

## **BILL ANALYSIS**

Senate Research Center

H.B. 2249  
By: Goodman (Harris)  
Jurisprudence  
5/3/2001  
Engrossed

### **DIGEST AND PURPOSE**

Currently, there is a 12-month deadline with the possibility of extension for rendering a final order in a suit filed by the Department of Protective and Regulatory Services requesting termination of a parent-child relationship. This helps reduce the amount of time a child spends in foster care awaiting a trial court decision. However, there are inconsistencies in the law and there is no mechanism through which the trial court can be compelled to timely set the case for final trial. Current law also does not address post-judgment appellate delays. H.B. 2249 addresses post-judgment appellate delays, corrects inconsistencies, and provides a mechanism to compel the trial court to timely set the case for final trial.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 161.002(b), Family Code, regarding the termination of the rights of an alleged biological father, to remove the stipulation that the man's response by filing an admission of or counterclaim for paternity under Chapter 160 be made prior to the final hearing in the suit.

SECTION 2. Amends Section 161.003(a), Family Code, to authorize a court to order termination of the parent-child relationship in a suit filed by the Department of Protective and Regulatory Services (department) if the court finds that the department has been the temporary or sole managing conservator of the child of the parent for at least six months preceding the date of hearing on the termination held in accordance with Subsection (c), rather than the six months preceding the filing of the petition.

SECTION 3. Amends Section 161.2011(a), Family Code, to authorize a parent whose rights are subject to termination in a suit affecting the parent-child relationship and against whom criminal charges are filed that directly relate to the grounds for which termination is sought to file a motion requesting a continuance of the final trial in the suit until the criminal charges are resolved. Authorizes the court to grant the motion only if the court finds that a continuance is in the best interest of the child. Requires the court, notwithstanding any continuance granted, to conduct status and permanency hearings with respect to the child as required by Chapter 263 and to comply with the dismissal date under Section 263.401. Deletes text regarding a continuance not proceeding to final trial in a suit to terminate the parent-child relationship during a certain time.

SECTION 4. Amends Section 161.203, Family Code, to provide that the dismissal or nonsuit, approved by the court, of a suit to terminate is without prejudice.

SECTION 5. Amends Section 161.204, Family Code, to authorize the court, in a suit for termination, to render an order terminating the parent-child relationship, rather than all legal relationships and rights which exist or may exist, between a child and a man who has signed an affidavit of waiver of interest in the child, if the termination is in the best interest of the child.

SECTION 6. Amends Section 161.205, Family Code, to require the court, if the court does not order termination of the parent-child relationship, to deny, rather than dismiss, the petition or render any order in the best interest of the child.

SECTION 7. Amends Section 263.304, Family Code, to require the court to set a final hearing under this chapter on a date that allows the court to render a final order before the date for dismissal of the suit under this chapter. Authorizes any party to the suit or an attorney ad litem for the child to seek a writ of mandamus to compel the court to comply with the duties imposed by this subsection.

SECTION 8. Amends Sections 263.401(b) and (c), Family Code, as follows:

(b) Authorizes the court to retain the suit on the court's docket for a period not to exceed 180 days after the time described by Subsection (a), if the court finds that continuing the appointment of the department as temporary managing conservator is in the best interest of the child. Requires the court, if the court retains the suit on the court's docket, to render an order in which the court schedules the new date for dismissal of the suit not later than the 180th day after the time described by Subsection (a), makes further temporary orders for the child's safety and welfare, and sets a final hearing on a date that allows the court to render a final order before the required date for dismissal of the suit under this subsection. Deletes text regarding an extension order.

(c) Provides that if the court grants an extension but does not render a final order or dismiss the suit on or before the required date for dismissal under Subsection (b), the court is required to dismiss the suit. Prohibits the court from granting an additional extension that extends the suit beyond the required date for dismissal under Subsection (b). Deletes text regarding the extension order.

SECTION 9. Amends Chapter 263E, Family Code, by amending Sections 263.402, 263.403, and 263.404, and adding Sections 263.405 and 263.406, as follows:

Sec. 263.402. LIMIT ON EXTENSION; WAIVER. (a) Prohibits the parties to a suit under this chapter from extending the deadlines set by the court under this subchapter by agreement or otherwise.

(b) Provides that a party to a suit under this chapter who fails to make a timely motion to dismiss the suit or to make a motion requesting the court to render a final order before the deadline for dismissal under this subchapter waives the right to object to the court's failure to dismiss the suit. Provides that a motion to dismiss under this subsection is timely if the motion is made before the department has introduced all of the department's evidence, other than rebuttal evidence, at the trial on the merits.

Sec. 263.403. Redesignated from Section 263.402, with no changes.

Sec. 263.404. Redesignated from Section 23.403, with no changes.

Sec. 263.405. APPEAL OF FINAL ORDER. (a) Provides that an appeal of a final order rendered under this subchapter is governed by the rules of the supreme court for accelerated appeals in civil cases and the procedures provided by this section. Requires the appellate court to render its final order or judgment with the least possible delay.

(b) Requires a party intending to appeal a final order, not later than the 15th day after the date the order is signed by the trial judge, to file with the trial court a statement of the point or points on which the party intends to appeal. Authorizes the statement to be combined with a motion for a new trial.

(c) Provides that a motion for a new trial, a request for findings of fact and conclusions of law, or any other post-trial motion in the trial court does not extend the deadline for filing a notice of appeal under Rule 26.1(b), Texas Rules of Appellate Procedure.

(d) Requires the trial court to hold a hearing not later than the 30th day after the date the final order is signed to determine whether a new trial should be granted, whether a party's claim of indigence, if any, should be sustained, and whether the appeal is frivolous as provided by Section 13.003(b) (Free Transcript of Statement of Facts on Appeal), Civil Practice and Remedies Code.

(e) Requires the court, if a person claims indigence and requests the appointment of an attorney, to require the person to file an affidavit of indigence and to hear evidence to determine the issue of indigence. Requires the court, if it does not render a written order denying the claim of indigence or requiring the person to pay partial costs before the 36th day after the date the final order being appealed is signed, to consider the person to be indigent and to appoint counsel to represent the person.

(f) Requires the appellate record to be filed in the appellate court not later than the 60th day after the date the final order is signed by the trial judge, unless the trial court, after a hearing, grants a new trial or denies a request for a trial court record at no cost.

(g) Authorizes the appellant to appeal the court's order denying the appellant's claim of indigence or the court's finding that the appeal is frivolous by filing with the appellate court the reporter's record and clerk's record of the hearing held under this section, both of which shall be provided without advance payment, not later than the 10th day after the date the court makes the decision.

(h) Prohibits the appellate court from extending the time for filing a record or appellate brief except on a showing of good cause.

Sec. 263.406. Redesignated from Section 263.404, with no changes.

SECTION 10. (a) Provides that, except as provided by Subsection (b) of this section, the changes in law made by this Act apply to a pending suit affecting the parent-child relationship regardless of whether the suit was filed before, on, or after the effective date of this Act.

(b) Provides that Section 263.405, Family Code, as added by this Act, applies only to an appeal of a final order under Chapter 263E, Family Code, as amended by this Act, filed on or after the effective date of this Act. Provides that such an appeal filed before the effective date of this Act is governed by the law in effect on the date the appeal was filed, and the former law is continued in effect for that purpose.

SECTION 11. Effective date: September 1, 2001.