

LEGISLATIVE UPDATE 2019: FAMILY LAW

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The author wishes to express his appreciation to the Honorable Judy K. Warne for her invaluable assistance in tracking, updating and commenting on the family law legislation during the entire course of this session. Her efforts have made this update a much easier task.

Houston Bar Association Family Law Section
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**SUMMARY OF FAMILY LAW LEGISLATIVE ACTION
(as of July 1 2019)**

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THIS COMPILATION OF NEW LEGISLATION INCLUDES ONLY THOSE STATUTES AFFECTING TITLES 1, 2, 4, AND 5 OF THE TEXAS FAMILY CODE. ALSO INCLUDED ARE SOME REVISIONS TO OTHER STATUTES THAT MAY HAVE AN EFFECT FAMILY LAW. THERE WERE ALSO AMENDMENTS TO STATUTES INVOLVING THE TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES (TDFPS) VI-D PROCEEDING, ALL OF WHICH ARE NOT INCLUDED IN THIS WRITING.

TITLE 1. THE MARRIAGE RELATIONSHIP

CHAPTER 3. MARITAL PROPERTY RIGHTS & LIABILITIES

Subchapter D. Management, Control, And Disposition of Marital Property Under Unusual Circumstances

§ 3.305. Citation by Publication-AMENDED

(a) Except as provided by Section 17.032, Civil Practice and Remedies Code, if [H] the residence of the respondent, other than a respondent reported to be a prisoner of war or missing on public service, is unknown, citation shall be published on the public information Internet website maintained as required by Section 72.034, Government Code, and in a newspaper of general circulation published in the county in which the petition was filed. [If that county has no newspaper of general circulation, citation shall be published in a newspaper of general circulation in an adjacent county or in the nearest county in which a newspaper of general circulation is published.]

(b) The notice shall be published on the public information Internet website for at least two consecutive weeks before the hearing and in a newspaper once a week for two consecutive weeks before the hearing. Neither [but the first] notice may [not] be initially published after the 20th day before the date set for the hearing.

Source: SB 891

Eff. Date: 9/1/19

RELATED TO: TFC 31.008 & 102.010 & CPRC 17.032

Subtitle C. Dissolution of Marriage

CHAPTER 6 – SUIT FOR DISSOLUTION OF MARRIAGE

Subchapter E. Filing Suit

§ 6.406(a-1). Mandatory Joinder of SAPCR-ADDED/AMENDED. SEE TFC 102.003

(a-1) If the parties to a suit for dissolution of a marriage are the intended parents under a gestational agreement that is in effect and that establishes a parent-child relationship between the parties as intended parents and an unborn child on the birth of the child, the petition in the suit for dissolution of a marriage shall state:

(1) that the parties to the marriage have entered into a gestational agreement establishing a parent-child relationship between the parties as intended parents and an unborn child on the birth of the child;

(2) whether the gestational mother under the agreement is pregnant or a child who is the subject of the agreement has been born; and

(3) whether the agreement has been validated under Section 160.756.

Source: HB 1689

Eff. Date: 9/1/19 -applies only to a petition for dissolution of a marriage that is filed on or after the effective date of this Act. A petition for dissolution of a marriage that is filed before the effective date of this Act is governed by the law in effect on the date the petition is filed, and the former law is continued in effect for that purpose.

Subchapter H. Trial and Appeal

CHAPTER 7. AWARD OF MARITAL PROPERTY

§ 7.006(b) Agreement Incident to Divorce or Annulment - AMENDED

(b) If the court finds that the terms of the written agreement in a divorce or an annulment are just and right, those terms are binding on the court. If the court approves the agreement, the court may set forth

the agreement in full or incorporate the agreement by reference in the final decree. If the court incorporates the agreement by reference in the final decree, the agreement is not required to be filed with the court or the court clerk.

Source: HB 559

Eff. Date: 9/1/19 - applies to an agreement incorporated by reference in a final decree of divorce or annulment regardless of whether the decree is signed before, on, or after the effective date of this Act.

Subtitle A – Limitations of Minority

CHAPTER 31 - REMOVAL OF DISABILITY OF MINORITY-UNSWORN DECLARATIONS

§ 31.008 (d) Waiver of Citation-AMENDED

d) The [Notwithstanding Section 132.001, Civil Practice and Remedies Code, the] waiver must be sworn before a notary public who is not an attorney in the suit or conform to the requirements for an unsworn declaration under Section 132.001, Civil Practice and Remedies Code. This subsection does not apply if the party executing the waiver is incarcerated.

SECTION 11.02. Section 45.107(d), Family Code, is amended to read as follows:

(d) The [Notwithstanding Section 132.001, Civil Practice and Remedies Code, the] waiver must be sworn before a notary public who is not an attorney in the suit or conform to the requirements for an unsworn declaration under Section 132.001, Civil Practice and Remedies Code. This subsection does not apply if the party executing the waiver is incarcerated.

Source: SB 891

Eff. Date: 9/1/19

CHAPTER 45. CHANGE OF NAME- AMENDED/ADDED

Subchapter B. Change of Name of Adult-AMENDED/ADDED

§ 45.103(b)(c) (d) Order.

(b) A court may order a change of name under this subchapter for a person with a final felony conviction if:

(1) [5] in addition to the requirements of Subsection (a), the person has:

(A) [(4)] received a certificate of discharge by the Texas Department of Criminal Justice or completed a period of community supervision or juvenile probation ordered by a court and not less than two years have passed. From the date of the receipt of discharge or completion of community supervision or juvenile probation; or

(B) [(2)] been pardoned; or

(2) the person is requesting to change the person's name to the primary name used in the person's criminal history record information.

(c) A court may order a change of name under this subchapter for a person subject to the registration requirements of Chapter 62, Code of Criminal Procedure, if the person:

(1) meets [5, in addition to] the requirements of Subsection (a) or is requesting to change the person's name to the primary name used in the person's criminal history record information; and

(2) [5, the person] provides the court with proof that the person has notified the appropriate local law enforcement authority of the proposed name change.

(d) In this section:

(1) "Criminal history record information" has the meaning assigned by Section 411.082, Government Code.

(2) "Local [subsection, "local] law enforcement authority" has the meaning assigned by Article 62.001, Code of Criminal Procedure.

Source: HB 2623

Eff. Date: 9/1/19

ALL ALIASES

§ 45.107(d) Waiver of Citation-AMENDED – CHANGE OF NAME OF ADULT-UNSWORN DECLARATION

(d) ~~The [Notwithstanding Section 132.001, Civil Practice and Remedies Code, the]~~ waiver must be sworn before a notary public who is not an attorney in the suit or conform to the requirements for an unsworn declaration under Section 132.001, Civil Practice and Remedies Code. This subsection does not apply if the party executing the waiver is incarcerated.

Source: SB 891

Eff. Date: 9/1/19

**TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT
AFFECTING THE PARENT-CHILD RELATIONSHIP**

CHAPTER 102. FILING SUIT

Subchapter C. Filing Suit

§ 102.003 (a)(d) General Standing to File Suit-AMENDED/ADDED

(14) a person who has been named as a prospective adoptive parent of a child by a pregnant woman or the parent of the child, in a verified written statement to confer standing executed under Section 102.0035, regardless of whether the child has been born; or

(15) subject to Subsection (d), a person who is an intended parent of a child or unborn child under a gestational agreement that complies with the requirements of Section 160.754.

(d) A person described by Subsection (a)(15) has standing to file an original suit only if:(1) the person is filing an original suit jointly with the other intended parent under the gestational agreement; or

2) the person is filing an original suit against the other intended parent under the gestational agreement.

Source: HB 1689

Eff. Date: 9/1/19

§ 102.008 (b) Contents of Petition-AMENDED/ADDED- ADOPTION FILING IN DIFFERENT COUNTY

(b) The petition must include:

(1) a statement that:

(A) the court in which the petition is filed has continuing, exclusive jurisdiction or that no court has continuing jurisdiction of the suit; or

(B) in a suit in which adoption of a child is requested, the court in which the petition is filed has jurisdiction of the suit under Section 103.001(b)

Source: HB 369

Date: applies only to a petition filed on or after September 1, 2019. A petition filed before September 1, 2019, is governed by the law in effect on the date the petition was filed, and the former law is continued in effect for that purpose

§ 102.010(a), (b), and (e) Service of Citation by Publication-AMENDED

(a) Except as provided by Section 17.032, Civil Practice and Remedies Code, citation [Citation] may be served [by publication as in other civil cases] to persons entitled to service of citation who cannot be notified by personal service or registered or certified mail and to persons whose names are unknown by publication on the public information Internet website maintained as required by Section 72.034, Government Code, and in a newspaper of general circulation published in the county in which the petition was filed.

(b) Citation by publication shall be published not later than the 20th day before the date set for the hearing [one time]. [If the name of a person entitled to service of citation is unknown, the notice to be published shall be

~~addressed to "All Whom It May Concern."~~] One or more causes to be heard on a certain day may be included in one notice and hearings may be continued from time to time without further notice.

(e) In a suit filed under Chapter 161 or 262 in which the last name of the respondent is unknown, the court may order substituted service of citation by publication, including publication by posting the citation at the courthouse door for a specified time, if the court finds and states in its order that the method of substituted service is as likely as citation by publication on the public information Internet website maintained as required by Section 72.034, Government Code, or in a newspaper in the manner described by Subsection (b) to give the respondent actual notice of the suit. If the court orders that citation by publication shall be completed by posting the citation at the courthouse door for a specified time, service must be completed on, and the answer date is computed from, the expiration date of the posting period. If the court orders another method of substituted service of citation by publication, service shall be completed as directed by the court.

Source: SB 891

Eff Date: 9/1/19

Subtitle A. General Provisions

CHAPTER 103. VENUE AND TRANSFER OF ORIGINAL PROCEEDINGS

§ 103.001(b) Venue for Original Suit-AMENDED – ADOPTION FILED WHERE CHILD RESIDES

(b) A suit in which adoption is requested may be filed in the county where the child resides or in the county where the petitioners reside, regardless of whether another court has continuing exclusive jurisdiction under Chapter 155. Except as provided by Section 155.201, a [A] court that has continuing exclusive jurisdiction is not required to transfer the suit affecting the parent-child relationship to the court in which the adoption suit is filed.

Source: HB 369

Date: 9/1/19 - The changes in law made by this Act to Sections 103.001, 155.201, and 155.204, Family Code, apply to a motion to transfer a suit affecting the parent-child relationship filed on or after the effective date of this Act. A motion to transfer a suit affecting the parent-child relationship filed before the effective date of this Act is governed by the law in effect on the date that motion was filed, and the former law is continued in effect for that purpose

Part 2. Appointments in Suits Other than Suits by Governmental Entity

Subchapter D. Child Custody Evaluation

CHAPTER 107. SPECIAL APPOINTMENTS, CHILD CUSTODY EVALUATIONS, AND ADOPTION EVALUATIONS

§ 107.106. (A) (A-1) Access to Child and Information Relating To Child-AMENDED/ADDED

(a) This section applies only to a county:

- (1) with a population of less than 500,000;
- (2) that is contiguous to the Gulf of Mexico or a bay or inlet opening into the gulf and that borders the United Mexican States; or
- (3) that borders a county described by Subdivision (2).

(a-1) In a county to which this section applies [~~with a population of less than 500,000~~], if a court finds that an individual who meets the requirements of Section 107.104 is not available in the county to conduct a child custody evaluation in a timely manner, the court, after notice and hearing or on agreement of the parties, may appoint an individual the court determines to be otherwise qualified to conduct the evaluation.

Source: HB 2514

Eff. Date: 9/1/19

CHAPTER 153 – CONSERVATORSHIP, POSSESSION, & ACCESS

Subchapter B -Parent Appointed as Conservator: In General

§ 153.073(a) (6) Rights of Parents at All Times-AMENDED

....

(6) to attend school activities, including school lunches, performances, and field trips;

Source: HB 3145

Eff. Date: 9/1/19

Subchapter C - Parent Appointed as Sole or Joint Managing Conservator

§153.132. Rights and Duties of Parent Appointed Sole Managing Conservator-AMENDED.

Unless limited by court order, a parent appointed as sole managing conservator of a child has the rights and duties provided by Subchapter B and the following exclusive rights:

- (1) the right to designate the primary residence of the child;
- (2) the right to consent to medical, dental, and surgical treatment involving invasive procedures;
- (3) the right to consent to psychiatric and psychological treatment;
- (4) the right to receive and give receipt for periodic payments for the support of the child and to hold or disburse these funds for the benefit of the child;
- (5) the right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;
- (6) the right to consent to marriage and to enlistment in the armed forces of the United States;
- (7) the right to make decisions concerning the child's education;
- (8) the right to the services and earnings of the child; [~~and~~]
- (9) except when a guardian of the child's estate or a guardian or attorney ad litem has been appointed for the child, the right to act as an agent of the child in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government; and
- (10) the right to:
 - (A) apply for a passport for the child;
 - (B) renew the child's passport; and
 - (C) maintain possession of the child's passport.

Source: HB 555

Eff. Date: 9/1/19 - apply only to a suit affecting the parent-child relationship that is pending in a trial court on or filed on or after the effective date of this Act

Subchapter F. Standard Possession Order

§ 153.312 (C) Parents Who Reside 100 Miles Or Less Apart-ADDED

(c) Notwithstanding Section 153.316, after receiving notice from the managing conservator under Subsection (b)(3) of this section designating the summer weekend during which the managing conservator is to have possession of the child, the possessory conservator, not later than the 15th day before the Friday that begins that designated weekend, must give the managing conservator written notice of the location at which the managing conservator is to pick up and return the child.

Source: HB 553

Eff. Date: 9/1/19 - applies only to a court order providing for possession of or access to a child rendered on or after the effective date of this Act. A court order rendered before the effective date of this Act is governed by the law in effect on the date the order was rendered, and the former law is continued in effect for that purpose.

Subchapter G – Appointment of Nonparent Joint Managing Conservator

§ 153.371. Rights and Duties of Nonparent Appointed as Sole Managing Conservator.

Unless limited by court order or other provisions of this chapter, a nonparent, a licensed child-placing agency, or the Department of Family and Protective Services appointed as a managing conservator of the child has the following rights and duties:

- (1) the right to have physical possession and to direct the moral and religious training of the child;
- (2) the duty of care, control, protection, and reasonable discipline of the child;
- (3) the duty to provide the child with clothing, food, shelter, education, and medical, psychological, and dental care;
- (4) the right to consent for the child to medical, psychiatric, psychological, dental, and surgical treatment and to have access to the child's medical records;
- (5) the right to receive and give receipt for payments for the support of the child and to hold or disburse funds for the benefit of the child;
- (6) the right to the services and earnings of the child;
- (7) the right to consent to marriage and to enlistment in the armed forces of the United States;
- (8) the right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;
- (9) except when a guardian of the child's estate or a guardian or attorney ad litem has been appointed for the child, the right to act as an agent of the child in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government;
- (10) the right to designate the primary residence of the child and to make decisions regarding the child's education; ~~and~~
- (11) if the parent-child relationship has been terminated with respect to the parents, or only living parent, or if there is no living parent, the right to consent to the adoption of the child and to make any other decision concerning the child that a parent could make; and
- (12) the right to:
 - (A) apply for a passport for the child;
 - (B) renew the child's passport; and
 - (C) maintain possession of the child's passport.

Source: HB 555

Eff. Date: 9/1/19 - apply only to a suit affecting the parent-child relationship that is pending in a trial court on or filed on or after the effective date of this Act

Subchapter F. Support for a Minor or Adult Disabled Child

CHAPTER 154. CHILD SUPPORT – SPECIAL NEEDS/MEDICARE REIMBURSEMENT TRUST

§ 154.302. Court-Ordered Support for Disabled Child-ADDED

(c) Notwithstanding Subsection (b), a court that orders support under this section for an adult child with a disability may designate a special needs trust and provide that the support may be paid directly to the trust for the benefit of the adult child. The court shall order that support payable to a special needs trust under this subsection be paid directly to the trust and may not order the support be paid to the state disbursement unit. This subsection does not apply in a Title IV-D case.

Source: HB 558

Eff. Date: 9/1/19 - The change in law made by this Act constitutes a material and substantial change of circumstances under Section 156.401, Family Code, sufficient to warrant modification of a court order or a portion of a decree that provides for the support of a child rendered before the effective date of this Act.

CHAPTER 155 – CONTINUING, EXCLUSIVE JURISDICTION; TRANSFER

Subchapter A. Continuing, Exclusive Jurisdiction

§ 155.004 (d) Loss of Continuing, Exclusive Jurisdiction- AMENDED – ADOPTION-LOSS OF JURIS.

(a) A court of this state loses its continuing, exclusive jurisdiction to modify its order if:

(1) an order of adoption is rendered by another [after the] court in an original suit filed as described by Section 103.001(b) [acquires continuing, exclusive jurisdiction of the suit]

Source: HB 1854

Eff. Date: 9/1/19 - (a) The change in law made by this Act applies only to an order of adoption rendered on or after the effective date of this Act. (b) Notwithstanding Subsection (a) of this section, an order of adoption rendered in a suit filed as described by Section 103.001(b), Family Code, on or after September 1, 2015, but before the effective date of this Act by a court that had jurisdiction under that section to render the order of adoption regardless of whether another court had continuing, exclusive jurisdiction under Chapter 155, Family Code, is a final order and is not subject to an appeal on the basis that the court rendering the order of adoption did not have continuing, exclusive jurisdiction at the time the adoption order was rendered.

Subchapter C. Transfer of Continuing, Exclusive Jurisdiction

§ 155.201 (a) (a-1)(a-2) Mandatory Transfer- AMENDED/ADDED

155.201, Family Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(a) On the filing of a motion showing that a suit for dissolution of the marriage of the child's parents has been filed in another court and requesting a transfer to that court, the court having continuing, exclusive jurisdiction of a suit affecting the parent-child relationship shall, within the time required by Section 155.204, transfer the proceedings to the court in which the dissolution of the marriage is pending.

(a-1) On the filing of a motion showing that a suit in which adoption of a child is requested has been filed in another court located in the county in which the child resides as provided by Section 103.001 and requesting a transfer to that court, the court having continuing, exclusive jurisdiction of a suit affecting the parent-child relationship with regard to that child shall, within the time required by Section 155.204, transfer the proceedings to the court in which the suit for adoption is pending.

(a-2) A [The] motion described by Subsection (a) or (a-1) must comply with the requirements of Section 155.204(a)

Source: HB 369

Eff. Date: 9/1/19 - The changes in law made by this Act to Section 155.201, Family Code, apply to a motion to transfer a suit affecting the parent-child relationship filed on or after the effective date of this Act. A motion to transfer a suit affecting the parent-child relationship filed before the effective date of this Act is governed by the law in effect on the date that motion was filed, and the former law is continued in effect for that purpose

§ 155.204 (a) Procedure for Transfer- AMENDED

(a) A motion to transfer under Section 155.201(a) or (a-1) may be filed at any time. The motion must contain a certification that all other parties, including the attorney general, if applicable, have been informed of the filing of the motion.

Source: HB 369

Eff. Date: 9/1/19 - The changes in law made by this Act to Sections 155.204, Family Code, apply to a motion to transfer a suit affecting the parent-child relationship filed on or after the effective date of this Act. A motion to transfer a suit affecting the parent-child relationship filed before the effective date of this Act is governed by the law in effect on the date that motion was filed, and the former law is continued in effect for that purpose

OTHER LEGISLATION AFFECTING THE FAMILY CODE

CIVIL PRACTICE AND REMEDIES CODE

TITLE 2. TRIAL, JUDGMENT, AND APPEAL

Subtitle B. Trial Matters

Subchapter B. Citation Generally

CHAPTER 17-PARTIES; CITATION; LONG-ARM JURISDICTION

§ 17.032. Citation by Publication-ADDED.

(a) Notwithstanding any statute or rule requiring a person to publish citation or notice on the public information Internet website maintained as required by Section 72.034, Government Code, and in a newspaper of general circulation, the person may publish the citation or notice only on the public information Internet website if:

(1) the person files a statement of inability to afford payment of court costs under the Texas Rules of Civil Procedure;

(2) the total cost of the required publication exceeds the greater of \$200 each week or the amount set by the supreme court under Subsection (b); or

(3) the county in which the publication of the citation or notice is required does not have any newspaper published, printed, or generally circulated in the county.

(b) The supreme court shall adjust for inflation the maximum amount of publication costs established in Subsection (a)(2).

§ 17.033. Substituted Service Through Social Media Presence-ADDED. SUP CT TO ADOPT RULES

(a) If substituted service of citation is authorized under the Texas Rules of Civil Procedure, the court, in accordance with the rules adopted by the supreme court under Subsection (b), may prescribe as a method of service an electronic communication sent to the defendant through a social media presence.

(b) The supreme court shall adopt rules to provide for the substituted service of citation by an electronic communication sent to a defendant through a social media presence.

(b) The Texas Supreme Court shall adopt rules under Section 17.033, Civil Practice and Remedies Code, as added by this section, not later than December 31, 2020.

(c) Section 17.033, Civil Practice and Remedies Code, as added by this section, applies only to an action commenced on or after the effective date of the rules adopted by the Supreme Court of Texas under that section.

Source: HB 891

Eff. Date: 9/1/19

CHAPTER 18. EVIDENCE

Subchapter A. Documentary Evidence – ATTORNEY FEES UNDER CPRC-TIME TABLE

§ 18.01(b)(d)(d-1&2)(e)(e-1)(f)(g)(h)(i)-AMENED/ADDED

(b) Unless a controverting affidavit is served as provided by this section, an affidavit that the amount a person charged for a service was reasonable at the time and place that the service was provided and that the service was necessary is sufficient evidence to support a finding of fact by judge or jury that the amount charged was reasonable or that the service was necessary. The affidavit is not evidence of and does not support a finding of the causation element of the cause of action that is the basis for the civil action.

(d) The party offering the affidavit in evidence or the party's attorney must serve a copy of the affidavit on each other party to the case by the earlier of:

(1) 90 [at least 30] days after [before] the date the defendant files an answer;

(2) the date the offering party must designate any expert witness under a court order; or

(3) the date the offering party must designate any expert witness as required by the Texas Rules of Civil Procedure [day on which evidence is first presented at the trial of the case].

(d-1) Notwithstanding Subsection (d), if services are provided for the first time by a provider after the date the defendant files an answer, the party offering the affidavit in evidence or the party's attorney must serve a copy of the affidavit for services provided by that provider on each other party to the case by the earlier of:

(1) the date the offering party must designate any expert witness under a court order; or

(2) the date the offering party must designate any expert witness as required by the Texas Rules of Civil Procedure.

(d-2) The party offering the affidavit in evidence or the party's attorney must file notice with the clerk of the court when serving the affidavit that the party or the attorney served a copy of the affidavit in accordance with this section. Except as provided by the Texas Rules of Evidence, [the records attached to] the affidavit is [are] not required to be filed with the clerk of the court before the trial commences.

(e) A party intending to controvert a claim reflected by the affidavit must serve a copy of the counteraffidavit on each other party or the party's attorney of record by the earlier of:

(1) 120 days after the date the defendant files its answer; [not later than:

[(A) 30 days after the day the party receives a copy of the affidavit; and

[(B) at least 14 days before the day on which evidence is first presented at the trial of the case; or]

(2) the date the party offering the counteraffidavit must designate expert witnesses under a court order; or

(3) the date the party offering the counteraffidavit must designate any expert witness as required by the Texas Rules of Civil Procedure [with leave of the court, at any time before the commencement of evidence at trial].

(e-1) Notwithstanding Subsection (e), if the party offering the affidavit in evidence serves a copy of the affidavit under Subsection (d-1), the party offering the counteraffidavit in evidence or the party's attorney must serve a copy of the counteraffidavit on each other party to the case by the later of:

(1) 30 days after service of the affidavit on the party offering the counteraffidavit in evidence;

(2) the date the party offering the counteraffidavit must designate any expert witness under a court order; or

(3) the date the party offering the counteraffidavit in evidence must designate any expert witness as required by the Texas Rules of Civil Procedure.

(f) The counteraffidavit must give reasonable notice of the basis on which the party serving it intends at trial to controvert the claim reflected by the initial affidavit and must be taken before a person authorized to administer oaths. The counteraffidavit must be made by a person who is qualified, by knowledge, skill, experience, training, education, or other expertise, to testify in contravention of all or part of any of the matters contained in the initial affidavit. The counteraffidavit may not be used to controvert the causation element of the cause of action that is the basis for the civil action.

(g) The party offering the counteraffidavit in evidence or the party's attorney must file written notice with the clerk of the court when serving the counteraffidavit that the party or attorney served a copy of the counteraffidavit in accordance with this section.

(h) If continuing services are provided after a relevant deadline under this section:

(1) a party may supplement an affidavit served by the party under Subsection (d) or (d-1) on or before the 60th day before the date the trial commences; and

(2) a party that served a counteraffidavit under Subsection (e) or (e-1) may supplement the counteraffidavit on or before the 30th day before the date the trial commences.

(i) Notwithstanding Subsections (d), (d-1), (d-2), (e), (e-1), (g), and (h), a deadline under this section may be altered by all parties to an action by agreement or with leave of the court.

Source: HB 1693

Eff. Date: 9/1/19 - The change in law made by this Act applies only to an action commenced on or after the effective date of this Act. An action commenced before the effective date of this Act is governed by the law applicable to the action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

CHAPTER 27. ACTIONS INVOLVING THE EXERCISE OF CERTAIN CONSTITUTIONAL RIGHTS

§ 27.001 (2) (6) (7) Definitions-AMENDED – ANTI-SLAPP

(2) "Exercise of the right of association" means to [a communication between individuals who] join together to collectively express, promote, pursue, or defend common interests relating to a governmental proceeding or a matter of public concern.

(6) "Legal action" means a lawsuit, cause of action, petition, complaint, cross-claim, or counterclaim or any other judicial pleading or filing that requests legal, declaratory, or equitable relief. The term does not include:

(A) a procedural action taken or motion made in an action that does not amend or add a claim for legal, equitable, or declaratory relief;

-
- (B) alternative dispute resolution proceedings; or
(C) post-judgment enforcement actions.
- (7) "Matter of public concern" means a statement or activity regarding:
(A) a public official, public figure, or other person who has drawn substantial public attention due to the person's official acts, fame, notoriety, or celebrity;
(B) a matter of political, social, or other interest to the community; or
(C) a subject of concern to the public [includes an issue related to:
[(A) health or safety;
[(B) environmental, economic, or community well-being;
[(C) the government;
[(D) a public official or public figure; or
[(E) a good, product, or service in the marketplace].

Source: HB 2730

Eff. Date: 9/1/19-applies only to an action filed on or after the effective date of this Act. An action filed before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

§ 27.003, (a) (b)(d)(e) Motion to Dismiss-AMENDED/ADDED

- (a) If a legal action is based on~~[, relates to,]~~ or is in response to a party's exercise of the right of free speech, right to petition, or right of association or arises from any act of that party in furtherance of the party's communication or conduct described by Section 27.010(b), that party may file a motion to dismiss the legal action. A party under this section does not include a government entity, agency, or an official or employee acting in an official capacity.
- (b) A motion to dismiss a legal action under this section must be filed not later than the 60th day after the date of service of the legal action. The parties, upon mutual agreement, may extend the time to file a motion under this section or the court may extend the time to file a motion under this section on a showing of good cause.
- (d) The moving party shall provide written notice of the date and time of the hearing under Section 27.004 not later than 21 days before the date of the hearing unless otherwise provided by agreement of the parties or an order of the court.
- (e) A party responding to the motion to dismiss shall file the response, if any, not later than seven days before the date of the hearing on the motion to dismiss unless otherwise provided by an agreement of the parties or an order of the court.

Source: HB 2730

Eff. Date: 9/1/19-applies only to an action filed on or after the effective date of this Act. An action filed before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose

§ 27.005(a)(b)(d)- Ruling-AMENDED

- (a) The court must rule on a motion under Section 27.003 not later than the 30th day following the date ~~[of]~~ the hearing on the motion concludes.
- (b) Except as provided by Subsection (c), on the motion of a party under Section 27.003, a court shall dismiss a legal action against the moving party if the moving party demonstrates ~~[shows by a preponderance of the evidence]~~ that the legal action is based on~~[, relates to,]~~ or is in response to:
- (1) the party's exercise of:
(A) [(1)] the right of free speech;
(B) [(2)] the right to petition; or
(C) [(3)] the right of association; or
- (2) the act of a party described by Section 27.010(b).
- (d) Notwithstanding the provisions of Subsection (c), the court shall dismiss a legal action against the moving party if the moving party establishes an affirmative defense or other grounds on which the moving party is entitled to judgment as a matter of law ~~[by a preponderance of the evidence each essential element of a valid defense to the nonmovant's claim].~~

Source: HB 2730

Eff. Date: 9/1/19-applies only to an action filed on or after the effective date of this Act. An action filed before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

§ 27.006 (a). Proof [Evidence]-AMENDED

(a) In determining whether a legal action is subject to or should be dismissed under this chapter, the court shall consider the pleadings, evidence a court could consider under Rule 166a, Texas Rules of Civil Procedure, and supporting and opposing affidavits stating the facts on which the liability or defense is based.

Source: HB 2730

Eff. Date: 9/1/19-applies only to an action filed on or after the effective date of this Act. An action filed before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

§ 27.007(a) Additional Findings-AMENDED

(a) If the court awards sanctions under Section 27.009(b) [At the request of a party making a motion under Section 27.003], the court shall issue findings regarding whether the legal action was brought to deter or prevent the moving party from exercising constitutional rights and is brought for an improper purpose, including to harass or to cause unnecessary delay or to increase the cost of litigation.

Source: HB 2730

Eff. Date: 9/1/19-applies only to an action filed on or after the effective date of this Act. An action filed before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

§ 27.0075. Effect of Ruling-ADDED

Neither the court's ruling on the motion nor the fact that it made such a ruling shall be admissible in evidence at any later stage of the case, and no burden of proof or degree of proof otherwise applicable shall be affected by the ruling.

Source: HB 2730

Eff. Date: 9/1/19-applies only to an action filed on or after the effective date of this Act. An action filed before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

§ 27.009 (a)(c) Damages and Costs-AMENDED AND ADDED.

(a) Except as provided by Subsection (c), if [If] the court orders dismissal of a legal action under this chapter, the court [shall award to the moving party]:

(1) shall award to the moving party court costs and [5] reasonable attorney's fees~~[-and other expenses]~~ incurred in defending against the legal action [as justice and equity may require]; and

(2) may award to the moving party sanctions against the party who brought the legal action as the court determines sufficient to deter the party who brought the legal action from bringing similar actions described in this chapter.

(c) If the court orders dismissal of a compulsory counterclaim under this chapter, the court may award to the moving party reasonable attorney's fees incurred in defending against the counterclaim if the court finds that the counterclaim is frivolous or solely intended for delay.

Source: HB 2730

Eff. Date: 9/1/19-applies only to an action filed on or after the effective date of this Act. An action filed before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

§ 27.010. Exemptions-AMENDED.

(a) This chapter does not apply to:

(1) an enforcement action that is brought in the name of this state or a political subdivision of this state by the attorney general, a district attorney, a criminal district attorney, or a county attorney;

(2) [

~~(b) This chapter does not apply to]~~ a legal action brought against a person primarily engaged in the business of selling or leasing goods or services, if the statement or conduct arises out of the sale or lease of goods, services, or an insurance product, insurance services, or a commercial transaction in which the intended audience is an actual or potential buyer or customer;

(3) [

~~(e) This chapter does not apply to]~~ a legal action seeking recovery for bodily injury, wrongful death, or survival or to statements made regarding that legal action;

(4) [

~~(d) This chapter does not apply to]~~ a legal action brought under the Insurance Code or arising out of an insurance contract;

(5) a legal action arising from an officer-director, employee-employer, or independent contractor relationship that:

(A) seeks recovery for misappropriation of trade secrets or corporate opportunities; or

(B) seeks to enforce a non-disparagement agreement or a covenant not to compete;

(6) a legal action filed under Title 1, 2, 4, or 5, Family Code, or an application for a protective order under Chapter 7A, Code of Criminal Procedure;

(7) a legal action brought under Chapter 17, Business & Commerce Code, other than an action governed by Section 17.49(a) of that chapter;

(8) a legal action in which a moving party raises a defense pursuant to Section 160.010, Occupations Code, Section 161.033, Health and Safety Code, or the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11101 et seq.);

(9) an eviction suit brought under Chapter 24, Property Code;

(10) a disciplinary action or disciplinary proceeding brought under Chapter 81, Government Code, or the Texas Rules of Disciplinary Procedure;

(11) a legal action brought under Chapter 554, Government Code; or

(12) a legal action based on a common law fraud claim.

(b) Notwithstanding Subsections (a)(2), (7), and (12), this chapter applies to:

(1) a legal action against a person arising from any act of that person, whether public or private, related to the gathering, receiving, posting, or processing of information for communication to the public, whether or not the information is actually communicated to the public, for the creation, dissemination, exhibition, or advertisement or other similar promotion of a dramatic, literary, musical, political, journalistic, or otherwise artistic work, including audio-visual work regardless of the means of distribution, a motion picture, a television or radio program, or an article published in a newspaper, website, magazine, or other platform, no matter the method or extent of distribution; and

(2) a legal action against a person related to the communication, gathering, receiving, posting, or processing of consumer opinions or commentary, evaluations of consumer complaints, or reviews or ratings of businesses.

(c) This chapter applies to a legal action against a victim or alleged victim of family violence or dating violence as defined in Chapter 71, Family Code, or an offense under Chapter 20, 20A, 21, or 22, Penal Code, based on or in response to a public or private communication.

Source: HB 2730

Eff. Date: 9/1/19-applies only to an action filed on or after the effective date of this Act. An action filed before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

CODE OF CRIMINAL PROCEDURE

TITLE 1. CODE OF CRIMINAL PROCEDURE

CHAPTER 17. BAIL

Art. 17.294. Confidentiality of Certain Information in Order for Emergency Protection-ADDED

On request by a person protected by an order for emergency protection issued under Article 17.292, or if determined necessary by the magistrate, the court issuing the order may protect the person's mailing address by rendering an order:

(1) requiring the person protected under the order to:

(A) disclose the person's mailing address to the court;

(B) designate another person to receive on behalf of the person any notice or documents filed with the court related to the order; and

(C) disclose the designated person's mailing address to the court;

(2) requiring the court clerk to:

(A) strike the mailing address of the person protected by the order from the public records of the court, if applicable; and

(B) maintain a confidential record of the mailing address for use only by:

(i) the court; or

(ii) a law enforcement agency for purposes of entering the information required by Section 411.042(b)(6), Government Code, into the statewide law enforcement information system maintained by the Department of Public Safety; and

(3) prohibiting the release of the information to the defendant.

Source: SB 2390

Eff. Date: 9/1/19 - apply only to a magistrate's order for emergency protection issued on or after the effective date of this Act. An order issued before the effective date of this Act is governed by the law in effect on the date the order was issued, and the former law is continued in effect for that purpose.

GOVERNMENT CODE

TITLE 2. JUDICIAL BRANCH

Subtitle A. Courts

CHAPTER 25-STATUTORY COUNTY COURTS

Subchapter A: General Provision

§ 25.0022 (v)(w) ADMINISTRATION OF STATUTORY PROBATE COURTS-ADDED

(v) A judge who is assigned under this section to a court in a county other than the county in which the judge serves is not an employee of the other county.

(w) A former or retired judge who is assigned under this section is not an employee of the county in which the assigned court is located.

Source: SB 891

Eff. Date: 9/1/19

Subtitle B. Court Administration

CHAPTER 36. JUDICIAL REPORTS

§ 36.003. Exemption-AMENDED. NO MEDIATOR REPORTS IF:

The reporting requirements of Section 36.004 do not apply to:

(1) a mediation conducted by an alternative dispute resolution system established under Chapter 152, Civil Practice and Remedies Code;

(2) information made confidential under state or federal law, including applicable rules;

(3) a guardian ad litem or other person appointed under a program authorized by Section 107.031, Family Code; [☞]

(4) an attorney ad litem, guardian ad litem, amicus attorney, or mediator appointed under a domestic relations office established under Chapter 203, Family Code;

(5) an attorney ad litem, guardian ad litem, amicus attorney, or mediator providing services without expectation or receipt of compensation; or

(6) an attorney ad litem, guardian ad litem, amicus attorney, or mediator providing services as a volunteer of a nonprofit organization that provides pro bono legal services to the indigent.

Source: SB 41

Eff. Date: 9/1/19

Subtitle B. Judges

CHAPTER 37-APPOINTMENTS OF ATTORNEYS AD LITEM, GUARDIANS AD LITEM, MEDIATORS, AND GUARDIANS

§ 37.002. Exemption-AMENDED – OUTSIDE THE WHEEL

The appointment requirements of Section 37.004 do not apply to:

(1) a mediation conducted by an alternative dispute resolution system established under Chapter 152, Civil Practice and Remedies Code;

(2) a guardian ad litem or other person appointed under a program authorized by Section 107.031, Family Code;

(3) an attorney ad litem, guardian ad litem, amicus attorney, or mediator appointed under a domestic relations office established under Chapter 203, Family Code; ~~[or]~~

(4) a person other than an attorney or a private professional guardian appointed to serve as a guardian as defined by Section 1002.012, Estates Code;

(5) an attorney ad litem, guardian ad litem, amicus attorney, or mediator providing services without expectation or receipt of compensation; or

(6) an attorney ad litem, guardian ad litem, amicus attorney, or mediator providing services as a volunteer of a nonprofit organization that provides pro bono legal services to the indigent.

Source: SB 41

Eff. Date: 9/1/19

§ 37.004 (D-1(G) Appointment Of Attorneys Ad Litem, Guardians Ad Litem, Mediators, And Guardians; Maintenance Of Lists-AMENDED/ADDED

(a) Except as provided by Subsections (c), ~~[and]~~ (d), and (d-1), in each case in which the appointment of an attorney ad litem, guardian ad litem, or guardian is necessary, a court using a rotation system shall appoint the person whose name appears first on the applicable list maintained by the court as required by Section 37.003.

(d-1) The court may appoint a person included on the applicable list whose name does not appear first on the list or a person who meets statutory or other requirements to serve and who is not included on the list if, within 30 days preceding the date of appointment, an initial declaration of a state of disaster is made for the area served by the court.

(g) In this section, "declaration of a state of disaster" means a declaration made by:

(1) the president of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Section 5121 et seq.);

(2) the governor under Section 418.014; or

(3) the presiding officer of the governing body of a political subdivision under Section 418.108.

Source: SB 41

Eff. Date: 9/1/19

Subtitle D. Judicial Personnel And Officials

CHAPTER 51. CLERKS

Subchapter A. Clerk of Supreme Court – PROCEDURE & FUNDING IN PROCESS

§ 51.3032. Electronic Display of Official And Legal Notices By District Clerk-ADDED

A district clerk may post an official and legal notice by electronic display, instead of posting a physical document, in the manner provided for a county clerk by Section 82.051, Local Government Code.

Source: SB 891

Eff. Date: 9/1/19

Subtitle F. Court Administration

CHAPTER 72. OFFICE OF COURT ADMINISTRATION

Subchapter F. Protective Order Registry-ADDED

§ 72.151. Definitions.

In this subchapter:

(1) "Authorized user" means a person to whom the office has given permission and the means to submit records to or modify or remove records in the registry. The term does not include members of the public who may only access through the registry's Internet website certain information regarding protective orders entered into the registry.

(2) "Peace officer" has the meaning assigned by Article 2.12, Code of Criminal Procedure.

(3) "Protective order" means an order issued by a court in this state to prevent family violence, as defined by Section 71.004, Family Code. The term includes a magistrate's order for emergency protection issued under Article 17.292, Code of Criminal Procedure, with respect to a person who is arrested for an offense involving family violence.

(4) "Protective order registry" or "registry" means the protective order registry established under Section 72.153.

(5) "Race or ethnicity" means a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

§ 72.152. Applicability.

This subchapter applies only to:

(1) an application for a protective order filed under:

(A) Chapter 82, Family Code; or

(B) Article 17.292, Code of Criminal Procedure, with respect to a person who is arrested for an offense involving family violence; and

(2) a protective order issued under:

(A) Chapter 83 or 85, Family Code; or

(B) Article 17.292, Code of Criminal Procedure, with respect to a person who is arrested for an offense involving family violence.

§72.153. Protective Order Registry.

(a) In consultation with the Department of Public Safety and the courts of this state, the office shall establish and maintain a centralized Internet-based registry for applications for protective orders filed in this state and protective orders issued in this state.

(b) The office shall establish and maintain the registry in a manner that allows municipal and county case management systems to easily interface with the registry.

§ 72.154. Public Access to Protective Order Registry.

(a) Subject to Subsections (c) and (d) and Section 72.158, the office shall establish and maintain the registry in a manner that allows a member of the public, free of charge, to electronically search for and receive publicly

accessible information contained in the registry regarding each protective order issued in this state. The registry must be searchable by:

- (1) the county of issuance;
- (2) the name of a person who is the subject of the protective order; and
- (3) the birth year of a person who is the subject of the protective order.

(b) Publicly accessible information regarding each protective order must consist of the following:

- (1) the court that issued the protective order;
- (2) the case number;
- (3) the full name, county of residence, birth year, and race or ethnicity of the person who is the subject of the protective order;
- (4) the dates the protective order was issued and served;
- (5) the date the protective order was vacated, if applicable; and
- (6) the date the protective order expired or will expire, as applicable.

(c) A member of the public may only access the information in the registry described by Subsection (b).

(d) The office may not allow a member of the public to access through the registry any information related to a protective order issued under Article 17.292, Code of Criminal Procedure, or Chapter 83, Family Code.

§ 72.155. Restricted Access to Protective Order Registry.

(a) The registry must include a copy of each application for a protective order filed in this state and a copy of each protective order issued in this state, including a vacated or expired order. Only an authorized user, the attorney general, a district attorney, a criminal district attorney, a county attorney, a municipal attorney, or a peace officer may access that information under the registry.

(b) The office shall ensure that an authorized user, the attorney general, a district attorney, a criminal district attorney, a county attorney, a municipal attorney, or a peace officer is able to search for and receive a copy of a filed application for a protective order or a copy of an issued protective order through the registry's Internet website.

§ 72.156. Entry of Applications.

(a) Except as provided by Subsection (b), as soon as possible but not later than 24 hours after the time an application for a protective order is filed, the clerk of the court shall enter a copy of the application into the registry.

(b) A clerk may delay entering information under Subsection (a) into the registry only to the extent that the clerk lacks the specific information required to be entered.

(c) The office shall ensure that a member of the public is not able to access through the registry's Internet website the application or any information related to the application entered into the registry under Subsection (a).

§ 72.157. Entry of Orders.

(a) Except as provided by Subsection (c), as soon as possible but not later than 24 hours after the time a court issues an original or modified protective order or extends the duration of a protective order, the clerk of the court shall enter into the registry:

(1) a copy of the order and, if applicable, a notation regarding any modification or extension of the order; and

(2) the information required under Section 72.154(b).

(b) For a protective order that is vacated or that has expired, the clerk of the applicable court shall modify the record of the order in the registry to reflect the order's status as vacated or expired.

(c) A clerk may delay entering information under Subsection (a) into the registry only to the extent that the clerk lacks the specific information required to be entered.

§ 72.158. Request for Grant or Removal of Public Access.

(a) The office shall ensure that the public may access information about protective orders, other than information about orders under Article 17.292, Code of Criminal Procedure, or Chapter 83, Family Code, through the registry, only if:

(1) a protected person requests that the office grant the public the ability to access the information described by Section 72.154(b) for the order protecting the person; and

(2) the office approves the request.

(b) A person whose request under Subsection (a) was approved by the office may request that the office remove the ability of the public to access the information that was the subject of the person's earlier approved request. Not later than the third business day after the office receives a request under this subsection, the office shall remove the ability of the public to access the information.

(c) The Supreme Court of Texas:

(1) shall prescribe a form for use by a person requesting a grant or removal of public access as described by Subsections (a) and (b); and

(2) by rule may prescribe procedures for requesting a grant or removal of public access as described by Subsections (a) and (b).

Source: SB 325

Eff. Date: 9/1/19- See notes below

(a) Except as provided by Subsection (b) of this section, not later than June 1, 2020, the Office of Court Administration of the Texas Judicial System shall establish the protective order registry required by Section 72.153, Government Code, as added by this Act.

(b) The Office of Court Administration of the Texas Judicial System may delay establishing the protective order registry described by Subsection (a) of this section for a period not to exceed 90 days if the delay is authorized by resolution of the Texas Judicial Council.

(c) Not later than June 1, 2020, the Office of Court Administration of the Texas Judicial System shall establish and supervise a training program for magistrates, court personnel, and peace officers on the use of the protective order registry described by Subsection (a) of this section. The training program must make all materials for use in the training program available to magistrates, court personnel, and peace officers.

Notwithstanding Section 2 of this Act, the Office of Court Administration of the Texas Judicial System may not allow a member of the public to view before September 1, 2020, publicly accessible information described by Section 72.154(b), Government Code, as added by this Act, through the Internet website of the protective order registry established under Subchapter F, Chapter 72, Government Code, as added by this Act.

Subchapter F, Chapter 72, Government Code, as added by this Act, applies only to an application for a protective order filed or a protective order issued on or after September 1, 2020.

The Office of Court Administration of the Texas Judicial System is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the Office of Court Administration of the Texas Judicial System may, but is not required to, implement a provision of this Act using other appropriations available for that purpose.

This Act takes effect September 1, 2019.

CHAPTER 74. COURT ADMINISTRATION ACT

Subchapter A. Chief Justice

§ 74.061(l)(m) Compensation While Assigned-ADDED

(l) A judge of a district, statutory probate, constitutional county, or statutory county court who is assigned under this chapter to a court in a county other than the county in which the judge serves is not an employee of the other county.

(m) A former or retired judge or an active judge or justice of the supreme court, the court of criminal appeals, or a court of appeals who is assigned under this chapter is not an employee of the county in which the assigned court is located.

Source: SB 891

Eff. Date: 9/1/19

TITLE 4. EXECUTIVE BRANCH

Subtitle B. Law Enforcement and Public Protection

CHAPTER 411. DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF TEXAS

Subchapter A. General Provisions and Administration

§ 411.042 (b) BUREAU OF IDENTIFICATION AND RECORDS-AMENDED

(b) The bureau of identification and records shall:

....

(D) the residence address and place of employment or business of the person protected by the order [~~unless that information is excluded from the order under Article 17.292(e), Code of Criminal Procedure~~];

(E) the child-care facility or school where a child protected by the order normally resides or which the child normally attends [~~unless that information is excluded from the order under Article 17.292(e), Code of Criminal Procedure~~];

Source: SB 2390

Eff. Date: 9/1/19 - apply only to a magistrate's order for emergency protection issued on or after the effective date of this Act. An order issued before the effective date of this Act is governed by the law in effect on the date the order was issued, and the former law is continued in effect for that purpose.

TITLE 10 - GENERAL GOVERNMENT

Subtitle H. Prohibited Adverse Actions by Government

CHAPTER 2400. PROTECTION OF MEMBERSHIP IN AND SUPPORT TO RELIGIOUS ORGANIZATIONS-ADDED

§ 2400.001. Definitions.

In this chapter:

(1) "Adverse action" means any action taken by a governmental entity to:

(A) withhold, reduce, exclude, terminate, or otherwise deny any grant, contract, subcontract, cooperative agreement, loan, scholarship, license, registration, accreditation, employment, or other similar status from or to a person;

(B) withhold, reduce, exclude, terminate, or otherwise deny any benefit provided under a benefit program from or to a person;

(C) alter in any way the tax treatment of, cause any tax, penalty, or payment assessment against, or deny, delay, or revoke a tax exemption of a person;

(D) disallow a tax deduction for any charitable contribution made to or by a person;

(E) deny admission to, equal treatment in, or eligibility for a degree from an educational program or institution to a person; or

(F) withhold, reduce, exclude, terminate, or otherwise deny access to a property, educational institution, speech forum, or charitable fund-raising campaign from or to a person.

(2) "Benefit program" means any program administered or funded by a governmental entity or federal agency that provides assistance in the form of payments, grants, loans, or loan guarantees.

(3) "Governmental entity" means:

(A) this state;

(B) a board, commission, council, department, or other agency in the executive branch of state government that is created by the state constitution or a statute, including an institution of higher education as defined by Section 61.003, Education Code;

-
- (C) the legislature or a legislative agency;
(D) a state judicial agency or the State Bar of Texas;
(E) a political subdivision of this state, including a county, municipality, or special district or authority; or
(F) an officer, employee, or agent of an entity described by Paragraphs (A)-(E).
- (4) "Person" has the meaning assigned by Section 311.005, except the term does not include:
(A) an employee of a governmental entity acting within the employee's scope of employment;
(B) a contractor of a governmental entity acting within the scope of the contract; or
(C) an individual or a medical or residential custodial health care facility while the individual or facility is providing medically necessary services to prevent another individual's death or imminent serious physical injury.
- (5) "Religious organization" means an organization that is a religious organization under Section 110.011(b), Civil Practice and Remedies Code.

§ 2400.0015. Applicability.

This chapter does not apply to an investment prohibited under Chapter 808 or a contract prohibited under Chapter 2270, as added by Chapter 1 (H.B. 89), Acts of the 85th Legislature, Regular Session, 2017.

§ 2400.002. Adverse Action Prohibited.

Notwithstanding any other law, a governmental entity may not take any adverse action against any person based wholly or partly on the person's membership in, affiliation with, or contribution, donation, or other support provided to a religious organization.

§ 2400.003. Relief Available.

(a) A person may assert an actual or threatened violation of Section 2400.002 as a claim or defense in a judicial or administrative proceeding and obtain:

- (1) injunctive relief;
- (2) declaratory relief; and
- (3) court costs and reasonable attorney's fees.

(b) Notwithstanding any other law, a person may commence an action under this section and relief may be granted regardless of whether the person has sought or exhausted available administrative remedies.

§ 2400.004. Immunity Waived.

A person who alleges a violation of Section 2400.002 may sue the governmental entity for the relief provided under Section 2400.003. Sovereign or governmental immunity, as applicable, is waived and abolished to the extent of liability for that relief.

§ 2400.005. Interpretation.

(a) This chapter may not be construed to preempt a state or federal law that is equally or more protective of the free exercise of religious beliefs or to narrow the meaning or application of a state or federal law protecting the free exercise of religious beliefs.

(b) This chapter may not be construed to prevent a governmental entity from providing, either directly or through a person who is not seeking protection under this chapter, any benefit or service authorized under state or federal law.

Source: HB 1978

Eff. Date: 9/1/19

PROPERTY CODE

TITLE 8. LANDLORD AND TENANT

CHAPTER 92. RESIDENTIAL TENANCIES

Subchapter A. General Provisions -AMENDED/ADDED

§ 92.016 (b)(c) Definitions-AMENDED/ADDED – LEASE TERMINATION IF FAM VIOLENCE

(b) A tenant may terminate the tenant's rights and obligations under a lease and may vacate the dwelling and avoid liability for future rent and any other sums due under the lease for terminating the lease and vacating the dwelling before the end of the lease term if the tenant complies with Subsection (c).

(b-1) A tenant may obtain relief under Subsection (b) if the tenant ~~and~~ provides the landlord or the landlord's agent:

(1) a copy of one or more of the following orders protecting the tenant or an occupant from family violence:

(A) ~~(1)~~ a temporary injunction issued under Subchapter F, Chapter 6, Family Code;

(B) ~~(2)~~ a temporary ex parte order issued under Chapter 83, Family Code; ~~or~~

(C) ~~(3)~~ a protective order issued under Chapter 85, Family Code; or

(D) an order of emergency protection under Article 17.292, Code of Criminal Procedure; or

(2) a copy of documentation of the family violence against the tenant or an occupant from:

(A) a licensed health care services provider who examined the victim;

(B) a licensed mental health services provider who examined or evaluated the victim; or

(C) an advocate as defined by Section 93.001, Family Code, who assisted the victim.

(c) A tenant may exercise the rights to terminate the lease under Subsection (b), vacate the dwelling before the end of the lease term, and avoid liability beginning on the date after all of the following events have occurred:

(1) a judge signs an order described by Subsection (b-1)(1) if the tenant obtained such an order ~~(b)~~;

(2) the tenant provides a copy of the relevant documentation described by Subsection (b-1)(1) or (2), as applicable, ~~(b)~~ to the landlord;

(3) the tenant provides written notice of termination of the lease to the landlord on or before the 30th day before the date the lease terminates;

(4) the 30th day after the date the tenant provided notice under Subdivision (3) expires; and

(5) the tenant vacates the dwelling.

(c-1) If the family violence is committed by a cotenant or occupant of the dwelling, a tenant may exercise the right to terminate the lease under the procedures provided by Subsection (b-1)(1)(A), (C), or (D) or (b-1)(2) ~~(b)(1) or (3)~~ and Subsection (c), except that the tenant is not required to provide the notice described by Subsection (c)(3).

Source: SB 234

Eff. Date: 9/1/19- applies only to a lease entered into or renewed on or after the effective date of this Act. A lease entered into or renewed before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

TITLE 9. TRUSTS

Subtitle B. Texas Trust Code: Creation, Operation, And Termination Of Trusts

CHAPTER 111. GENERAL PROVISIONS

§ 111.0035(b). Default and Mandatory Rules; Conflict Between Terms and Statute-Amended

(b) The terms of a trust prevail over any provision of this subtitle, except that the terms of a trust may not limit:

(1) the requirements imposed under § 112.031;

(2) the applicability of § 114.007 to an exculpation term of a trust;

(3) the periods of limitation for commencing a judicial proceeding regarding a trust;

(4) a trustee's duty:

(A) with regard to an irrevocable trust, to respond to a demand for accounting made under § 113.151 if the demand is from a beneficiary who, at the time of the demand:

(i) is entitled or permitted to receive distributions from the trust; or

-
- (ii) would receive a distribution from the trust if the trust terminated at the time of the demand; and
- (B) to act in good faith and in accordance with the purposes of the trust;
- (5) the power of a court, in the interest of justice, to take action or exercise jurisdiction, including the power to:
- (A) modify, reform, or terminate a trust or take other action under § 112.054;
 - (B) remove a trustee under § 113.082;
 - (C) exercise jurisdiction under § 115.001;
 - (D) require, dispense with, modify, or terminate a trustee's bond; [øf]
 - (E) adjust, [øf] deny, or order disgorgement of a trustee's compensation if the trustee commits a breach of trust; or
 - (F) make an award of costs and attorney's fees under § 114.064; or
- (6) the applicability of § 112.038.

Source: HB 2245

Eff. Date: 9/1/19

CHAPTER 112. CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUSTS

Subchapter A. Creation.-SAME AS ESTATES CODE

§ 112.0335. Construction of Certain Trusts-ADDED.

(a) Unless the terms of the trust provide otherwise, if a trust is created and amendable or revocable by the settlor, or by the settlor and the settlor's spouse, Chapter 255, Estates Code, applies at the settlor's death to the construction and interpretation of at-death transfers as if the settlor of the trust is the testator, the beneficiaries of the at-death transfer are devisees, and the at-death transfers are devises.

(b) Section 355.109, Estates Code, applies to the abatement of at-death transfers.

(c) For purposes of this section, "at-death transfer" means a transfer pursuant to the terms of a trust described by Sub Section (a) that is intended to take effect or become irrevocable by reason of the settlor's death.

(d) For purposes of the Estates Code provisions specified by this section :

(1) an at-death transfer of specifically identifiable trust property is a specific bequest, devise, or legacy;

(2) an at-death transfer from the general assets of the trust that does not transfer specifically identifiable property is a general bequest, devise, or legacy; and

(3) an at-death transfer of trust property that remains after all specific and general transfers have been satisfied is the residuary estate.

Source: HB 2245

Eff. Date: 9/1/19 - applies to a trust only if the settlor's death occurs on or after September 1, 2019

§ 112.054(c) Judicial Modification, Reformation, Or Termination of Trusts-AMENDED

(c) The court may direct that an order described by Subsection (a)(4) [~~øf~~(b-1)] has retroactive effect. The reformation of a trust under an order described by Subsection (b-1) is effective as of the creation of the trust.

Source: HB 2245

Eff. Date: 9/1/19

§ 112.0715. Creation of Second Trust-ADDED

(a) A second trust may be created by a distribution of principal under §112.072 or 112.073 to a trust created under the same trust instrument as the first trust from which the principal is distributed or to a trust created under a different trust instrument.

(b) If a second trust is created by a distribution of principal under §112.072 or 112.073 to a trust created under the same trust instrument as the first trust from which the principal is distributed, the property is not required to be retitled.

(c) The legislature intends this section to be a codification of the common law of this state in effect immediately before September 1, 2019.

Source: HB 2245

Eff. Date: 9/1/19

Subchapter E. Effect of Dissolution of Marriage on Certain Transfers in Trust -ADDED

§112.101. Definitions.

(1) "Disposition or appointment of property" includes a transfer of property to or a provision of another benefit to a beneficiary under a trust instrument.

(2) "Divorced individual" means an individual whose marriage has been dissolved by divorce, annulment, or a declaration that the marriage is void.

(3) "Relative" means an individual who is related to another individual by consanguinity or affinity, as determined under §§ 573.022 and 573.024, Government Code, respectively.

(4) "Revocable," with respect to a disposition, appointment, provision, or nomination, means a disposition to, appointment of, provision in favor of, or nomination of an individual's spouse or any relative of the individual's spouse who is not a relative of the individual that is contained in a trust instrument executed by the individual before the dissolution of the individual's marriage to the spouse and that the individual was solely empowered by law or by the trust instrument to revoke regardless of whether the individual had the capacity to exercise the power at that time.

Source: HB 2245

Eff. Date: 9/1/19-applies to a trust only with respect to a dissolution of marriage that occurs on or after September 1, 2019

§ 112.102. Revocation of Certain Nontestamentary Transfers; Treatment of Former Spouse or Former Spouse's Relative as Beneficiary Under Certain Policies or Plans.

(a) The dissolution of the marriage revokes a provision in a trust instrument that was executed by a divorced individual as settlor before the divorced individual's marriage was dissolved and that:

(1) is a revocable disposition or appointment of property made to the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual;

(2) revocably confers a general or special power of appointment on the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual; or

(3) revocably nominates the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual to serve:

(A) as a personal representative, trustee, conservator, agent, or guardian; or

(B) in another fiduciary or representative capacity.

(b) Sub§(a) does not apply if one of the following provides otherwise:

(1) a court order;

(2) the express terms of a trust instrument executed by the divorced individual before the individual's marriage was dissolved; or

(3) an express provision of a contract relating to the division of the marital estate entered into between the divorced individual and the individual's former spouse before, during, or after the marriage.

(c) § 9.301 and 9.302, Family Code, govern the designation of a former spouse as a beneficiary of certain life insurance policies or as a beneficiary under certain retirement benefit plans or other financial plans.

Source: HB 2245

Eff. Date: 9/1/19-applies to a trust only with respect to a dissolution of marriage that occurs on or after September 1, 2019

§ 112.103. Effect of Revocation.

(a) An interest granted in a provision of a trust instrument that is revoked under §112.102(a)(1) or (2) passes as if the former spouse of the divorced individual who executed the trust instrument and each relative of the former spouse who is not a relative of the divorced individual disclaimed the interest granted in the provision.

(b) An interest granted in a provision of a trust instrument that is revoked under §112.102(a)(3) passes as if the former spouse and each relative of the former spouse who is not a relative of the divorced individual died immediately before the dissolution of the marriage.

Source: HB 2245

Eff. Date: 9/1/19-applies to a trust only with respect to a dissolution of marriage that occurs on or after September 1, 2019

§ 112.104. Liability of Certain Purchasers or Recipients Of Certain Payments, Benefits, Or Property.

A bona fide purchaser of property from a divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual or a person who receives from the former spouse or any relative of the former spouse who is not a relative of the divorced individual a payment, benefit, or property in partial or full satisfaction of an enforceable obligation:

- (1) is not required by this subchapter to return the payment, benefit, or property; and
- (2) is not liable under this subchapter for the amount of the payment or the value of the property or benefit.

Source: HB 2245

Eff. Date: 9/1/19-applies to a trust only with respect to a dissolution of marriage that occurs on or after September 1, 2019

§ 112.105. Liability of Former Spouse or Former Spouse's Relative For Certain Payments, Benefits, or Property.

A divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual who, not for value, receives a payment, benefit, or property to which the former spouse or the relative of the former spouse who is not a relative of the divorced individual is not entitled as a result of sections 112.102(a) and (b):

- (1) shall return the payment, benefit, or property to the person who is entitled to the payment, benefit, or property under this subchapter; or
- (2) is personally liable to the person described by Subdivision (1) for the amount of the payment or the value of the benefit or property received, as applicable.

Source: HB 2245

Eff. Date: 9/1/19-applies to a trust only with respect to a dissolution of marriage that occurs on or after September 1, 2019

§ 112.106. Certain Trusts with Divorced Individuals As Joint Settlers.

(a) This section applies only to a trust created under a trust instrument that:

- (1) was executed by two married individuals as settlors whose marriage to each other is subsequently dissolved; and
- (2) includes a provision described by Section 112.102(a).

(b) On the death of one of the divorced individuals who is a settlor of a trust to which this section applies, the trustee shall divide the trust into two trusts, each of which shall be composed of the property attributable to the contributions of only one of the divorced individuals.

(c) An action authorized in a trust instrument described by Subsection (a) that requires the actions of both divorced individuals may be taken with respect to a trust established in accordance with Subsection (b) from the surviving divorced individual's contributions solely by that divorced individual.

(d) The provisions of this subchapter apply independently to each trust established in accordance with Subsection (b) as if the divorced individual from whose contributions the trust was established had been the only settlor to execute the trust instrument described by Subsection (a).

(e) This section does not apply if one of the following provides otherwise:

- (1) a court order;
- (2) the express terms of a trust instrument executed by the two divorced individuals before their marriage was dissolved; or
- (3) an express provision of a contract relating to the division of the marital estate entered into between the two divorced individuals before, during, or after their marriage.

Source: HB 2245

Eff. Date: 9/1/19-applies to a trust only with respect to a dissolution of marriage that occurs on or after September 1, 2019

TITLE 10. MISCELLANEOUS BENEFICIAL PROPERTY INTERESTS

Subtitle A. Persons Under Disability

CHAPTER 142. MANAGEMENT OF PROPERTY RECOVERED IN SUIT BY A NEXT FRIEND OR GUARDIAN AD LITEM-ADDED

§ 142.010. Transfer of Trust Property to a Pooled Trust Subaccount-ADDED

- (a) In this section, "management trust" means a trust created for a beneficiary in accordance with §142.005.
- (b) If the court with continuing jurisdiction over a management trust determines that it is in the best interests of the beneficiary for whom the management trust is created, the court may order the transfer of all property in the management trust to a pooled trust subaccount established in accordance with Chapter 143.
- (c) For purposes of a proceeding to determine whether to transfer property from a management trust to a pooled trust subaccount, the court may, but is not required to, appoint an attorney ad litem or guardian ad litem to represent the interests of a management trust beneficiary who has a physical disability and is not an incapacitated person. The attorney ad litem or the guardian ad litem is entitled to a reasonable fee and reimbursement of expenses to be paid from the management trust property.
- (d) The transfer of property from the management trust to the pooled trust subaccount shall be treated as a continuation of the management trust and may not be treated as the establishment of a new trust for purposes of 42 U.S.C. §1396p(d)(4)(A) or (C) or otherwise for purposes of the management trust beneficiary's eligibility for medical assistance under Chapter 32, Human Resources Code.
- (e) The court may not allow termination of the management trust from which property is transferred under this section until all of the property in the management trust has been transferred to the pooled trust subaccount.

Source: HB 2245

Eff. Date: 9/1/19

CHAPTER 143. POOLED TRUST SUBACCOUNTS-ADDED

§ 143.001. DEFINITIONS.

In this chapter:

- (1) "Beneficiary" means a person for whose benefit a subaccount is established.
- (2) "Incapacitated person" has the meaning assigned by §142.007.
- (3) "Medical assistance" means benefits and services under the medical assistance program administered under Chapter 32, Human Resources Code.
- (4) "Pooled trust" means a trust that meets the requirements of 42 U.S.C. §1396p(d)(4)(C) for purposes of exempting the trust from the applicability of 42 U.S.C. §1396p(d) in determining the eligibility of a person who is disabled for medical assistance.
- (5) "Subaccount" means an account in a pooled trust established under this chapter.

Source: HB 2245

Eff. Date: 9/1/19

§ 143.002. Application to Establish Subaccount.

The following persons may apply to the court having jurisdiction under §142.005 for the establishment of a subaccount solely for the benefit of a proposed beneficiary who is a person for whom a management trust has been or could be established for the person's benefit under §142.005:

- (1) the trustee of a management trust established under §142.005 for the benefit of the proposed beneficiary of the subaccount;
- (2) the guardian of the person or estate, or both, of the proposed beneficiary of the subaccount;
- (3) a person who has filed an application for the appointment of a guardian of the person or estate, or both, for the proposed beneficiary of the subaccount;
- (4) an attorney ad litem or guardian ad litem appointed to represent the proposed beneficiary of the subaccount; or
- (5) the proposed beneficiary, if the proposed beneficiary is not a minor or incapacitated person.

Source: HB 2245

Eff. Date: 9/1/19

§ 143.003. Appointment of Attorney Ad Litem.

(a) The court shall appoint an attorney ad litem for a person who is a minor or an incapacitated person and who is the subject of an application under §143.002.

(b) The attorney ad litem is entitled to a reasonable fee and reimbursement of expenses to be paid from the person's property.

Source: HB 2245

Eff. Date: 9/1/19

§ 143.004. Establishment of Subaccount.

If the court finds that it is in the best interests of a person who is the subject of an application under §143.002, the court may order:

- (1) the establishment of a subaccount of which the person is the beneficiary; and
- (2) the transfer to the subaccount of any of the person's property on hand or accruing to the person.

Source: HB 2245

Eff. Date: 9/1/19

§ 143.005. Terms of Subaccount.

Unless the court orders otherwise, the terms governing the subaccount must provide that:

- (1) the subaccount terminates on the earliest of the date of:
 - (A) the beneficiary's 18th birthday, if the beneficiary:
 - (i) is not found by the court to be considered disabled for purposes of 42 U.S.C. Chapter 7, Subchapter XVI; and
 - (ii) is a minor at the time the subaccount is established;
 - (B) the beneficiary's death; or
 - (C) a court order terminating the subaccount; and
- (2) on termination, any property remaining in the beneficiary's subaccount after making any required payments to satisfy the amounts of medical assistance reimbursement claims for medical assistance provided to the beneficiary under this state's medical assistance program and other states' medical assistance programs shall be distributed to:
 - (A) the beneficiary, if on the date of termination the beneficiary is living and is not a minor or incapacitated person;
 - (B) the beneficiary's guardian of the estate, if on the date of termination the beneficiary is living and is a minor or incapacitated person; or
 - (C) the personal representative of the beneficiary's estate, if on the date of termination the beneficiary is deceased.

Source: HB 2245

Eff. Date: 9/1/19

§143.006. Fees and Reporting.

(a) The manager or trustee of a pooled trust may:

(1) assess fees against a subaccount of that pooled trust that is established under this chapter, in accordance with the manager's or trustee's standard fee structure; and

(2) pay fees assessed under Subdivision (1) from the subaccount.

(b) If required by the court, the manager or trustee of the pooled trust shall file a copy of the annual report of account with the court clerk.

Source: HB 2245

Eff. Date: 9/1/19

§ 143.007. Jurisdiction Exclusive.

Notwithstanding any other law, the court that orders the establishment of a subaccount for a beneficiary has exclusive jurisdiction of a subsequent proceeding or action that relates to both the beneficiary and the subaccount, and the proceeding or action may be brought only in that court.

Source: HB 2245

Eff. Date: 9/1/19

TFLF TOP BAD BILLS OF THE 86TH REGULAR SESSION THAT DIED

By Steve and Amy Bresnen

Although not an exhaustive list, the following bills represent some of the most noxious family law legislation filed during the recently adjourned legislative session. The Texas Family Law Foundation, comprised of around 800 Texas family lawyers and their lobbyists, Amy and Steve Bresnen, works around the clock during the session against bills like these in an attempt to prevent them from becoming law. Here is what could have happened to your clients and your practice:

HB 922 by Krause- Relating to divorce on the ground of insupportability.

What the bill would have done: HB 922 would have ended no-fault divorce, except where both parties agree.

What happened to the bill? The Texas Family Law Foundation worked with SMU law professors Natalie Nanasi and Joanna Grossman to produce publications outlining the dangers of ending no-fault divorce and extending the waiting period for divorce. The papers are thorough and discuss the vulnerability of domestic violence victims to both physical and financial abuse. The papers also address the stale argument that no-fault divorce is unconstitutional.

Our lobby team and Foundation volunteers met with the individual legislators assigned to the House Juvenile Justice and Family Issues and the Senate State Affairs Committees to discuss the perils of this legislation and distributed the papers. The team periodically reminded legislative staff of the discussion. We know that the legislator who filed this bill asked for a hearing in early March, and had a hearing been granted that early in the session, it could have passed. However, the bill did not get a hearing until May when it was destined to die due to lack of time. Some of our Foundation members testified against the bill at the hearing.

HB 926 by Krause- Relating to the waiting period for a divorce on the grounds of insupportability.

What the bill would have done: HB 926 would have extended the waiting period for divorce from the current 60 days to 180 days.

What happened to the bill? Our efforts to combat the repeal of no-fault divorce were coupled with the efforts to kill this bill (see above). The bill was also heard in May, too late in the process for the bill to become law.

HB 1659 by Guillen- Relating to conservatorship of a child in certain suits affecting the parent-child relationship.

What the bill would have done: HB 1659 would raise the burden of proof from “credible evidence” to “clear and convincing” when determining if there is sufficient evidence of domestic abuse to not appoint parents as joint managing conservators.

What happened to the bill? Our lobby team and a volunteers went by the legislator’s office to discuss the bill with staff. They explained it was a constituent bill and meant no harm. The lobby team explained the burdens of proof and how they differed, as well how often each of them are used in family law cases. The sponsor graciously pulled the bill down and never asked for a hearing.

HB 2157 by Middleton- Relating to equal parenting orders in suits affecting the parent-child relationship.

What the bill would have done: HB 2157 would have added a Subsection (c) to Section 153.134, Family Code, creating a presumption in favor of equal parenting time if the parents are appointed joint managing conservators. It stated that, if parents are appointed joint managing conservators, the Court shall enter a possession order that provides for equal parenting, unless the Court determines it is not in the child's best interest. If equal parenting is not in the child's best interest, the Court may enter (1) the standard possession order or (2) another possession order the Court deems to be in the best interests of the child.

The bill further proposed a new Subchapter F-1 to Chapter 153, Family Code, entitled "Equal Parenting Order," which consisted of Sections 153.351 and 153.352. Section 153.351 states that the Court shall, as an alternative to the standard possession order, enter an equal parenting order if the Court appoints the parents joint managing conservators under Section 153.134 and determines that the order would be in the best interests of the child. Section 153.352 contained the equal parenting order, stating in section (a) that the Court may enter an equal parenting order, provided that the schedule may not grant possession to a parent for more than five days greater than the possession granted to the other parent. If one parent is granted more days of possession in a year, the schedule shall alternate the next year so that the other parent is granted the same number of days. Subsection (b) states that the Court shall give the parents an opportunity to agree on an equal parenting order, subject to the Court's determination that the schedule is in the best interests of the child. If the parents do not agree, the Court may order any equal parenting order.

The bill also states that its enactment would not constitute a material and substantial change.

What happened to the bill? First, this was a re-filed bill from the previous session, so our lobby team was extensively prepared to battle it through the legislative process. Our lobbyists had heard at the beginning of the legislative session that the freshman representative may file this legislation and went to talk to him. He was very accessible as they spent over an hour explaining the expanded standard possession order and calendar. They also explained that judges could already do this where it is deemed appropriate. And thanks to the Family Law Section poll on this issue, our lobby team shared that 72% of lawyers who had handled “50/50” custody arrangements had to return to court for modifications because often 50/50 plans are just not feasible. Based on the evident increased litigation, this arrangement should not be the presumption. This frank yet thoughtful discussion delayed the bill from being filed for a month.

Chairman Harold Dutton did not give the bill a hearing until the last week of April, which was too late for the bill to pass.

HB 2756/SB 2365 by Leach/Hughes- Relating to the protection of parental rights.

What the bill would have done: HB 2756/SB 2365 stated that it is the public policy of Texas in a suit between a parent and nonparent that the state not interfere with a parent's fundamental right to raise their children without overcoming the presumption that a parent is a fit parent and a fit parent acts in the best interest of the child. The standard set forth for a fit parent is one who "adequately cares for their child." It also sets forth that the fundamental right of parents to raise their children includes but is not limited to the right to direct the care, custody, control, education, upbringing, moral and religious training, and health care of their child.

The fact that the parental presumption is inserted in the child's best interest statute implies that the child's best interest is subjugated to the stated parental presumptions and rights. This creates confusion and would eradicate decades of family law jurisprudence where the top priority of the state has simply been “the best interests of the child.”

What happened to the bill? This bill was the Texas Home School Coalition's top priority this session and was drawn from Texas Attorney General's opinion (KP-0241) relating to the state's infringement on parental rights.

The House bill had a hearing in early April, which was still sufficient time to pass. However, after the persistent efforts by our lobby team, the bill did not have the votes to pass out of the House Committee when the vote was taken.

The lobby team heard rumors that the Home School Coalition was not giving up and intended to amend this bill onto a CPS-related bill, HB 3331. By this point HB 3331 had already made its way to the House Calendars committee, which is the last stop for a House bill before it goes to the floor. The rumors of mischief may have killed HB 3331, which was the last possible vehicle in the House for HB 2756. To be fair, HB 3331 had its own share of problems, but the Foundation did not oppose it and the bill's author committed not to allow the bill to become a vehicle for bad legislation.

Once the Texas Home School Coalition learned there was no viable path for the bill in the House, it focused its efforts on the Senate. The Senate companion, SB 2365, was heard in the Senate State Affairs committee and it was amended in Committee to mirror the language of the House bill. Luckily, the Senate bill was left pending and did not receive a vote.

HB 3121 by Bowers- Relating to ensuring the safety of children in suits affecting the parent-child relationship.

What the bill would have done: HB 3121 would have made substantial and consequential changes to Chapter 153 both in substance and procedure. It was a complete overhaul.

To name a few, the bill would have substantially changed the meaning of "best interest of the child" by stating that the "best interest of the child, providing a safe, healthy, stable and nonviolent environment for the child is the paramount concern."

It also altered the current procedures for determining joint managing conservator status under Chapter 153, which would cause confusion for judges and litigants. For example, current law allows courts to consider evidence of abuse within two years prior to the filing of the suit. Under this bill, courts could consider evidence of abuse against a party or a child any time before the filing of the suit.

It also required courts to look at evidence of "emotional abuse," which was too broadly defined, and the emotional abuse could have happened at any time prior to the filing of the suit. The bill stated that the court must look at "valid, scientific research" but did not define its meaning. As drafted, the court could consider "emotional abuse" at the time of the suit. For example, during cross-examination. In addition, the court would be required to consider the scientific research and make findings by clear and convincing evidence that awarding visitation could not endanger the child.

The bill also removed the "rebuttable presumption" that the appointment of a parent as a sole managing conservator or primary conservator is not in the best interest of the child if there is evidence that there is a history and pattern of neglect, abuse, family violence or emotional abuse by a parent against the other parent. This would not allow the court to consider any other circumstances or evidence.

What happened to the bill? Bills like this show why it is so important to have an advocacy presence at the Capitol. Not only was the Foundation able to stop this bill from becoming a law, the Foundation also made a friend. Representative Rhetta Bowers, a freshman from Dallas and House Juvenile Justice and Family Issues committee member, truly cares about family law and wants to make positive changes. Her intentions when filing this bill were totally pure.

A group called the "Stop Abuse Campaign" brought this language to her and asked her to file the bill. Although this group is well-intentioned, as it appears to be mostly concerned about child sex abuse, the bill was written by non-lawyer activists who go state to state attempting to dump this exact same language into every state's codes. It is very similar to the American Laws for American Courts' advocacy approach or the Americans for Parental Equality approach. There does not appear to be any research or thought put into the individual state's existing law or that it may not be necessary.

Rather than outright opposing this bill, the Foundation asked Rep. Bowers if she would consider, given the vast changes to Chapter 153 proposed in the bill, an interim study on specific sections of Chapter 153. Many bills were filed this past session that would amend that chapter, so it seemed appropriate for an interim study topic. Rep. Bowers obliged and was

excited about a study. She substituted an “interim study” for the filed version’s language. Unfortunately, the committee substitute bill died due to lack of time.

But the Foundation expects this group to return to the 87th Legislature. In the meantime, we are seriously suggest improving Chapter 153 where it is needed.

HB 3414 by Sanford- Relating to alternative equal access time of possession under a standard possession order in a suit affecting the parent-child relationship.

What the bill would have done: HB3414 would have added two sections to the Texas Family Code. Proposed Section 153.3115 stated that, unless the court finds that equal access is not in the best interests of the children, a conservator may elect to increase the times of possession the conservator would be otherwise entitled under Sections 153.312, 153.314, and 153.315 by requesting an equal access possession order. Section 153.318 was titled "Alternative Equal Access Possession Order." This section give would a conservator an election to increase that conservator's possession time under the standard possession order up to one of the following arrangements: (1) week-on, week-off possession; (2) a 2-2-5 possession schedule; or (3) another arrangement ordered by the court or agreed to by the parties, as long as the schedule provides, as reasonably as possible, equal access. This bill would have, in effect, made 50/50 the standard possession order. If a court ordered a standard possession order, the conservator awarded the standard possession order has the option to make it a 50/50 schedule.

What happened to the bill? It was killed. And then, Chairman Harold Dutton killed it again by refusing to allow Representative Sanford to amend it onto one of his bills during the last week of the legislative session.

HB 3761/SB 2105 by Miller/Zaffirni- Relating to the rendition of certain temporary orders in a suit affecting the parent-child relationship in anticipation of a parent's military deployment, military mobilization, or temporary military duty.

What the bill would have done: HB 3761/SB 2105 would have allowed a member of the military who “anticipates” being deployed in the next 12 months to have an expedited hearing for a temporary order in a SAPCR case. In other words, the person may never have been given notice of future deployment and the word “anticipates” was not defined. The could even mean the person had a dream that he or she could. possibly be deployed in the next 12 months.

What happened to the bill? The Foundation’s volunteers explained the concerns with the anticipatory language and that it would not be necessary as most who are active in the military are given ample notice of their future deployment and are able to get a prompt hearing when needed.

It is also the lobby team’s understanding that this was supported by some of the "father’s rights" groups, which may explain its obvious problems because their proposals are seldom well thought out.

The House bill received a late hearing and died due to the clock. The Senate sponsor did not press the bill once its effects and shortcomings were explained.

HB 3879 by Ramos- Relating to military duty of conservator of s child in suit affecting the parent-child relationship.

What the bill would have done: HB 3879 was the most comprehensive of the military bills filed this past session. Some of the changes included: The bill did way away with the terms military deployment, mobilization or temporary duty and changes it to “long-term military obligation and “short-term military obligation” Long-term was defined as 90 days to 18 months.

It also stated that the parent opposing visitation must show by “clear and convincing evidence” that visitation is not in the best interest of the child. The bill did not require that an “agreement” meeting the terms of this bill be filed with a court or signed by a judge, so there would be no way of enforcing the agreement.

What happened to the bill? The Foundation made another friend while helping put this bill to rest. Representative Ana-Maria Ramos of Dallas filed this bill, but after the Foundation explained the many problems with it, she agreed to pull it down. It should be noted that this bill was also supported by the father’s rights groups.

HB 4189 by Middleton- Relating to the duty of certain professionals to report child abuse and neglect.

What the bill would have done: The bill would change the standard for reporting child or elderly abuse from a person having “cause to believe” that the abuse occurred, to a person having “actual knowledge” that the abuse actually occurred. In other words, the perpetrator or someone who witnessed the abuse firsthand, would likely be the only one required to report the abuse.

What happened to the bill? The House Committee on Human Services held a hearing on the bill at the end of March. After scathing testimony from several stakeholders, including the Foundation, the bill died in committee.