

By: Dutton

H.B. No. 756

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to a suit for possession of or access to a child by a  
3 grandparent.

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

5 SECTION 1. Part 2, Subchapter B, Chapter 107, Family Code,  
6 is amended by adding Section 107.024 to read as follows:

7 Sec. 107.024. APPOINTMENT OF GUARDIAN AD LITEM IN SUIT FOR  
8 POSSESSION OR ACCESS BY GRANDPARENT. (a) In a suit filed under  
9 Section 153.432 requesting possession of or access to a grandchild,  
10 the court shall appoint a guardian ad litem for the grandchild at  
11 the request of a grandparent who is a party to the suit.

12 (b) Notwithstanding Section 107.002(e), a guardian ad litem  
13 appointed under this section shall submit to the court a report  
14 regarding the guardian ad litem's recommendations relating to:

15 (1) the grandparent's possession of or access to the  
16 grandchild in accordance with Section 153.433; and

17 (2) the bases for the guardian ad litem's  
18 recommendations.

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

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

23 SECTION 3. Section 153.433, Family Code, is amended to read  
24 as follows:

1           Sec. 153.433. POSSESSION OF OR ACCESS TO GRANDCHILD. (a)

2 The court may order reasonable possession of or access to a  
3 grandchild by a grandparent if:

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

7           (2) the grandparent requesting possession of or access  
8 to the child overcomes the presumption that a parent acts in the  
9 best interest of the parent's child by proving by a preponderance of  
10 the evidence that denial of possession of or access to the child  
11 would significantly impair the child's physical health or emotional  
12 well-being[~~, and~~

13           ~~[(3) the grandparent requesting possession of or~~  
14 ~~access to the child is a parent of a parent of the child and that~~  
15 ~~parent of the child.~~

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

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

19           ~~[(C) is dead, or~~

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

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

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

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

4           (2) the grandparent requesting possession of or access  
5 to the child has overcome the presumption that a parent acts in the  
6 best interest of the parent's child by proving by a preponderance of  
7 the evidence that the denial of possession of or access to the child  
8 would significantly impair the child's physical health or emotional  
9 well-being[; ~~and~~

10           ~~[(3) the grandparent requesting possession of or~~  
11 ~~access to the child is a parent of a parent of the child and that~~  
12 ~~parent of the child.~~

13           ~~[(A) has been incarcerated in jail or prison~~  
14 ~~during the three-month period preceding the filing of the petition;~~

15           ~~[(B) has been found by a court to be incompetent;~~

16           ~~[(C) is dead; or~~

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

19           SECTION 4. The change in law made by this Act applies to a  
20 suit affecting the parent-child relationship that is pending in a  
21 trial court on the effective date of this Act or filed on or after  
22 that date.

23           SECTION 5. This Act takes effect September 1, 2021.