

- SUBJECT:** Giving adoptive parents standing to file for adoption before child's birth
- COMMITTEE:** Juvenile Justice and Family Issues — committee substitute recommended
- VOTE:** 9 ayes — Dutton, Goodman, Baxter, Castro, Dunnam, Hodge, J. Moreno, Morrison, Reyna
- 0 nays
- WITNESSES:** For — Judge Tom Stansbury, Texas Family Law Foundation
- Against — None
- BACKGROUND:** Family Code, sec. 102.003 specifies who has standing to bring a suit affecting the parent-child relationship. Sec. 102.003(a)(10) limits standing for a prospective adoptive parent to situations in which the birth parent has signed an affidavit of voluntary relinquishment of parent rights. Sec. 102.003(a)(7) gives a licensed child-placing agency standing to bring a suit affecting the parent-child relationship without requiring an affidavit of voluntary relinquishment.
- Family Code, sec. 161.103 prevents a parent from signing an affidavit of voluntary relinquishment until at least 48 hours after the child's birth. The affidavit must contain the name of the prospective adoptive parent or a licensed child-placing agency that will serve as managing conservator.
- Sec. 162.003 requires that a pre-adoptive home screening be conducted in a suit for adoption. Sec. 107.051 allows a court to order the preparation of a social study into the circumstances and condition of the child and of the home of the prospective adoptive parents.
- Under sec. 162.001, an adult with standing may petition to adopt a child if the parent-child relationship as to each living parent has been terminated or if a suit for termination is joined with the suit for adoption. Sec. 161.001 delineates when a court may terminate the parent-child relationship involuntarily — for example, when a parent has abandoned the child.

DIGEST: CSHB 233 would amend Family Code, sec. 102.003(a) to allow a pregnant woman to confer standing to a prospective adoptive parent before the birth of the child, and to allow either birth parent to confer standing to a prospective adoptive parent after the child's birth.

The bill would authorize a pregnant woman or birth parent to execute a statement to confer standing to a prospective adoptive parent. The statement to confer standing could not be used for any purpose other than to confer standing in a proceeding for adoption or to terminate the parent-child relationship. Such a statement would not be required in a suit brought by a person with standing under Family Code, secs. 102.003(a)(1)-(13).

The pregnant woman or birth parent could revoke the statement to confer standing at any time before signing an affidavit for voluntary relinquishment of parental rights, provided that the revocation was in writing and was sent to the prospective adoptive parent. The court would have to dismiss any suit affecting the parent-child relationship filed by the prospective adoptive parents after the pregnant woman or birth parent filed with the court proof of the delivery of the revocation.

The bill would take effect September 1, 2003.

SUPPORTERS SAY: CSHB 233 would expedite suits for adoption, allowing them to be finalized shortly after the birth of the child. When an adult files for adoption, the court requires a screening of the adoptive parents' home to ensure that it is safe and suitable for the child. The duration varies by region, but home studies can take from 30 to 90 days. Because adoptive parents now have to wait until the child is born to file suit, the child sometimes is placed in a foster home while the home study is being conducted. This process is disruptive for the child during infancy. By reducing the delay between birth and placement with the adoptive family, this bill would promote the best interest of the child and the family.

CSHB 233 would give adoptive parents the same right to standing that licensed child-placing agencies already have. It would give adoptive parents the right to file an adoption suit before the child's birth without the assistance of a child-placing agency. Eliminating the "middleman" could save adoptive parents money. Also, when birth parents relinquish parental rights, they sometimes designate a licensed child-placing agency to serve as managing

conservator of the child, rather than a specific adoptive parent. This designation gives all parties less control over who the adoptive parents will be, leaving the ultimate decision in the hands of the child-placing agency. By giving standing to adoptive parents, CSHB 233 would give birth and adoptive parents more control over the process.

By allowing a pregnant woman to confer standing to adoptive parents, CSHB 233 would give adoptive parents more certainty early in the process about their ability to adopt a child. By executing a statement to confer standing, a pregnant woman would make her intent known to the courts and the adoptive family. That statement would give adoptive families peace of mind and would allow them to prepare their homes and lives better for the adoptive child.

The bill also would prevent a birth parent from having to relinquish parental rights before giving standing to the adoptive parents. This requirement in the current law makes the relinquishing parent vulnerable, because a previously absent parent might assert parental rights and gain at least temporary possession of the child.

Birth parents and pregnant women still would have the right to change their minds about adoption during or after the birth of the child. CSHB 233 would allow them to revoke the statement conferring standing at any time before they executed an affidavit for voluntary relinquishment of parental rights. They could revoke their statement for any reason, and after they revoked their statement, the court would have to dismiss the adoption suit.

CSHB 233 would not make pregnant women more vulnerable to being taken advantage of by third parties. The statement to confer standing would have to contain information about the prospective adoptive parent, the birth parents, and the county where the suit would be filed. The pregnant woman, who would have to sign the statement, should be expected to understand its contents. No legislation can protect completely against abuses by attorneys or other third parties, but CSHB 233 would contain sufficient safeguards. Furthermore, if an attorney lied to the pregnant woman about what rights she was relinquishing, it would be a clear case of fraud and the statement conferring standing would be void.

CSHB 233 would not give rise to more conflicts between birth parents than arise under current law. Under Family Code, sec. 162.001, before a child may be adopted, the parent-child relationship as to each living parent must have been terminated. Conflicts arise already as to whether the court should involuntarily terminate the parent-child relationship of either parent under sec. 161.001. Furthermore, under current law, both parents can relinquish their parental rights and designate a different adoptive parent. That conflict is no different from any that might arise under CSHB 233, which also would allow each birth parent to confer standing to a different adoptive parent.

Fathers would lose no rights under CSHB 233 that they now enjoy. The court could not terminate their parental rights involuntarily until after the birth of the child, as under current law, and fathers would remain entitled to the same notice and procedural requirements. It makes sense to allow pregnant women to confer standing before the birth of the child because the court knows with certainty that she will be the mother, as opposed to a man claiming that he will be the father. A man does not legally become a father until the birth of the child, even if he is the husband of the pregnant woman.

**OPPONENTS
SAY:**

CSHB 233 would make it easy for third parties like attorneys to take advantage of pregnant women. A pregnant women might not understand that she merely was conferring standing, and not relinquishing her parental rights, before the child's birth. While the bill would give birth parents a right to revoke, they could not exercise that right if they were not aware of it. In practice, pregnant women would not have any meaningful right to change their minds during the pregnancy or after the child's birth because they would be confused about their options.

The bill would create conflicts because both birth parents could confer standing to a different party. For example, a pregnant woman might want to confer standing to a well-respected adoptive family, whereas the father might want to confer standing to his mother to keep the child in the family. The involvement of additional parties would result in protracted litigation.

CSHB 233 would diminish a birth father's rights in the adoption process. It would discriminate against men by allowing the pregnant woman, but not the father-to-be, to confer standing to a prospective adoptive parent. Expediting the adoption process might not be in the best interest of the birth father, who

might not want to relinquish his parental rights or have them terminated involuntarily.

NOTES:

The original version of HB 233 would have allowed parents to confer standing in suits brought by a governmental entity, such as the Department of Protective and Regulatory Services, under Family Code, chapters 262 or 263. According to the fiscal note, this provision could have added another party and prolonged legal proceedings and foster care, costing the state a projected \$2.1 million in general revenue in fiscal 2004-05. According to the revised fiscal note, the substitute would have no significant fiscal implications for the state.

During the 2001 regular session of the 77th Legislature, HB 1635, similar to CSHB 233, was reported favorably as substituted by the Juvenile Justice and Family Issues Committee, but the bill died in the House Calendars Committee.