

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 2365  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 2365 codifies the constitutional rules governing the parent-child relationship outlined by 100 years of Supreme Court case law and recent Texas attorney general opinion, KP-0241. The bill includes nothing that is not already constitutionally required. The point of the bill is not to change the law, but to update the law to clearly reflect current constitutional rules.

The bill is limited to only suits between a parent and a non-parent. Suits between two parents are not included. The reason for this is that case law has not applied the same constitutional rules in suits between two parents as in suits between a parent and a non-parent. It outlines the scope of a parent's fundamental right, straight from existing case law, as including the right to direct the care, custody, control, education, upbringing, moral and religious training, and medical care of their child.

It also details the constitutional level of strict scrutiny that must be applied when considering the infringement of any fundamental right, as well as the constitutional requirement for the state to presume that a parent is a fit parent who acts in the best interests of their child and the methods of overcoming that presumption.

As proposed, S.B. 2365 amends current law relating to the protection of parental rights.

### **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 151.001(a), Family Code, as follows:

(a) Makes nonsubstantive changes throughout this subsection. Provides that a parent of a child has the following rights and duties:

(1) the right to:

(A) have physical possession of the child;

(B) direct the nurture, upbringing, moral and religious training, and health care of the child, rather than the right to direct the moral and religious training; and

(C) creates this paragraph from existing text;

(2)–(5) makes no changes to these subdivisions;

(6) the right to consent to the child's enlistment in the armed forces of the United States, medical and dental care, and psychiatric, psychological, and surgical treatment, rather than the right to consent to the child's marriage, enlistment in the

armed forces of the United States, medical and dental care, and psychiatric, psychological, and surgical treatment;

(7)–(11) makes no changes to these subdivisions.

SECTION 2. Amends Chapter 151, Family Code, by adding Section 151.004, as follows:

Sec. 151.004. PROTECTION OF PARENTAL RIGHTS. (a) Provides that the liberty of a parent regarding the care, custody, and control of the parent's child is a fundamental right that resides first in the parent.

(b) Provides that it is presumed that a parent is a fit parent and that a fit parent acts in the best interest of the child.

(c) Provides that, for purposes of Subsection (b), a parent may be determined to not be a fit parent only by clear and convincing evidence that the parent does not adequately care for the parent's child.

(d) Prohibits the state, or an agency or political subdivision of the state, from restricting or interfering with a parent's fundamental right to make decisions in the raising of the parent's child unless the state, agency, or political subdivision demonstrates that the action of the state, agency, or political subdivision:

(1) is in furtherance of a compelling governmental interest; and

(2) is narrowly tailored to accomplish that interest.

(e) Prohibits a court from restricting or interfering with the fundamental right of a parent solely because the court believes a better decision could be made. Authorizes a court to restrict or interfere with the fundamental right of a parent only if the court:

(1) first overcomes the presumptions described by Subsection (b); and

(2) finds that the parent is not a fit parent or the infringement is necessary to prevent a significant impairment of the child's physical health or emotional well-being.

(f) Provides that this section does not limit the right of the state or an agency or political subdivision of the state, in accordance with the United States Constitution and applicable state and federal law, to investigate or take action based on a report of child abuse or neglect allegedly committed by a person responsible for a child's care, custody, or welfare.

SECTION 3. Amends Section 153.002, Family Code, as follows:

Sec. 153.002. BEST INTEREST OF CHILD. (a) Creates this subsection from existing text.

(b) Provides that it is presumed that a parent is a fit parent and that a fit parent acts in the best interest of the child.

(c) Provides that, for purposes of Subsection (b), a parent may be determined to not be a fit parent only by clear and convincing evidence that the parent does not adequately care for the parent's child.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2019.