

BILL ANALYSIS

Senate Research Center

H.B. 1151
By: Thompson (West)
Jurisprudence
5/18/2009
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Family Code provides for the filing with the court of a statement by a child 12 years of age or older naming the person who is the child's preference to have "the exclusive right to designate the primary residence of the child." Such statements are usually seen in the form of a notarized affidavit submitted to the court. This statute assumes that children (rather than their parents and their parents' attorneys) are filing such affidavits and assumes that such children have the intellectual capacity to comprehend the legal ramifications of such a declaration. It further assumes that children have the emotional maturity to adapt in a healthy manner to the consequences of stating such a preference in written form. Research and clinical practice do not support these assumptions when applied to the 'affidavit of preference' situation.

General practice for family courts is to keep children out the middle of their parents' conflict and shield them from adult disputes during custody litigation. Unfortunately, current statute gives rise to parents placing children in the middle of the adult dispute, often with each side pressuring children to choose one parent over the other. This is not only developmentally inappropriate, but it exposes children to multiple psycho-social stressors and can place them under significant emotional duress.

It is critical that children's voices be heard by family courts overseeing suits affecting the parent child relationship, without placing the children involved under additional emotional distress. There are developmentally appropriate ways that the court can do this without forcing the child to declare a preference and essentially take sides in an adult dispute they may not fully comprehend. This bill would utilize existing resources in order to provide courts with information about children without inappropriately placing those children in the middle of the parents' dispute or forcing the children to "choose sides" in their parents' legal disputes.

H.B. 1151 relates to temporary orders and orders for modification in suits affecting the parent-child relationship.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 156.006(b), Family Code, as follows:

(b) Prohibits the court, while a suit for modification is pending, from rendering a temporary order that has the effect of changing the designation of the person who has the exclusive right to designate the primary residence of the child under the final order unless the temporary order is in the best interest of the child and the order is necessary because the child's present circumstances would significantly impair the child's physical health or emotional development, the person designated in the final order has voluntarily relinquished the primary care and possession of the child for more than six months, rather than the person designated in the final order has voluntarily relinquished the primary care and possession of the child for more than six months and the temporary order is in the best interest of the child, or the child is 12 years of age or older and has expressed to the court in chambers as provided by Section 153.009 (Interview of Child in Chambers) the name of the person who is the child's preference to have the exclusive right to designate

the primary residence of the child, rather than the child is 12 years of age or older and has filed with the court in writing the name of the person who is the child's preference to have the exclusive right to designate the primary residence of the child and the temporary order designating that person is in the best interest of the child.

SECTION 2. Amends Section 156.101, Family Code, to make conforming changes.

SECTION 3. Repealer: Section 153.008 (Child's Preference of Person to Designate Residence), Family Code.

SECTION 4. Makes application of the changes in law made by this Act by the amendment of Sections 156.006(b) and 156.101, Family Code, prospective.

SECTION 5. Effective date: September 1, 2009.