

BILL ANALYSIS

Senate Research Center
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S.B. 1194
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Jurisprudence
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Ordinarily, a grandparent may not be granted custody of a child until the child's parents are shown to be unfit. However, laws relating to a grandparent's right to possession of a child may be used by a grandparent to take a child away from fit parents. In many cases, if the parents divorce or one of the parents is incarcerated or dies, a grandparent may sue for possession of a child. This is seen by some as discrimination against single parents and can leave fit parents fighting expensive court battles that can lead to financial ruin and the removal of their legal right to provide for their children. S.B. 1194 seeks to protect fit parents from losing custody of their children to a grandparent.

As proposed, S.B. 1194 amends current law relating to a suit for possession of or access to a child by a grandparent.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 153.432, Family Code, by amending Subsections (a) and (c) and adding Subsections (d), (e), and (f), as follows:

- (a) Authorizes a biological or adoptive grandparent, subject to Section 153.434, to request possession of or access to a grandchild by filing certain suits.
- (c) Deletes existing text requiring the court to deny the relief sought and dismiss the suit unless the court determines that the facts stated in the affidavit, if true, would be sufficient to support the relief authorized under Section 153.433.
- (d) Requires a court to deny the relief sought and refuse to schedule a hearing unless the court determines that the facts stated in the affidavit, if subsequently proven to be true, are adequate to support an allegation as described in Subsection (c). Requires the court, if the court determines that the facts stated, if subsequently proven to be true, are adequate to support an allegation, to set a time and place for the initial hearing as provided by Section 153.433(b).
- (e) Requires the court to assess attorney's fees as costs against the offending party if the court finds that a suit described by Subsection (a) is filed frivolously or is designed to harass a party.
- (f) Prohibits a suit described by Subsection (a) from being tried or consolidated with any other suit for conservatorship of the child or any other proceeding involving or arising from a claim involving the parent-child relationship. Provides that any order resulting from a consolidated proceeding prohibited by this subsection is void.

SECTION 2. Amends Section 153.433, Family Code, as follows:

Sec. 153.433. POSSESSION OF OR ACCESS TO GRANDCHILD. (a) Authorizes the court to order reasonable possession of or access to a grandchild by a grandparent if:

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

(2) the grandparent requesting possession of or access to the child overcomes the presumption that a parent acts in the best interest of the parent's child by proving by clear and convincing evidence, rather than a preponderance of the evidence, that denial of possession of or access to the child would significantly impair the child's physical health or emotional well-being; and

(3) the grandparent requesting possession of or access to the child is a parent of a parent of the child and that parent of the child has been incarcerated in jail or prison during the three-month period preceding the filing of the petition, has been found by a court to be incompetent, is dead, or has not had actual or court-ordered possession of or access to the child, rather than does not have actual or court-ordered possession of or access to the child.

(b) Requires the court, as a threshold issue, to conduct an initial hearing not later than the 45th day after the date of service of process at which the court is required to dismiss the suit unless the grandparent requesting possession of or access to the child proves by clear and convincing evidence that denial of possession of or access to the child would significantly impair the child's physical health or emotional well-being.

(c) Prohibits the court, in a hearing under Subsection (b), from rendering a temporary order.

(d) Prohibits the court, in a suit by a grandparent, unless the grandparent meets the evidentiary burden at the initial hearing, from ordering:

(1) the appointment of an amicus attorney, guardian ad litem, or attorney ad litem; or

(2) counseling, a social study, mental examination, physical examination, or parenting classes, except for a grandparent who files the suit.

(e) Creates this subsection from existing text. Requires that an order granting possession of or access to a child by a grandparent that is rendered over a parent's objections to state, with specificity, among other qualifications, the parent's objections, the fact that the court gave special weight to the parent's objections, the manner in which the court gave special weight to the parent's objections, and the specific grounds for overriding the parent's objections. Makes nonsubstantive changes.

(f) Prohibits the court, in a suit by a grandparent, from imposing a geographic restriction.

(g) Authorizes the court to award the parent all costs, fees, and expenses incurred by the parent to defend the suit in accordance with Chapter 106 (Costs and Attorney's Fees) if the grandparent requesting possession of or access to a child fails to meet all of the evidentiary burdens under this section.

(h) Prohibits this section from prohibiting a grandparent from filing a suit for managing conservatorship of a child under this chapter (Conservatorship, Possession, and Access) or Chapter 102 (Filing Suit) or 156 (Modification).

SECTION 3. Amends Section 153.434, Family Code, as follows:

Sec. 153.434. **LIMITATION ON RIGHT TO REQUEST POSSESSION OR ACCESS.** Prohibits a biological or adoptive grandparent from requesting possession of or access to a grandchild if the child has been adopted or is the subject of a pending suit for adoption and among other conditions, executed an affidavit of waiver of interest in child or an affidavit of relinquishment of parental rights under Chapter 161 (Termination of the Parent-Child Relationship) and the affidavit designates an authorized agency, licensed child-placing agency, or another person as the managing conservator of the child, rather than an authorized agency, licensed child-placing agency, or person other than the child's stepparent as the managing conservator of the child. Deletes existing text prohibiting a biological or adoptive grandparent from requesting possession of or access to a grandchild if, among other conditions, the grandchild has been adopted, or is the subject of a pending suit for adoption, by a person other than the child's stepparent.

SECTION 4. Provides that notwithstanding Chapter 156, Family Code, or any other provision of the Family Code, Sections 153.432, 153.433, and 153.434, Family Code, as amended by this Act, apply equally to an original suit and a suit for modification filed by a grandparent seeking possession of or access to a grandchild.

SECTION 5. Provides that the changes in law made by this Act apply to a suit affecting the parent-child relationship that is pending in a court on the effective date of this Act or is filed on or after that date.

SECTION 6. Effective date: upon passage or September 1, 2013.