

BILL ANALYSIS

Senate Research Center
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S.B. 414
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Parents are supposed to be protected from having their parental rights removed, and their child taken, unless they are shown to be unfit. In many cases, if a child's 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 this situation 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. 414 seeks to protect fit parents from unjustly losing possession of a child to a grandparent.

As proposed, S.B. 414 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 (Limitation on Right to Request Possession or Access), to request possession of or access to a grandchild by filing an original suit or a suit for modification as provided by Chapter 156 (Modification).
- (c) Deletes existing text requiring the court (relating to an entity authorized under the law of a state to establish, enforce, or modify a child custody determination) 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. Makes no further change to this subsection.
- (d) Requires the 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, if the court finds that a suit described by Subsection (a) is filed frivolously or is designed to harass a party, to assess attorney's fees as costs against the offending 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) Makes no change to this subdivision;

(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:

(A)-(C) Makes no change to these paragraphs;

(D) has not had actual or court-order possession of or access to the child, rather than does not have actual or court-order 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, a mental examination, a 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, with specificity, state;

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

(2) that the grandparent requesting possession of or access to the child has overcome 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 the denial of possession of or access to the child would significantly impair the child's physical health or emotional well-being;

(3) that 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:

(A)-(C) Makes no change to these paragraphs;

(D) has no 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;

(4) the parent's objections;

(5) the fact that the court gave special weight to the parent's objections;

(6) the manner in which the court gave special weight to the parent's objections; and

(7) the specific grounds for overriding the parent's objections.

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

(g) Authorizes the court, if the grandparent requesting possession of or access to a child fails to meet all of the evidentiary burdens under this section, 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).

(h) Provides that this section does not prohibit a grandparent from filing a suit for managing conservatorship of a child under this chapter or Chapter 102 (Filing Suit) or 156.

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 each of the biological parents of the child, rather than grandchild, has:

(1) Redesignates Paragraph (A) as Subdivision (1) and makes no further change;

(2) Redesignates Paragraph (B) as Subdivision (2) and makes no further change;

(3) 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, rather than person other than the child's stepparent, as the managing conservator of the child.

Deletes existing Subdivision (2) text prohibiting a biological or adoptive parent from requesting possession of or access to a grandchild if 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, 2015.