

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1178
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State Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Supreme Court jurisprudence, both at the state and federal level, makes clear certain constitutional rights as it relates to the parent-child relationship in suits involving third parties. These rights were clarified and reaffirmed as recently as June 26, 2020, when the Texas Supreme Court issued its unanimous opinion in *In re C.J.C.* The opinion, consistent with 100 years of prior case law, unanimously held that in suits between a parent and a non-parent, the court must initially presume that the parent is a fit parent who is acting in the best interest of the child.

While all Texas courts are bound by these rules, trial courts and many attorneys often operate in contravention of this common law principle. In fact, appellate review indicates that trial courts have misapplied this constitutional presumption 43 percent of the time over the last 20 years. On mandamus review, the trial court record is even worse.

S.B. 1178, or the Family Unity Act, statutorily specifies and defines the certain parent-child rights guaranteed by our state and federal constitutions. Among these are the parent's rights to direct the child's religious upbringing, medical care, and education. Establishing this judicial presumption in statute will give district courts fewer opportunities to erroneously interrupt the rights of parent and their child.

Lastly, the Family Unity Act precludes a third party from interfering in a parent-child relationship unless it is necessary to prevent a significant impairment of the child's physical health or emotional well-being.

(Original Author's / Sponsors Statement of Intent)

C.S.S.B. 1178 amends current law relating to the rights and duties of parents and the protection of parental rights in suits affecting the parent-child relationship.

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) Provides that in addition to the rights and duties described by Section 151.004, a parent of a child has certain rights and duties. Makes conforming and nonsubstantive changes.

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

Sec. 151.004. PRESUMPTION OF PARENTAL FITNESS; FUNDAMENTAL RIGHT OF PARENTS TO RAISE CHILDREN. (a) Provides that in a suit, there is a presumption that a parent is a fit parent who acts in the best interest of the parent's child.

(b) Provides that the fundamental right of a parent to raise the parent's child includes the right to direct and make decisions for the child's care, custody, control, education, upbringing, moral and religious training, and medical care.

(c) Prohibits a court, in a suit between a parent and a nonparent, from granting any relief that conflicts with a parent's decisions or proposed decisions for the child unless the court finds that:

(1) the requested relief is necessary to prevent a significant impairment of the child's physical health or emotional well-being; or

(2) in the most recent final order rendered regarding the child in a previous suit to which the parent was a party, the parent:

(A) either was given an opportunity to be heard and present evidence, or entered into a written agreement that did not name the parent as the sole managing conservator or a joint managing conservator of the child;

(B) was not appointed as the sole managing conservator or a joint managing conservator of the child; and

(C) had adequate notice of the final hearing as required by law.

(d) Prohibits this section from being construed to limit the rights of the state to investigate or act on a report of child abuse or neglect allegedly committed by a person responsible for a child's care, custody, or welfare, beyond the limitations required by the United States Constitution and the Texas Constitution.

(e) Provides that this section does not apply to an order to enforce child support.

SECTION 3. Effective date: upon passage or September 1, 2021.