SUBJECT: Standing for family to file suit affecting parent-child relationship

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 10 ayes — Jackson, Lewis, Bohac, Castro, S. Davis, Hartnett, Madden, Raymond, Scott, Thompson

0 nays

1 absent — Woolley

WITNESSES: For — Dennis Moreno; Jesus Moreno; Mary Moreno; John Orchard; Manuel Rodriguez; (*Registered, but did not testify:* Amanda Vining, Texans Care for Children)

Against — Jane Burstain, Center for Public Policy Priorities; Kenneth Raggio, Texas Family Law Foundation

On — Tina Amberboy, Supreme Court Children's Commission; Liz Kromrei, Department of Family and Protective Services; John J. Sampson

BACKGROUND: Family Code, sec. 102.006 states that if the parent-child relationship between the child and every living parent of the child has been terminated, an original suit may not be filed by:

- a former parent whose parent-child relationship with the child has been terminated by court order;
- the father of the child; or
- a family member or relative by blood, adoption, or marriage of either a former parent whose parent-child relationship has been terminated or of the father of the child.

The limitations on filing suit do not apply, under certain circumstances, to:

- an adult sibling of the child;
- a grandparent of the child;
- an aunt who was a sister of a parent of the child; or
- an uncle who was the brother of a parent of the child.

The adult sibling, grandparent, aunt or uncle must file an original suit or a suit for modification requesting managing conservatorship of the child not later than the 90th day after the date the parent-child relationship between the child and the parent is terminated in a suit filed by the Department of Family Protective Services requesting the termination of the parent-child relationship.

DIGEST:

HB 121 would amend Family Code, sec. 102.006 to provide that the limitations on filing suit once the parent-child relationship between the child and every living parent had been terminated would not apply to a person related to the child within the fourth degree by consanguinity. The person would have to file an original suit or a suit for modification requesting managing conservatorship or adoption by the same deadline as under current law.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

SUPPORTERS SAY:

CSHB 121 would expand the pool of relatives who could petition the court to the fourth degree by consanguinity. This would allow first cousins to present themselves as available conservators.

The bill would address situations in which extended family did not know that a family member's parental rights were terminated involuntarily and the child was subsequently placed for adoption outside the family network. The extended family of the child should have at least 90 days to petition for conservatorship to promote the goal of reunification and family placement. Once an adoption takes place, significant procedural barriers exist for the extended family to challenge the adoption. The bill would preempt those problems by providing the extended family an opportunity to present themselves as available conservators for the child before an outside adoption took place. The bill would allow these children to be placed with blood relatives, which studies have shown can be helpful for their development.

While permanency for the child certainly is important, ensuring that children are placed with family would be worth adding 90 days to the termination process. The bill would provide family members a seat at the table, but the ultimate decision as to who served as a conservator would

belong to the judge. A judge can capably decide if placing a child with a family member would be in the child's best interests.

OPPONENTS SAY:

The Department of Family and Protective Services is required to notify close relatives of the removal of a child within 30 days. A better solution would be to improve the identification of suitable conservators at the beginning of the process of terminating parental rights and not 90 days after the termination. Termination proceedings take up to 18 months. Allowing 90 days for family members within the fourth degree by consanguinity to come forward would unnecessarily lengthen the time before a child could obtain permanency. While family placement is an important and mandated goal, permanency for the child is required to be pursued with equal diligence in the Family Code.

Expanding the pool of relatives who could petition the court would diminish the likelihood that those relatives have had contact with the child. Substantial past contact with the child should be required to be shown to allow an extended family member to serve as a conservator.

The extended family member should be required to file a petition for adoption, rather than the less legally rigorous suit for conservatorship. Adoption provides true permanency for the child, with all of the associated benefits, including inheritance. In addition, home-studies to adequately assess the child's best interest should be required for extended family member placement, which is done for adoption but not if the family member petitions for custody.