rights to and impose duties regarding the
24 child on a designated person who has a close and substantial
25 relationship with [~~regarding~~] the child, except that if the
26 designated person is a nonparent, the court may not require the
27 designated person to pay child support.

1 (d) After a conservator's military deployment or long-term
2 military obligation has [~~military mobilization, or temporary~~
3 ~~military duty is~~] concluded[] and the conservator returns to the
4 conservator's usual residence, the temporary orders under this
5 section terminate and the rights of all affected parties are
6 governed by the terms of any court order applicable when the
7 conservator is not ordered to military deployment or long-term
8 military obligation [~~military mobilization, or temporary~~
9 ~~military duty~~].

10 SECTION 3. Section 153.703(a), Family Code, is amended to
11 read as follows:

12 (a) If the conservator with the exclusive right to designate
13 the primary residence of the child is ordered to military
14 deployment or long-term military obligation, [~~military~~
15 ~~mobilization, or temporary military duty~~] the court may render a
16 temporary order to appoint a designated person to exercise the
17 exclusive right to designate the primary residence of the child
18 during the military deployment or long-term military obligation [
19 ~~military mobilization, or temporary military duty~~] in the following
20 order of preference:

21 (1) the conservator who does not have the exclusive
22 right to designate the primary residence of the child;

23 (2) if it is shown by clear and convincing evidence
24 that appointing the conservator described by Subdivision (1) will
25 cause substantial harm to [~~is not in~~] the child's best interest, a
26 designated person who has a close and substantial relationship with
27 the child chosen by the conservator with the exclusive right to

1 designate the primary residence of the child; or

2 (3) if it is shown by clear and convincing evidence
3 that appointing the conservator described by Subdivision (1) or the
4 person chosen under Subdivision (2) is not in the child's best
5 interest, another person chosen by the court who has a close and
6 substantial relationship with the child.

7 SECTION 4. Section 153.705(a), Family Code, is amended to
8 read as follows:

9 (a) If the conservator without the exclusive right to
10 designate the primary residence of the child is ordered to military
11 deployment or long-term military obligation, [~~military~~
12 ~~mobilization, or temporary military duty,~~] the court may award
13 visitation with the child to a designated person with whom the child
14 has a close and substantial relationship chosen by the conservator,
15 unless it is shown by clear and convincing evidence that [~~if~~] the
16 visitation is not in the best interest of the child.

17 SECTION 5. Subchapter L, Chapter 153, Family Code, is
18 amended by adding Sections 153.706 and 153.7065 to read as follows:

19 Sec. 153.706. TEMPORARY ORDER UNDER AGREEMENT. (a) A court
20 may render a temporary order under this section that is based on a
21 temporary mutual agreement entered into by the conservators of a
22 child granting a designated person who is a nonparent of the child
23 temporary conservatorship or visitation with the child during a
24 conservator's military deployment or long-term military
25 obligation. The agreement must:

26 (1) be in writing;

27 (2) be signed by both conservators and any designated

1 person to whom temporary conservatorship or visitation is granted;
2 and

3 (3) be notarized by a notary signing agent.

4 (b) An agreement under Subsection (a) may be executed in
5 counterparts, each of which shall be considered an original and all
6 of which collectively constitute one agreement.

7 (c) If the agreement does not include a termination date or
8 time, the agreement terminates on the 15th day after the date the
9 conservator ordered to military deployment or military obligation
10 gives notice on record to the other conservator and the designated
11 person of the date of the conservator's return from military
12 deployment or long-term military obligation, unless the
13 conservators agree to terminate the agreement before that date.

14 Sec. 153.7065. TERMS OF TEMPORARY ORDER. (a) Any temporary
15 order issued by the court under this subchapter must:

16 (1) designate the order as temporary;

17 (2) identify to the extent feasible the destination,
18 duration, and conditions of the military deployment or long-term
19 military obligation;

20 (3) specify the allocation of conservatorship or
21 visitation among the conservator ordered to military deployment or
22 military obligation, the other parent, and the designated person;

23 (4) provide a process for immediately resolving any
24 disputes arising from the order;

25 (5) provide for liberal communication between the
26 conservator ordered to military deployment or military obligation
27 and the child during the conservator's deployment or obligation,

1 including through electronic means, unless it is shown by clear and
2 convincing evidence that the contact would be harmful to the child,
3 and specify:

4 (A) any role to be played by the other
5 conservator or designated person in facilitating the
6 communication; and

7 (B) the allocation of any communication costs;

8 (6) provide for liberal contact between the
9 conservator ordered to military deployment or military obligation
10 and the child during the time the conservator is on leave from
11 deployment or obligation or is otherwise available, unless it is
12 shown by clear and convincing evidence that the contact would be
13 harmful to the child;

14 (7) provide for reasonable and substantial contact
15 between the conservator ordered to military deployment or military
16 obligation and the child on the conservator's return from military
17 deployment or long-term military obligation until the temporary
18 order is terminated, regardless of whether the time of contact
19 exceeds the time the conservator was entitled to have possession of
20 or access to the child before the temporary order was rendered;

21 (8) provide details of the temporary agreement's
22 termination to the extent feasible;

23 (9) clearly specify that any delegation of
24 conservatorship of the child is not a basis on which to determine
25 the outcome of any future modification regarding conservatorship of
26 the child by either party; and

27 (10) specify findings of fact and conclusions of law

1 to show the terms of the order were determined by the court to
2 protect the child from substantial harm.

3 (b) The court may limit or expand the rights of a designated
4 person named in a temporary order rendered under this subchapter as
5 appropriate to the best interest of the child.

6 (c) On the motion of a conservator ordered to military
7 deployment or military obligation, the other conservator, or any
8 designated person to whom conservatorship of or visitation with a
9 child has been delegated, the court may modify or terminate the
10 grant if the modification or termination is consistent with this
11 subchapter and in the best interest of the child. Any modification
12 is temporary and terminates on the date the conservator concludes
13 the conservator's military deployment or long-term military
14 obligation unless otherwise stated in a court order.

15 SECTION 6. Section 153.707, Family Code, is amended to read
16 as follows:

17 Sec. 153.707. EXPEDITED HEARING. (a) If [On] a [motion by
18 the] conservator [who] has been ordered to military deployment,
19 long-term military obligation [military mobilization], or
20 short-term military obligation and the conservator's military
21 duties have a material effect on the conservator's ability to
22 appear in person at any hearing in a suit affecting the parent-child
23 relationship, on a motion of any party or on the court's own motion,
24 or if a hearing is necessary before the military obligations begin
25 to determine if the modification is necessary to protect the best
26 interest of the child [temporary military duty], the court shall [7
27 for good cause shown,] hold an expedited hearing [if the court finds

1 ~~that the conservator's military duties have a material effect on~~
2 ~~the conservator's ability to appear in person at a regularly~~
3 ~~scheduled hearing].~~

4 (b) A hearing under this section shall, if possible, take
5 precedence over other suits affecting the parent-child
6 relationship not involving a conservator who has been ordered to
7 military deployment or military obligation [~~, military~~
8 ~~mobilization, or temporary military duty~~].

9 (c) On a motion by any party, the court shall, after
10 reasonable advance notice and for good cause shown, including
11 military obligation, permanent duty station assignment, or
12 financial hardship because of military obligation, allow a party to
13 present testimony of the party or witnesses and evidence by
14 electronic means, including by teleconference or through the
15 Internet. If the other party objects to that accommodation, the
16 other party has the burden of proof to show by clear and convincing
17 evidence that an in-person appearance is necessary.

18 SECTION 7. Section 153.708, Family Code, is amended to read
19 as follows:

20 Sec. 153.708. ENFORCEMENT. Temporary orders rendered under
21 this subchapter may be enforced by or against the designated person
22 to the same extent that an order would be enforced by or enforceable
23 against the conservator who has been ordered to military deployment
24 or military obligation [~~, military mobilization, or temporary~~
25 ~~military duty~~].

26 SECTION 8. Section 153.709, Family Code, is amended to read
27 as follows:

1 Sec. 153.709. ADDITIONAL PERIODS OF POSSESSION OR ACCESS.

2 (a) Not later than the 90th day after the date a conservator
3 without the exclusive right to designate the primary residence of
4 the child who is a member of the armed services concludes the
5 conservator's military deployment or long-term military
6 obligation, [~~military mobilization, or temporary military duty,~~]
7 the conservator may petition the court to:

8 (1) compute the periods of possession of or access to
9 the child to which the conservator would have otherwise been
10 entitled during the conservator's deployment or long-term military
11 obligation; and

12 (2) award the conservator additional periods of
13 possession of or access to the child to compensate for the periods
14 described by Subdivision (1).

15 (b) If the conservator described by Subsection (a)
16 petitions the court under Subsection (a), the court:

17 (1) shall compute the periods of possession or access
18 to the child described by Subsection (a)(1); and

19 (2) may award to the conservator additional periods of
20 possession of or access to the child for a length of time and under
21 terms the court considers reasonable, if the court determines that:

22 (A) the conservator was on military deployment or
23 long-term military obligation, [~~military mobilization, or~~
24 ~~temporary military duty~~] in a location where the access to the child
25 to which the conservator was entitled before the conservator's
26 deployment or mobilization was not reasonably possible; and

27 (B) the award of additional periods of possession

1 of or access to the child is not harmful to [~~in~~] the best interest of
2 the child.

3 (c) In making the determination under Subsection (b)(2),
4 the court:

5 (1) shall consider:

6 (A) the periods of possession of or access to the
7 child to which the conservator would otherwise have been entitled
8 during the conservator's military deployment or long-term military
9 obligation, [~~military mobilization, or temporary military duty,~~]
10 as computed under Subsection (b)(1);

11 (B) whether the court named a designated person
12 under Section 153.705 to exercise limited possession of the child
13 during the conservator's deployment or long-term military
14 obligation; and

15 (C) any other factor the court considers
16 appropriate; and

17 (2) is not required to award additional periods of
18 possession of or access to the child that equals the possession or
19 access to which the conservator would have been entitled during the
20 conservator's military deployment or long-term military
21 obligation, [~~military mobilization, or temporary military duty,~~]
22 as computed under Subsection (b)(1).

23 (d) After the conservator described by Subsection (a) has
24 exercised all additional periods of possession or access awarded
25 under this section, the rights of all affected parties are governed
26 by the terms of the court order applicable when the conservator is
27 not ordered to military deployment or long-term military

1 obligation~~[, military mobilization, or temporary military duty]~~.

2 SECTION 9. Subchapter L, Chapter 153, Family Code, is
3 amended by adding Sections 153.710, 153.711, 153.712, 153.713,
4 153.714, 153.715, and 153.716 to read as follows:

5 Sec. 153.710. PROHIBITION AGAINST DISCRIMINATION BASED ON
6 MILITARY DUTY. In determining issues of conservatorship or
7 possession of or access to a child, the court:

8 (1) may not consider a conservator's past or possible
9 future military deployment or military obligation as a determining
10 factor in determining the best interest of the child; and

11 (2) may consider any substantial harm caused by the
12 conservator's past or possible future military deployment or
13 military obligation shown by clear and convincing evidence directly
14 related to the conservatorship or possession of the child during
15 those periods of deployment or obligation.

16 Sec. 153.711. REQUIRED NOTIFICATION BY CONSERVATOR ORDERED
17 TO MILITARY DUTY. (a) Subject to Subsection (b), a conservator who
18 is ordered to military deployment, long-term military obligation,
19 or short-term military obligation lasting more than 48 hours shall
20 notify the other conservator not later than the seventh day after
21 the date the conservator receives notice of the deployment or
22 obligation unless reasonably prevented from doing so by the
23 circumstances of the conservator's deployment or obligation. If
24 the circumstances of the conservator's deployment or obligation
25 prevent the conservator from giving notification within that
26 period, the conservator shall give the notification as soon as
27 reasonably possible.

1 (b) If a court order currently in effect prohibits
2 disclosure of the address or contact information of the conservator
3 to whom notification must be given under Subsection (a),
4 notification may be made to the court with continuing jurisdiction
5 over the child. If the address of the conservator to whom
6 notification must be given under Subsection (a) is available to the
7 court, the court shall mail the notification to that conservator.
8 The court shall keep confidential the address or contact
9 information of the conservator receiving notification.

10 (c) In a proceeding regarding possession of or access to a
11 child, a court may consider the reasonableness of a conservator's
12 efforts to comply with this section.

13 Sec. 153.712. JURISDICTION. (a) If a court has issued a
14 temporary order regarding conservatorship or possession of a child
15 during a conservator's military deployment or long-term military
16 obligation, the residence of the conservator ordered to deployment
17 or obligation is not changed by reason of the deployment or
18 obligation for purposes of Chapter 152 during the deployment or
19 obligation.

20 (b) If a court has issued a permanent order regarding
21 conservatorship or possession of a child before notice of a
22 conservator's military deployment or long-term military obligation
23 and the conservators modify that order temporarily by mutual
24 agreement, the residence of the conservator ordered to deployment
25 or obligation is not changed by reason of the deployment or
26 obligation for purposes of Chapter 152.

27 (c) If a court in another state has issued a permanent order

1 regarding conservatorship or possession of a child or a temporary
2 order regarding conservatorship or possession of the child as the
3 result of a conservator's impending or current military deployment
4 or long-term military obligation, the residence of the conservator
5 ordered to deployment or obligation is not changed by reason of the
6 deployment or obligation for purposes of Chapter 152.

7 (d) If no state has issued any type of order regarding
8 conservatorship or possession of the child, this state may not
9 assume jurisdiction if the child's residence was not located in
10 this state before the start of the conservator's military
11 deployment or long-term military obligation and:

12 (1) the conservator is on military deployment or
13 fulfilling a long-term military obligation; or

14 (2) the conservator has directly returned from
15 military deployment or long-term military obligation to the same
16 residence the conservator resided in before military deployment or
17 long-term military obligation within the last 60 days.

18 (e) This section does not prevent a court from exercising
19 temporary emergency jurisdiction under Chapter 152.

20 Sec. 153.713. PERMANENT ORDERS. (a) On a motion of a
21 conservator who is ordered to short-term military obligation on a
22 regular basis, if it is in the best interest of the child, a court
23 may grant standing intermittent conservatorship and possession of
24 the child to a designated person who is an adult family member of
25 the child or an adult with whom the child has a close and
26 substantial relationship.

27 (b) A grant of conservatorship or possession of a child to a

1 designated person under this section may include:

2 (1) the designated person receiving the amount of time
3 or in a capacity that the conservator ordered to short-term
4 military obligation would be entitled but for the conservator's
5 obligation; or

6 (2) the designated person receiving a specified
7 portion of the amount of time or in a capacity that the conservator
8 ordered to short-term military obligation would be entitled but for
9 the conservator's obligation.

10 (c) If a court grants conservatorship or possession of a
11 child to a designated person under this section, the court shall
12 specify the standing intermittent conservatorship rights, duties,
13 and periods of possession during periods of short-term military
14 obligation.

15 (d) A permanent possession order rendered under this
16 section must include:

17 (1) provisions pertaining to conservatorship and
18 possession of the child during short-term military obligation; and

19 (2) the findings of fact and conclusions of law
20 described by Section 153.714.

21 (e) Except as otherwise provided and consistent with the
22 Servicemembers Civil Relief Act (50 U.S.C. Section 3901 et seq.),
23 on motion of a conservator ordered to military deployment or
24 military obligation, the other conservator, or any designated
25 person to whom standing intermittent conservatorship or possession
26 has been granted, the court may modify or terminate the grant if the
27 court finds that the modification or termination is in the best

1 interest of the child.

2 Sec. 153.714. FINDINGS OF FACTS AND CONCLUSIONS OF LAW. A
3 court shall include in any temporary or permanent order rendered by
4 the court under this subchapter specific findings of fact and
5 conclusions of law to show that the conservator's rights, duties,
6 and periods of possession were determined by the court to best
7 protect the child from substantial harm.

8 Sec. 153.715. SPECIAL BEST INTEREST STANDARDS. (a) It is a
9 rebuttable presumption that the following are in the child's best
10 interest:

11 (1) maintaining a relationship with the family of a
12 conservator ordered to military deployment or military obligation
13 by way of electronic communications or face-to-face contact; and

14 (2) having frequent, routine, and consistent contact
15 with a conservator ordered to military deployment or military
16 obligation and the conservator's family by any means available to
17 the child, the conservator, and family members, including
18 electronic means and in-person contact.

19 (b) The presumption under Subsection (a) may be overcome if
20 the objecting party shows by clear and convincing evidence that
21 maintaining the relationships or providing for contact as described
22 by that subsection would cause substantial harm to the child.

23 Sec. 153.716. LIMITED SCOPE MODIFICATIONS. A change in
24 marital status of a conservator ordered to military deployment or
25 military obligation or the death or illness of a designated person
26 with a grant of conservatorship or possession of a child is
27 considered a change in circumstance sufficient to justify a

1 modification of an order providing for conservatorship or
2 possession only in relation to the periods of military deployment
3 or military obligation.

4 SECTION 10. Section 156.006(c), Family Code, is amended to
5 read as follows:

6 (c) Subsection (b)(2) does not apply to a conservator who
7 has the exclusive right to designate the primary residence of the
8 child and who has temporarily relinquished the primary care and
9 possession of the child to another person during the conservator's
10 military deployment or~~[r]~~ military obligation [~~mobilization, or~~
11 ~~temporary military duty~~], as those terms are defined by Section
12 153.701.

13 SECTION 11. Section 156.101(b), Family Code, is amended to
14 read as follows:

15 (b) Subsection (a)(3) does not apply to a conservator who
16 has the exclusive right to designate the primary residence of the
17 child and who has temporarily relinquished the primary care and
18 possession of the child to another person during the conservator's
19 military deployment or~~[r]~~ military obligation [~~mobilization, or~~
20 ~~temporary military duty~~], as those terms are defined by Section
21 153.701.

22 SECTION 12. Section 156.102(d), Family Code, is amended to
23 read as follows:

24 (d) Subsection (b)(3) does not apply to a person who has the
25 exclusive right to designate the primary residence of the child and
26 who has temporarily relinquished the primary care and possession of
27 the child to another person during the conservator's military

1 deployment or[7] military obligation [~~mobilization, or temporary~~
2 ~~military duty~~], as those terms are defined by Section 153.701.

3 SECTION 13. Section 156.105, Family Code, is amended to
4 read as follows:

5 Sec. 156.105. MODIFICATION OF ORDER BASED ON MILITARY DUTY.
6 The military duty of a conservator who is ordered to military
7 deployment or[7] military obligation [~~mobilization, or temporary~~
8 ~~military duty~~], as those terms are defined by Section 153.701, does
9 not by itself constitute a material and substantial change of
10 circumstances sufficient to justify a modification of an existing
11 court order or portion of a decree that sets the terms and
12 conditions for the possession of or access to a child except that
13 the court may render a temporary order under Subchapter L, Chapter
14 153.

15 SECTION 14. The following provisions of the Family Code are
16 repealed:

- 17 (1) Sections 153.704(c) and (d); and
18 (2) Sections 153.705(b) and (c).

19 SECTION 15. (a) Sections 153.702, 153.703, 153.704, and
20 153.705, Family Code, as amended by this Act, and Section 153.7065,
21 Family Code, as added by this Act, apply only to an application for
22 a temporary order filed on or after the effective date of this Act.
23 An application for a temporary order filed before the effective
24 date of this Act is governed by the law in effect on the date the
25 application is filed, and the former law is continued in effect for
26 that purpose.

27 (b) Section 153.706, Family Code, as added by this Act,

1 applies only to a temporary order based on an agreement filed with
2 the court on or after the effective date of this Act.

3 (c) Section 153.707, Family Code, as amended by this Act,
4 applies only to a motion made on or after the effective date of this
5 Act.

6 (d) Section 153.709, Family Code, as amended by this Act,
7 applies to a petition by a conservator submitted to the court on or
8 after the effective date of this Act. A petition submitted to the
9 court before the effective date of this Act is governed by the law
10 in effect on the date the petition was submitted, and the former law
11 is continued in effect for that purpose.

12 (e) Section 153.710, Family Code, as added by this Act,
13 applies only to an order granting conservatorship of or possession
14 of or access to a child rendered on or after the effective date of
15 this Act.

16 (f) Section 153.711, Family Code, as added by this Act,
17 applies only to a conservator who receives notice of the
18 conservator's pending military deployment, long-term military
19 obligation, or short-term military obligation on or after the
20 effective date of this Act.

21 (g) Sections 153.712, 153.714, and 153.715, Family Code, as
22 added by this Act, apply only to a temporary or permanent order
23 rendered on or after the effective date of this Act. An order
24 rendered before the effective date of this Act is governed by the
25 law in effect on the date the order was rendered, and the former law
26 is continued in effect for that purpose.

27 (h) Section 153.713, Family Code, as added by this Act,

1 applies only to an order for which a motion is filed on or after the
2 effective date of this Act.

3 (i) Section 153.716, Family Code, as added by this Act,
4 applies only to a suit for modification pending before a trial court
5 on or filed on or after the effective date of this Act.

6 SECTION 16. This Act takes effect September 1, 2019.