

BILL ANALYSIS

Senate Research Center
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S.B. 1148
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Jurisprudence
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current sections of the Family Code and a recent court decision impede the ability of a grandparent to gain access to a grandchild. S.B. 1148 is designed to address these issues. Specifically, it addresses notice and hearing requirements for grandparents in possessory conservator suits, the use of expert testimony in access suits, and the barriers to who may bring a suit for access to a grandchild.

Currently, there is no notice and hearing requirement in statute on a grandparent's petition to intervene in a conservatorship suit brought by the parents of a child. This bill requires that there be notice to the parties and a hearing conducted before the court rules on the grandparent's ability to intervene.

In order for a grandparent to gain access to a grandchild, the grandparent must prove that the child's physical health or emotional well-being would be significantly impaired without that visitation to overcome the presumption that the parent acts in the best interest of the child. A recent court decision stated that lay testimony alone may be held insufficient to meet the burden in these suits and that expert testimony should be used in all cases, even though such requirement is not in statute. This bill addresses that issue directly by clarifying in statute that an expert opinion is not required in all cases to meet that burden.

In order for a grandparent to bring a suit for access to a child, the law currently states that the grandparent's child (i.e., the grandchild's parent) be dead, incompetent, incarcerated, or without actual or court ordered possession of or access to the child. The current law does not allow the grandparent to bring suit if one of these criteria is not met by the grandparent's child. This bill will allow a grandparent to gain access regardless of the status of the parent.

As proposed, S.B. 1148 amends current law relating to possession of or access to a child by a grandparent or certain other persons.

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 Sections 102.004(a) and (b), Family Code, as follows:

(a) Makes a nonsubstantive change.

(b) Prohibits an original suit requesting possessory conservatorship from being filed by a grandparent or other person. Authorizes the court, however, to grant a grandparent or other person deemed by the court to have had substantial past contact with the child leave to intervene in a pending suit filed by a person authorized to do so under this subchapter if, after notice and hearing, there is satisfactory proof to the court that appointment of a parent as a sole managing conservator or both parents as joint managing conservators would significantly impair the child's physical health or emotional development.

SECTION 2. Amends Section 153.432, Family Code, by adding Subsection (d), as follows:

(d) Provides that an affidavit submitted under Subsection (c) (relating to requiring the person filing the suit for possession or access by grandparent to execute and attach a certain affidavit) is not required to contain expert opinion.

SECTION 3. 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; and

(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 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.

Deletes existing text authorizing the court to order reasonable possession of or access to a grandchild by a grandparent if 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 does not have actual or court-ordered possession of or access to the child.

(a-1) Provides that, to meet the burden of proof under Subsection (a)(2), a grandparent requesting possession of or access to a grandchild is not required to offer expert testimony.

(b) Requires that an order granting possession of or access to a child by a grandparent that is rendered over a parent's objections state, with specificity, that:

(1) 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; and

(2) 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 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.

Deletes existing text requiring that an order granting possession of or access to a child by a grandparent that is rendered over a parent's objections state, with specificity, 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 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 does not have actual or court-ordered possession of or access to the child. Makes a nonsubstantive change.

SECTION 4. Provides that the changes in law made by this Act apply only to a suit affecting the parent-child relationship filed on or after the effective date of this Act. Provides that a suit filed before that date is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

SECTION 5. Effective date: September 1, 2013.