

- SUBJECT:** Standing for family to file suit affecting parent-child relationship.
- COMMITTEE:** Juvenile Justice and Family Issues — committee substitute recommended
- VOTE:** 7 ayes — Dutton, Eiland, Bolton, Farias, Farrar, Gonzalez Toureilles, Hernandez
- 0 nays
- 2 absent — Strama, Vaught
- WITNESSES:** (*On original bill:*)
- For — Dennis Moreno; Jesus Moreno; Joann Moreno; Mary Moreno; Sandra Moreno; Cynthia Valadez, MADRES- Mothers Against Discriminatory Racism in Education and Society
- Against — Heidi Bruegel Cox; Jack Marr, Texas Family Law Foundation (*Registered, but did not testify:* Wendy Burgower; Sherri A. Evans; Diana S. Friedman, Diana S. Friedman, P.C.; Jim Loveless, State Bar of Texas, Family Law Section; Christy Bradshaw Schmidt; Doug Woodbur n)
- On —Beth Engelking, Department of Family and Protective Services
- BACKGROUND:** Family Code, sec. 102.006 states that if the parent-child relationship between the child and every living parent of the child has been terminated, an original suit may not be filed by:
- a former parent whose parent-child relationship with the child has been terminated by court order;
 - the father of the child; or
 - a family member or relative by blood, adoption, or marriage of either a former parent whose parent-child relationship has been terminated or of the father of the child.
- The limitations on filing suit do not apply to a person who:
- has a continuing right to possession of or access to the child under an existing court order; or

- has the consent of the child's managing conservator, guardian, or legal custodian to bring the suit.

DIGEST:

CSHB 1481 would amend Family Code, sec. 102.006 to add that the limitations on filing suit once the parent-child relationship between the child and every living parent had been terminated would not apply, under certain circumstances, to:

- an adult sibling of the child;
- a grandparent of the child;
- an aunt who was a sister of a parent of the child;
- or an uncle who was the brother of a parent of the child.

The adult sibling, grandparent, aunt, or uncle would have to file an original suit or a suit for modification requesting managing conservatorship of the child not later than the 90th day after the date the parent-child relationship between the child and the parent was terminated in a suit filed by the Department of Family Protective Services requesting the termination of the parent-child relationship.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

SUPPORTERS
SAY:

CSHB 1481 would address situations in which extended family did not know that a family member's parental rights were terminated involuntarily and the child was subsequently placed for adoption outside the family network. The extended family of the child should have at least 90 days to petition for conservatorship to promote the goal of reunification and family placement. Once an adoption takes place, significant procedural barriers exist for the extended family to challenge the adoption. The bill would preempt those problems by providing the extended family an opportunity to present themselves as available conservators for the child before an outside adoption took place.

The committee substitute removed a requirement in the original bill that in order for the family members to have standing to file suit, the DFPS would have to have neglected to notify the family regarding the involuntary termination. The committee substitute also would limit the ability for family members to file for custody to an involuntary termination of parental rights by DFPS, so that a family member was not able to interfere

with a voluntary termination where adoption is being pursued voluntarily by the parent.

**OPPONENTS
SAY:**

Termination of parental rights statutorily takes up to 18 months. Allowing an extra 90 days for family members to come forward only would unnecessarily lengthen the time before a child could obtain permanency. The situation provoking the bill begs the question of where the extended family member was during the nearly 18 months when the termination of parental rights was pending. While family placement is an important and mandated goal, permanency for the child is required to be pursued with equal diligence in the Family Code.

If the extended family member were allowed to intervene post-termination, that family member should be required to file a petition for adoption, rather than the less legally rigorous suit for conservatorship. Adoption would provide true permanency for the child, with all of the associated benefits, including inheritance. In addition, home-studies to adequately assess the child's best interest should be required for extended family member placement, which would not be done if the family member were able to petition for custody rather than adoption.

NOTES:

The committee substitute would require a relative to file a suit for modification requesting managing conservatorship, extend the time for filing from 30 days to 90 days after termination, and limit the standing of a family member to involuntary terminations only. It eliminated a requirement in the original bill that DFPS have neglected to notify a relative of the termination for a relative to file suit.