

BILL ANALYSIS

C.S.H.B. 1617
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Juvenile Justice & Family Issues
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties are concerned that there is a need for greater consistency in the application of family law, especially when it comes to temporary orders pending an appeal because they impact numerous day-to-day issues for a family. C.S.H.B. 1617 seeks to update and clarify procedures in a suit for dissolution of a marriage or a suit affecting the parent-child relationship.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1617 amends the Family Code to remove the deadline for a trial court to render a temporary order pending an appeal in a suit for dissolution of a marriage and to add as a condition on a court's authority to render such an order that the order be considered equitable. The bill clarifies that a court may render a temporary order directed toward one or both parties and limits a temporary order requiring the payment of reasonable attorney's fees and expenses to those fees and expenses that are necessary. The bill includes among the temporary orders that a court may render an order enjoining a party from dissipating or transferring the property awarded to the other party in the trial court's property division or suspending the operation of all or part of the property division that is being appealed. The bill authorizes a temporary order enjoining a party from dissipating or transferring awarded property to be rendered without the issuance of a bond between the spouses or an affidavit or a verified pleading stating specific facts showing that immediate and irreparable injury, loss, or damage will result; expressly does not require such a temporary order to define the injury or state why the injury is irreparable or include an order setting the suit for trial on the merits with respect to the ultimate relief sought; and prohibits such an order from prohibiting a party's use, transfer, conveyance, or dissipation of the property awarded to the other party in the trial court's property division if the use, transfer, conveyance, or dissipation of the property is for the purpose of suspending the enforcement of the property division that is the subject of the appeal. The bill prohibits a temporary order that suspends the operation of all or part of the property division that is the subject of the appeal from being rendered unless the trial court takes reasonable steps to ensure that the party awarded property in the trial court's property division is protected from the other party's dissipation or transfer of that property.

C.S.H.B. 1617 requires the trial court, in considering a party's request to suspend the enforcement of the property division, to consider whether any relief granted in a temporary order

is adequate to protect the party's interests in the property awarded to the party or whether the party who was not awarded the property should also be required to provide security for the appeal in addition to any relief granted. The bill requires a trial court that determines that the party awarded the property can be adequately protected from the other party's dissipation of assets during the appeal only if the other party provides security for the appeal to set the appropriate amount of security, taking into consideration any relief granted in a temporary order and the amount of security that the other party would otherwise have to provide by law if relief was not granted.

C.S.H.B. 1617 authorizes the trial court, in rendering a temporary order that suspends enforcement of all or part of the property division, to grant any authorized relief in a temporary order in addition to requiring the party who was not awarded the property to post security for that part of the property division to be suspended. The bill authorizes the trial court to require that the party who was not awarded the property post all or only part of the security that would otherwise be required by law. The bill expressly does not prevent a party who was not awarded the property from exercising that party's right to suspend the enforcement of the property division as provided by law. The bill authorizes a motion seeking an original temporary order pending an appeal in a suit for dissolution of a marriage to be filed before the trial and prohibits such a motion from being filed by a party after the date by which the party is required to file the party's notice of appeal under the Texas Rules of Appellate Procedure. The bill grants a trial court jurisdiction to conduct a hearing and sign such an original temporary order until the 60th day after the date any eligible party has filed a notice of appeal from final judgment under the Texas Rules of Appellate Procedure and to modify a temporary order unless the appellate court, on a proper showing, supersedes the trial court's order.

C.S.H.B. 1617 authorizes the trial court to modify a previous temporary order on the motion of a party or on the court's own motion after notice and hearing if the circumstances of a party have materially and substantially changed since the rendition of the previous order and modification is equitable and necessary for the preservation of the property or for the protection of the parties during the appeal. The bill authorizes a party to seek review of the trial court's temporary order by motion filed in the court of appeals with jurisdiction or potential jurisdiction over the appeal from the judgment in the case, by proper assignment in the party's brief, or by petition for writ of mandamus. A temporary order is not subject to interlocutory appeal and the remedies provided in a temporary order are cumulative of all other remedies allowed by law. The bill authorizes any party to an appeal in a suit for dissolution of marriage, if any eligible party has filed a notice of appeal from a final judgment under the Texas Rules of Appellate Procedure before September 1, 2017, to file a motion in the trial court for an original temporary order under provisions relating to such a temporary order as those provisions existed immediately before the bill's effective date and grants the trial court jurisdiction to conduct a hearing and sign an original temporary order under those provisions until October 30, 2017.

C.S.H.B. 1617 clarifies the findings of fact and conclusions of law a court is required to state in writing in a suit for dissolution of a marriage in which the court has rendered a judgment dividing the estate of the parties and establishes that such findings and conclusions are in addition to any other findings or conclusions required or authorized by law.

C.S.H.B. 1617 removes a statutory provision providing for the temporary abatement of a court's power to render further orders to assist in the implementation of or to clarify the property division made in a divorce or annulment decree. The bill instead prohibits a trial court from rendering an order to assist in the implementation of or to clarify the property division made or approved in such a decree before the 30th day after the date the final judgment is signed and, if a timely motion for a new trial or to vacate, modify, correct, or reform the decree is filed, from rendering an order to assist in the implementation of or to clarify the property division made or approved in the decree before the 30th day after the date the order overruling the motion is signed or the motion is overruled by operation of law.

C.S.H.B. 1617 removes the deadline for a court to render a temporary order pending appeal in a suit affecting the parent-child relationship. The bill limits a temporary ordering requiring the payment of reasonable attorney's fees and expenses to those fees and expenses that are necessary. The bill authorizes a temporary order enjoining a party from molesting or disturbing the peace of the child or another party to be rendered without the issuance of a bond between the spouses or an affidavit or a verified pleading stating specific facts showing that immediate and irreparable injury, loss, or damage will result and expressly does not require such a temporary order to define the injury or state why the injury is irreparable or to include an order setting the suit for trial on the merits with respect to the ultimate relief sought. The bill authorizes a motion seeking an original temporary order pending appeal in a suit affecting the parent-child relationship to be filed before trial and prohibits such a motion from being filed by a party after the date by which that party is required to file the party's notice of appeal under the Texas Rules of Appellate Procedure. The bill grants the trial court jurisdiction to conduct a hearing and sign such a temporary order until the 60th day after the date any eligible party has filed a notice of appeal from final judgment under the Texas Rules of Appellate Procedure and to modify such a temporary order unless the appellate court, on a proper showing, supersedes the trial court's order. The bill authorizes the trial court to modify a previous temporary order on the motion of a party or on the court's own motion after notice and hearing if the circumstances of a party have materially and substantially changed since the rendition of the previous order and modification is equitable and necessary for the safety and welfare of the child. The bill authorizes a party to seek review of the trial court's temporary order by petition for writ of mandamus or proper assignment in the party's brief. The remedies provided in a temporary order are cumulative of all other remedies allowed by law.

C.S.H.B. 1617 requires an appeal from a final order rendered under the Uniform Child Custody Jurisdiction and Enforcement Act to comply with procedural requirements for appeals provided in that act. The bill removes the requirement that a request for findings in a case in which possession of a child by a parent is contested and the possession of the child varies from the standard possession order, including a possession order for a child under three years of age, be made or filed with the court not later than 10 days after the date of the hearing or on oral request made in open court during the hearing. The bill requires such a request for findings of fact to conform to the Texas Rules of Civil Procedure. The bill repeals the deadline for a court to make required findings in support of a possession order for a child less than three years of age.

C.S.H.B. 1617 changes the period during which a party may file a written request for findings relating to an obligor's or obligee's resources in a child support order from not later than 10 days after the date of the hearing to before the final order is signed but not later than 20 days after the date of the rendition of the order. The bill repeals the deadline for a court to make and enter such required findings. The bill restricts the requirement that a court state the obligee's monthly net resources in the child support order to a situation in which evidence of the monthly net resources of the obligee has been offered. The bill requires a court that finds a suit for modification of an order that provides for the conservatorship, support, or possession of and access to a child is filed frivolously or designed to harass a party to state that finding in the order.

C.S.H.B. 1617 repeals the following provisions of the Family Code:

- Sections 153.254(b) and (c)
- Section 154.130(a-1)

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1617 may differ from the original in minor or nonsubstantive ways, the

following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 6.709, Family Code, is amended to read as follows:

Sec. 6.709. TEMPORARY ORDERS DURING APPEAL. (a) In a suit for dissolution of a marriage [~~Not later than the 30th day after the date an appeal is perfected~~], on the motion of a party or on the court's own motion, after notice and hearing, the trial court may render a temporary order as considered equitable and necessary for the preservation of the property and for the protection of the parties during an [~~the~~] appeal, including an order [~~to~~]:

(1) requiring [~~require~~] the support of either spouse;

(2) requiring [~~require~~] the payment of reasonable attorney's fees and expenses incurred or anticipated to be incurred after trial and on appeal;

(3) appointing [~~appoint~~] a receiver for the preservation and protection of the property of the parties; [~~or~~]

(4) awarding [~~award~~] one spouse exclusive occupancy of the parties' residence pending the appeal;

(5) enjoining a party from dissipating or transferring the property awarded to the other party in the trial court's property division; or

(6) suspending the operation of all or part of the property division that is being appealed.

(b) A temporary order under this section enjoining a party from dissipating or transferring the property awarded to the other party in the trial court's property division:

(1) may be rendered without:

(A) the issuance of a bond between the spouses; or

(B) an affidavit or a verified pleading stating specific facts showing that immediate and irreparable injury, loss, or damage will result;

(2) is not required to:

(A) define the injury or state why the injury is irreparable; or

(B) include an order setting the suit for trial on the merits with respect to the ultimate

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 6.709, Family Code, is amended to read as follows:

Sec. 6.709. TEMPORARY ORDERS DURING APPEAL. (a) In a suit for dissolution of a marriage [~~Not later than the 30th day after the date an appeal is perfected~~], on the motion of a party or on the court's own motion, after notice and hearing, the trial court may render a temporary order as considered equitable and necessary for the preservation of the property and for the protection of the parties during an [~~the~~] appeal, including an order directed toward one or both parties [~~to~~]:

(1) requiring [~~require~~] the support of either spouse;

(2) requiring [~~require~~] the payment of reasonable and necessary attorney's fees and expenses;

(3) appointing [~~appoint~~] a receiver for the preservation and protection of the property of the parties; [~~or~~]

(4) awarding [~~award~~] one spouse exclusive occupancy of the parties' residence pending the appeal;

(5) enjoining a party from dissipating or transferring the property awarded to the other party in the trial court's property division; or

(6) suspending the operation of all or part of the property division that is being appealed.

(b) A temporary order under this section enjoining a party from dissipating or transferring the property awarded to the other party in the trial court's property division:

(1) may be rendered without:

(A) the issuance of a bond between the spouses; or

(B) an affidavit or a verified pleading stating specific facts showing that immediate and irreparable injury, loss, or damage will result;

(2) is not required to:

(A) define the injury or state why the injury is irreparable; or

(B) include an order setting the suit for trial on the merits with respect to the ultimate

relief sought; and

(3) may not prohibit a party's use, transfer, conveyance, or dissipation of the property awarded to the other party in the trial court's property division if the use, transfer, conveyance, or dissipation of the property is for the purpose of suspending the enforcement of the property division that is the subject of the appeal.

(c) A temporary order under this section that suspends the operation of all or part of the property division that is the subject of the appeal may not be rendered unless the trial court takes reasonable steps to ensure that the party awarded property in the trial court's property division is protected from the other party's dissipation or transfer of that property.

(d) In considering a party's request to suspend the enforcement of the property division, the trial court shall consider whether:

(1) any relief granted under Subsection (a) is adequate to protect the party's interest in the property awarded to the party; or

(2) the party who was not awarded the property should also be required to provide security for the appeal in addition to any relief granted under Subsection (a).

(e) If the trial court determines that the party awarded the property can be adequately protected from the other party's dissipation of assets during the appeal only if the other party provides security for the appeal, the trial court shall set the appropriate amount of security, taking into consideration any relief granted under Subsection (a) and the amount of security that the other party would otherwise have to provide by law if relief under Subsection (a) was not granted.

(f) In rendering a temporary order under this section that suspends enforcement of all or part of the property division, the trial court may grant any relief under Subsection (a), in addition to requiring the party who was not awarded the property to post security for that part of the property division to be suspended. The trial court may require that the party who was not awarded the property post all or only part of the security that would otherwise be required by law.

(g) This section does not prevent a party who was not awarded the property from exercising that party's right to suspend the

relief sought; and

(3) may not prohibit a party's use, transfer, conveyance, or dissipation of the property awarded to the other party in the trial court's property division if the use, transfer, conveyance, or dissipation of the property is for the purpose of suspending the enforcement of the property division that is the subject of the appeal.

(c) A temporary order under this section that suspends the operation of all or part of the property division that is the subject of the appeal may not be rendered unless the trial court takes reasonable steps to ensure that the party awarded property in the trial court's property division is protected from the other party's dissipation or transfer of that property.

(d) In considering a party's request to suspend the enforcement of the property division, the trial court shall consider whether:

(1) any relief granted under Subsection (a) is adequate to protect the party's interest in the property awarded to the party; or

(2) the party who was not awarded the property should also be required to provide security for the appeal in addition to any relief granted under Subsection (a).

(e) If the trial court determines that the party awarded the property can be adequately protected from the other party's dissipation of assets during the appeal only if the other party provides security for the appeal, the trial court shall set the appropriate amount of security, taking into consideration any relief granted under Subsection (a) and the amount of security that the other party would otherwise have to provide by law if relief under Subsection (a) was not granted.

(f) In rendering a temporary order under this section that suspends enforcement of all or part of the property division, the trial court may grant any relief under Subsection (a), in addition to requiring the party who was not awarded the property to post security for that part of the property division to be suspended. The trial court may require that the party who was not awarded the property post all or only part of the security that would otherwise be required by law.

(g) This section does not prevent a party who was not awarded the property from exercising that party's right to suspend the

enforcement of the property division as provided by law.

(h) A motion seeking an original temporary order under this section:

(1) may be filed before trial; and

(2) may not be filed by a party after the date by which that party is required to file the party's notice of appeal under the Texas Rules of Appellate Procedure.

(i) The trial court retains jurisdiction to conduct a hearing and sign an original temporary order under this section until the 60th day after the date any eligible party has filed a notice of appeal from final judgment under the Texas Rules of Appellate Procedure.

(j) The trial court retains jurisdiction to modify and enforce a temporary order under this section unless the appellate court, on a proper showing, supersedes the trial court's order.

(k) On the motion of a party or on the court's own motion, after notice and hearing, the trial court may modify a previous temporary order rendered under this section if:

(1) the circumstances of a party have materially and substantially changed since the rendition of the previous order; and

(2) modification is equitable and necessary for the preservation of the property or for the protection of the parties during the appeal.

(l) A party may seek review of the trial court's temporary order under this section by:

(1) motion filed in the court of appeals with jurisdiction or potential jurisdiction over the appeal from the judgment in the case;

(2) proper assignment in the party's brief; or

(3) petition for writ of mandamus.

(m) A temporary order rendered under this section is not subject to interlocutory appeal.

(n) The remedies provided in this section are cumulative of all other remedies allowed by law.

SECTION 2. Section 6.711, Family Code, is amended.

SECTION 3. Section 9.007(c), Family Code, is amended.

SECTION 4. Section 109.001, Family Code, is amended by amending Subsections

enforcement of the property division as provided by law.

(h) A motion seeking an original temporary order under this section:

(1) may be filed before trial; and

(2) may not be filed by a party after the date by which that party is required to file the party's notice of appeal under the Texas Rules of Appellate Procedure.

(i) The trial court retains jurisdiction to conduct a hearing and sign an original temporary order under this section until the 60th day after the date any eligible party has filed a notice of appeal from final judgment under the Texas Rules of Appellate Procedure.

(j) The trial court retains jurisdiction to modify and enforce a temporary order under this section unless the appellate court, on a proper showing, supersedes the trial court's order.

(k) On the motion of a party or on the court's own motion, after notice and hearing, the trial court may modify a previous temporary order rendered under this section if:

(1) the circumstances of a party have materially and substantially changed since the rendition of the previous order; and

(2) modification is equitable and necessary for the preservation of the property or for the protection of the parties during the appeal.

(l) A party may seek review of the trial court's temporary order under this section by:

(1) motion filed in the court of appeals with jurisdiction or potential jurisdiction over the appeal from the judgment in the case;

(2) proper assignment in the party's brief; or

(3) petition for writ of mandamus.

(m) A temporary order rendered under this section is not subject to interlocutory appeal.

(n) The remedies provided in this section are cumulative of all other remedies allowed by law.

SECTION 2. Substantially the same as introduced version.

SECTION 3. Same as introduced version.

SECTION 4. Section 109.001, Family Code, is amended by amending Subsections

(a) and (b) and adding Subsections (b-1), (b-2), (b-3), (b-4), (b-5), and (e) to read as follows:

(a) In a suit affecting the parent-child relationship [~~Not later than the 30th day after the date an appeal is perfected~~], on the motion of any party or on the court's own motion and after notice and hearing, the court may make any order necessary to preserve and protect the safety and welfare of the child during the pendency of an [~~the~~] appeal as the court may deem necessary and equitable. In addition to other matters, an order may:

- (1) appoint temporary conservators for the child and provide for possession of the child;
- (2) require the temporary support of the child by a party;
- (3) enjoin [~~restrain~~] a party from molesting or disturbing the peace of the child or another party;
- (4) prohibit a person from removing the child beyond a geographical area identified by the court;
- (5) require payment of reasonable attorney's fees and expenses; or
- (6) suspend the operation of the order or judgment that is being appealed.

(b) A temporary order under this section enjoining a party from molesting or disturbing the peace of the child or another party:

(1) may be rendered without:

(A) the issuance of a bond between the spouses; or

(B) an affidavit or a verified pleading stating specific facts showing that immediate and irreparable injury, loss, or damage will result; and

(2) is not required to:

(A) define the injury or state why the injury is irreparable; or

(B) include an order setting the suit for trial on the merits with respect to the ultimate relief sought.

(b-1) A motion seeking an original temporary order under this section:

(1) may be filed before trial; and

(2) may not be filed by a party after the date by which that party is required to file the party's notice of appeal under the Texas Rules of Appellate Procedure.

(b-2) The trial court retains jurisdiction to conduct a hearing and sign a temporary

(a) and (b) and adding Subsections (b-1), (b-2), (b-3), (b-4), (b-5), and (e) to read as follows:

(a) In a suit affecting the parent-child relationship [~~Not later than the 30th day after the date an appeal is perfected~~], on the motion of any party or on the court's own motion and after notice and hearing, the court may make any order necessary to preserve and protect the safety and welfare of the child during the pendency of an [~~the~~] appeal as the court may deem necessary and equitable. In addition to other matters, an order may:

- (1) appoint temporary conservators for the child and provide for possession of the child;
- (2) require the temporary support of the child by a party;
- (3) enjoin [~~restrain~~] a party from molesting or disturbing the peace of the child or another party;
- (4) prohibit a person from removing the child beyond a geographical area identified by the court;
- (5) require payment of reasonable and necessary attorney's fees and expenses; or
- (6) suspend the operation of the order or judgment that is being appealed.

(b) A temporary order under this section enjoining a party from molesting or disturbing the peace of the child or another party:

(1) may be rendered without:

(A) the issuance of a bond between the spouses; or

(B) an affidavit or a verified pleading stating specific facts showing that immediate and irreparable injury, loss, or damage will result; and

(2) is not required to:

(A) define the injury or state why the injury is irreparable; or

(B) include an order setting the suit for trial on the merits with respect to the ultimate relief sought.

(b-1) A motion seeking an original temporary order under this section:

(1) may be filed before trial; and

(2) may not be filed by a party after the date by which that party is required to file the party's notice of appeal under the Texas Rules of Appellate Procedure.

(b-2) The trial court retains jurisdiction to conduct a hearing and sign a temporary

order under this section until the 60th day after the date any eligible party has filed a notice of appeal from final judgment under the Texas Rules of Appellate Procedure.

(b-3) The trial court retains jurisdiction to modify and enforce a temporary order [~~its orders rendered~~] under this section unless the appellate court, on a proper showing, supersedes the court's order.

(b-4) On the motion of a party or on the court's own motion, after notice and hearing, the trial court may modify a previous temporary order rendered under this section if:

(1) the circumstances of a party have materially and substantially changed since the rendition of the previous order; and

(2) modification is equitable and necessary for the safety and welfare of the child.

(b-5) A party may seek review of the trial court's temporary order under this section by:

(1) petition for writ of mandamus; or

(2) proper assignment in the party's brief.

(e) The remedies provided in this section are cumulative of all other remedies allowed by law.

SECTION 5. The heading to Section 109.002, Family Code, is amended.

SECTION 6. Section 109.002, Family Code, is amended.

SECTION 7. Section 109.003, Family Code, is amended.

SECTION 8. Section 152.314, Family Code, is amended.

SECTION 9. Section 153.258, Family Code, is amended.

SECTION 10. Section 154.130, Family Code, is amended.

SECTION 11. Section 156.005, Family Code, is amended.

SECTION 12. The following sections of the Family Code are repealed:

(1) Sections 153.254(b) and (c); and

(2) Section 154.130(a-1).

SECTION 13. Notwithstanding Section

order under this section until the 60th day after the date any eligible party has filed a notice of appeal from final judgment under the Texas Rules of Appellate Procedure.

(b-3) The trial court retains jurisdiction to modify and enforce a temporary order [~~its orders rendered~~] under this section unless the appellate court, on a proper showing, supersedes the court's order.

(b-4) On the motion of a party or on the court's own motion, after notice and hearing, the trial court may modify a previous temporary order rendered under this section if:

(1) the circumstances of a party have materially and substantially changed since the rendition of the previous order; and

(2) modification is equitable and necessary for the safety and welfare of the child.

(b-5) A party may seek review of the trial court's temporary order under this section by:

(1) petition for writ of mandamus; or

(2) proper assignment in the party's brief.

(e) The remedies provided in this section are cumulative of all other remedies allowed by law.

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.

SECTION 8. Same as introduced version.

SECTION 9. Same as introduced version.

SECTION 10. Same as introduced version.

SECTION 11. Same as introduced version.

SECTION 12. Same as introduced version.

SECTION 13. Same as introduced version.

6.709, Family Code, as amended by this Act, if any eligible parties have filed a notice of appeal from a final judgment under the Texas Rules of Appellate Procedure before September 1, 2017, any party to the appeal may file a motion in the trial court for an original temporary order under Section 6.709, Family Code, as it existed immediately before the effective date of this Act, and the trial court has jurisdiction to conduct a hearing and sign an original temporary order under that section until October 30, 2017.

SECTION 14. Except as provided by Section 13 of this Act, the changes in law made by this Act apply only to an order that is rendered on or after the effective date of this Act. An order rendered before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

SECTION 15. This Act takes effect September 1, 2017.

SECTION 14. Same as introduced version.

SECTION 15. Same as introduced version.