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# Family Law

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**THIS ARTICLE WILL PROVIDE A SUMMARY OF FAMILY LAW-RELATED LEGISLATION PASSED BY THE TEXAS LEGISLATURE DURING THE 2013 LEGISLATIVE SESSION.** Unless noted otherwise, the bills are effective Sept. 1, 2013. The full text of the bills discussed in this article may be accessed online using the Texas Legislature Online Bill Lookup tool at [legis.state.tx.us/BillLookup/BillNumber.aspx](http://legis.state.tx.us/BillLookup/BillNumber.aspx). Additionally, the Online Bill Lookup provides a comprehensive analysis of each bill, complete with background information.

Although not a legislative change, the Family Law Section was recently notified by the Child Support Division of the Office of the Attorney General that it will soon publish in the Texas Register an increase in the “cap” on net resources for purposes of child support. The “cap” will increase from the current \$7,500 to \$8,550 effective Sept. 1, 2013. This change is based on authority granted by Section 154.125 of the Texas Family Code.

## **FAMILY LAW LEGISLATION PASSED DURING THE 2013 SESSION**

### **Title 1: The Marriage Relationship**

#### *Spousal Maintenance (House Bill 389)*

Amends Chapters 8 and 9 of the Texas Family Code. This bill seeks to provide for the uniform enforcement of court-ordered, agreed, and contractual alimony and maintenance and to provide for the enforcement of certain property division agreements, regardless of whether the agreement is included in the decree or in a separate document. Further, H.B. 389 amends current law relating to the enforcement of spousal maintenance agreements and property distribution agreements incident to divorce or annulment. This bill amends Section 8.059 of the Texas Family Code to include language establishing a maximum amount of agreed spousal maintenance that may be enforced by contempt (not to exceed the “amount of periodic support the court could have ordered”).

### **Title 4: Protective Orders and Family Violence**

#### *Venue for a Protective Order Application (Senate Bill 129)*

Amends Section 82.003 of the Texas Family Code. Protective orders against family violence can currently only be filed in the county in which the victim or the alleged offender resides. S.B. 129 expands the venue for filing an application for a protective order against family violence to include “any county in which the family violence is alleged to have occurred.”

#### *Protective Orders and Pets or Companion Animals (S.B. 555)*

Amends Chapter 85 of the Texas Family Code and Chapter 25 of the Texas Penal Code. S.B. 555 expands the scope of protective orders applicable to a person who committed family violence. This bill allows for pets, companion animals, or assistance animals in the “actual or constructive care” of a person protected by an order. Additionally, S.B. 555 amends the Texas Penal Code to specify, for purposes of statutory provisions establishing the conduct that constitutes an offense relating to the violation of certain court orders or conditions of bond in a family violence case, that possession of a pet, companion animal, or assistance animal by a person means actual

care, custody, control, or management of a pet, companion animal, or assistance animal by the person or constructive possession of a pet, companion animal, or assistance animal owned by the person or for which the person has been the primary caregiver.

### **Title 5: The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship**

#### *Mistaken Paternity and Termination of the Parent-Child Relationship (H.B. 154)*

Amends Sections 161.005(e) and (i) of the Texas Family Code. This bill allows for a termination suit to be filed not later than the *second* anniversary, rather than the first anniversary, of the date on which the petitioner becomes aware of the facts alleged in the petition indicating that the petitioner is not the child’s genetic father. Further, H.B. 154 ends the petitioner’s obligation to pay interest that accrues after the date an order is rendered on the basis of a child support arrearage or money judgment for a child support arrearage existing on that date.

#### *Child Entitled to Notice of a Permanency Hearing (H.B. 843)*

Amends Section 236.301 of the Texas Family Code. This bill entitles certain persons to at least 10 days’ notice of a permanency hearing and to present evidence and be heard at the hearing, including the child if the child is 10 or older or the court determines it is appropriate for the child to receive notice.

#### *Standard Possession Order (H.B. 845)*

Amends Sections 153.316 and 153.317 of the Texas Family Code. Additionally, H.B. 845 repeals Section 153.3162 related to additional periods of possession or access after conclusion of military deployment. This bill expands the definition of written notice under Section 153.316 to include notice provided by e-mail or fax. Further, H.B. 845 allows for greater options for the beginning and ending times of certain periods of possession or access.

#### *Enforcement of a Child Support Order by Contempt (H.B. 847)*

Amends Section 157.162 of the Texas Family Code and repeals Sections 157.162(d) and (e), removing the “get out of jail free” card of a last-minute payment. This bill allows a court to award a petitioner court costs or reasonable attorneys’ fees even if there is no finding of contempt.

#### *Retention of Certain Records in a SAPCR by Child’s Attorney Ad Litem, Guardian Ad Litem, or Amicus Attorney (H.B. 1185)*

Repeals Section 107.00(f) of the Texas Family Code. Records relating to a child the subject of a SAPCR obtained from a custodian by the child’s court-appointed

representatives are no longer required to be destroyed on termination of appointment. This bill seeks to address the unfortunate circumstances in which a child returns to the court system. In such cases, the child's court-appointed representatives must again seek out these essential records in order to help the child. H.B. 1185 allows a representative to retain such records and better serve a child returning to the system from the first day of appointment.

#### ***Failure to Report Abuse or Neglect of a Child (H.B. 1205)***

Amends Section 261.109 of the Texas Family Code. H.B. 1205 seeks to address circumstances in which a professional has cause to believe that abuse or neglect of a child has occurred (or may occur) but fails to report it by strengthening and clarifying the law relating to reporting child abuse or neglect. A professional required to make a report who knowingly fails to do so faces a Class A misdemeanor. If shown at trial that the professional intended to conceal the abuse or neglect, the professional faces a state jail felony.

#### ***History of Domestic Violence or Sexual Abuse (H.B. 1228)***

Amends Sections 153.004 and 161.007 of the Texas Family Code. A man who fathers a child through sexual assault may have the same custody and visitation privileges to that child as any other father. H.B. 1228 seeks to address this inequity by providing women who become pregnant as the result of sexual assault with more legal rights. This bill amends current law relating to consideration by the court of sexual abuse and conduct that constitutes sexual assault.

The court shall now consider evidence of sexual abuse in determining conservatorship and/or any limitation thereof. Section 161.007 orders the court, except as provided in subsection (b), to terminate a parent-child relationship if it is found by clear and convincing evidence that: (1) the parent has engaged in conduct that constitutes certain sexual or assaultive offenses; (2) as a direct result, the victim of the conduct became pregnant with the parent's child; and (3) termination is in the best interest of the child.

#### ***Interlocutory Appeals/De Novo Hearings in Family Law Proceedings (H.B. 1366)***

Amends Section 6.4035, Section 6.708, and Chapter 201 of the Texas Family Code. Additionally, H.B. 1366 amends Section 51.014 of the Texas Civil Practice and Remedies Code. This bill adds clarifying language to Section 6.4305(c) regarding a waiver of service in a divorce and adds Section 6.708(c), the famous *Tedder* amendment, regarding the court's award of reasonable attorneys' fees and expenses.

Under Chapter 201, a party may now request a de novo hearing by filing a written request not later than the *third* working day, rather than the seventh, after the date the party receives notice of the substance of the associate judge's report. Under Section 51.014 of the Texas Civil Practice and Remedies Code, H.B. 1366 adds language to preclude interlocutory appeals in a suit brought under the Texas Family Code.

#### ***Suspension/Denial of Issuance or Renewal of Driver's License for Failure to Pay Child Support (H.B. 1846)***

Amends Sections 232.008 and 232.0135 of the Texas Family Code. The attorney general or a court can stay or halt an order suspending a driver's license under certain circumstances. One of those conditions is that the individual comply with a child support repayment schedule. H.B. 1846 adds Section 232.008(b-1), which prohibits stay of an order unless the individual makes an immediate partial payment in an amount (not less than \$200) as specified by the court or Title IV-D agency. Additionally, the bill adds language to Section 232.0135(b) that prohibits a licensing authority from accepting an application for a license or license renewal unless the person owing child support has made the required payment (not less than \$200) and is in compliance with the remainder of the payment schedule.

#### ***VA Disability Benefits and Net Resources (H.B. 3017)***

Amends Chapter 154 of the Texas Family Code. Currently, the application of child support guidelines presumptively includes a disabled veteran's compensation and pension as a net resource pursuant to Section 154.062 (Net Resources). Although sections of the Texas Family Code provide guidance for treatment of a disabled obligor's net resources when the obligor is receiving Social Security benefits, the code is silent as to how to appropriately calculate and allocate a disabled veteran's U.S. Department of Veterans Affairs (VA) compensation and pension benefits. H.B. 3017 addresses the inconsistency of the law as it treats disabled parents who struggle with contributing to the economic well-being of their children. The bill amends provisions related to the determination of the amount of certain child support obligations. H.B. 3017 adds VA disability benefits "other than non-service-connected disability pension benefits, as defined by 38 U.S.C. Section 101(17)" to the definition of "resources" and clarifies the treatment of disability payments from the VA in determining child support.

#### ***Review of Placement of Children Under Care of DFPS (S.B. 534)***

Amends Chapter 263 of the Texas Family Code and

adds Section 263.009. S.B. 534 requires the Department of Family and Protective Services to hold a permanency planning meeting for each child for whom DFPS is appointed temporary managing conservator and sets out additional provisions. The bill requires meetings to be held: (1) not later than the 45th day after the date DFPS is named temporary managing conservator of the child; and (2) not later than five months after the date DFPS is named temporary managing conservator of the child.

#### **OTHER LEGISLATION PASSED DURING THE 2013 SESSION Barratry (H.B. 1711)**

Amends Chapter 82 of the Texas Government Code and Chapter 38 of the Texas Penal Code and allows for recovery of a \$10,000 penalty by a client who prevails in a barratry action from any person who committed such offense.

#### **Transfer of Cases Between District Courts (H.B. 1875)**

Amends Section 24.003 of the Texas Government Code.

#### **Administration of and Benefits Payable by the Teacher Retirement System of Texas**

Amends and repeals certain provisions of the Texas Government Code and repeals certain provisions of the Texas Insurance Code.

#### **Marriage License for Absent Applicant (H.B. 869)**

Amends Sections 2.006 and 2.007 of the Texas Family Code and adds Section 2.0071.

#### **Consent by Minor to Care Provided Through Transitional Living Program (S.B. 717)**

Amends Chapter 32 of the Texas Family Code by adding Section 32.203.

#### **Additional Duties of Attorney Ad Litem for Child (S.B. 1759)**

Amends Section 107.004 of the Texas Family Code.

#### **Credit Security Freeze on Protected Consumers Under 16 Years of Age (S.B. 60)**

Amends certain provisions of Chapter 20 of the Texas Business and Commerce Code and adds Subchapter E. This bill will become effective Jan. 1, 2014.

#### **Re-designation of Family Drug Court Program (S.B. 462)**

Amends certain provisions of the Texas Government Code. This bill will become effective Jan. 1, 2014.

#### **Conflicts of Interest (S.B. 130)**

Amends Section 81.0075 of the Texas Family Code.

#### **Powers and Duties of the Attorney General Regarding Child Support and Applications for a Protective Order (S.B. 355)**

Amends provisions of the Texas Family Code relating to marriage licenses, child support, and protective orders; clarifies the duties and responsibilities of the Office of the Attorney General; and provides for notification regarding the issuance of protective orders and the imposition of fines on employers who fail to comply with certain withholding requirements.

#### **Child Abuse or Neglect (S.B. 44)**

Amends Chapter 261 of the Texas Family Code to define “severe emotional disturbance” and amends certain provisions of the Texas Government Code.

#### **Eligibility of Children’s Advocacy Centers for Contracts to Provide Services (S.B. 245)**

Amends Section 264.411 of the Texas Family Code.

#### **Access to Investigative Records by Social Study Evaluators (S.B. 330)**

Amends Chapter 107 of the Texas Family Code by adding Section 107.05145.

#### **Placement of Children With Relative or Other Designated Caregiver (S.B. 502)**

Amends Chapter 264 of the Texas Family Code by adding Section 264.7541.



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