BILLS KILLED FOR YOU

THE TEXAS FAMILY LAW FOUNDATION'S TOP BAD BILLS OF THE 86TH LEGISLATURE'S REGULAR SESSION

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 about 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 Texas families 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 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 stated 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 custody 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 set 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.

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 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 would give 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 temporary orders in suits affecting 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..maybe* 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.