

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 1253  
By: Ellis  
Jurisprudence  
4-14-97  
Committee Report (Substituted)

### **DIGEST**

Currently, some sections of Title IV, Family Code, which cover protective orders and family violence, are in need of clarification and modification to ensure protection of family violence victims. This bill amends the Family Code to provide that victims are not charged fees for protective orders and gives judges greater latitude in assessing fees against respondents; requires a protective order to be filed in the court where the divorce is filed first or, a protective order is filed before a divorce petition, that there be no delay in issuing program requirements for individuals who commit acts of domestic violence; and provides that a joint managing conservatorship is not presumed if there is a history of family violence.

### **PURPOSE**

As proposed, C.S.S.B. 1253 amends the Family Code to provide that victims are not charged fees for protective orders and gives judges greater latitude in assessing fees against respondents; requires a protective order to be filed in the court where a divorce is filed first or, if a protective order is filed before a divorce petition, that there be no delay in issuing program requirements for individuals who commit acts of domestic violence; and provides that a joint managing conservatorship is not presumed if there is a history of family violence.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 71.04(b), Family Code, to delete a provision authorizing an application for a protective order to be filed by a member of a family or household.

SECTION 2. Amends Section 71.041, Family Code, to prohibit an attorney representing an applicant from being assessed a charge by a district or county clerk, sheriff, constable, or other employee in connection with the filing, serving, or entering of a protective order for any other service described by this subsection, including certain fees. Provides that if a date is not specified by the court, payment of costs is required before the 60th day after the date the order was rendered.

SECTION 3. Amends Sections 71.06(a) and (b), Family Code, to require certain persons who apply for a protective order to file an application for the order in the court in which the suit is pending, rather than under Section 3.581 of this code. Prohibits a court from delaying a hearing on the grounds that the suit for dissolution of marriage is filed after the date the application. Deletes a provision relating to exceptions to dismissing an application.

SECTION 4. Amends Section 71.07(d), Family Code, to require notice of an application for protective order to show the mailing address of the applicant if the applicant is not represented by an attorney.

SECTION 5. Amends Section 71.09(d), Family Code, to require a court in a county with a population of more than 1.5 million to set a date and time for a hearing on the application not later than 20 days after the date the application is filed and set a hearing rescheduled under Subsection (c) to take place not later than 20 days after the date on which the request is made. Deletes provisions

relating to request of the prosecuting attorney of an application.

SECTION 6. Amends Section 71.10(c), Family Code, to provide that if the respondent violated a protective order, rather than a former protective order, and the order was in effect at the time of the violation, certain actions would take place. Makes conforming changes.

SECTION 7. Amends Sections 71.11(a) and (e), Family Code, to authorize a protective order to provide for possession of and access to a child of a party, if the person receiving possession of or access to the child is a parent, as defined by Section 101.024, rather than Section 11.01 of this code, of the child; and require a person found to have committed family violence to complete a battery intervention and prevention program as provided by Article 42.141, Code of Criminal Procedure. Sets forth requirements for a person who files an affidavit that the person has begun counseling. Makes conforming changes.

SECTION 8. Amends Section 71.15(f), Family Code, to provide that a temporary ex parte order prevails over any other court order made under Title 5 to the extent of any conflict between the orders. Deletes a provision relating to a temporary ex parte order.

SECTION 9. Amends Section 3.581, Family Code, to make conforming changes.

SECTION 10. Amends Section 153.131, Family Code, to provide that Subsection (a) is subject to the prohibition in Section 153.004. Provides that a finding of a history of family violence involving the parents of a child removes the presumption under this subsection. Makes a conforming change.

SECTION 11. Repealer: Sections 3.582 and 3.583, Family Code (Copies of order and duties of law enforcement agencies, respectively).

SECTION 12. (a) Effective date: September 1, 1997.

(b) Makes application of SECTIONS 2 and 6 retroactive.

(c) Makes application of this Act prospective, except as provided in Subsection (b).

SECTION 13. Emergency clause.

## **SUMMARY OF COMMITTEE CHANGES**

SECTION 2.

Amends Section 71.041, Family Code, to provide that if a date is not specified by the court, payment of costs is required before the 60th day after the date the order was rendered.

SECTION 9.

Amends Section 153.131, Family Code, to provide that this section is subject to the prohibition in Section 153.004.