

BILL ANALYSIS

Senate Research Center
87R13534 TYPED

S.B. 1178
By: Birdwell
State Affairs
4/2/2021
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Supreme Court jurisprudence, both at the state and federal level, makes clear certain constitutional rights as it relates to the parent-child relationship in suits involving third parties. These rights were clarified and reaffirmed as recently as June 26, 2020, when the Texas Supreme Court issued its unanimous opinion in *In re C.J.C.* The opinion, consistent with 100 years of prior case law, unanimously held that in suits between a parent and a non-parent, the court must initially presume that the parent is a fit parent who is acting in the best interest of the child.

While all Texas courts are bound by these rules, trial courts and many attorneys often operate in contravention of this common law principle. In fact, appellate review indicates that trial courts have misapplied this constitutional presumption 43 percent of the time over the last 20 years. On mandamus review, the trial court record is even worse.

S.B. 1178, or the Family Unity Act, statutorily specifies and defines the certain parent-child rights guaranteed by our state and federal constitutions. Among these are the parent's rights to direct the child's religious upbringing, medical care, and education. Establishing this judicial presumption in statute will give district courts fewer opportunities to erroneously interrupt the rights of parent and their child.

Lastly, The Family Unity Act precludes a third party from interfering in a parent-child relationship unless it is necessary to prevent a significant impairment of the child's physical health or emotional well-being.

As proposed, S.B. 1178 amends current law relating to the rights and duties of parents and the protection of parental rights in suits affecting the parent-child relationship.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 151, Family Code, by adding Section 151.004, as follows:

Sec. 151.004. FUNDAMENTAL RIGHTS OF PARENTS. (a) Provides that a parent is presumed to be a fit parent who acts in the best interest of his or her child.

(b) Provides that the fundamental right of a parent to raise his or her child includes but is not limited to the right to direct and make decisions for the care, custody, control, education, upbringing, moral and religious training, and medical care of the child.

(c) Authorizes a parent who has suffered an infringement of his or her fundamental right under Subsection (b) by a non-parent to raise Subsection (d) as a defense in a suit between a parent and a non-parent.

(d) Prohibits a court from ordering any relief that conflicts with a parent's fundamental right under Subsection (b) unless the court finds that the requested relief is necessary to prevent a significant impairment of the child's physical health or emotional well-being.

(e) Prohibits this section from being construed to limit the rights of the state, including the right to investigate or act on a report of child abuse or neglect allegedly committed by a person responsible for a child's care, custody, or welfare, beyond the limitations required by the United States Constitution.

(f) Provides that this section does not apply to an action for child support.

SECTION 2. Effective date: upon passage or September 1, 2021.