

Chapter 727

1 AN ACT

2 relating to a prohibition against certain court orders in a suit  
3 affecting the parent-child relationship during a parent's military  
4 deployment.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Chapter 153, Family Code, is amended by adding  
7 Subchapter L to read as follows:

8 SUBCHAPTER L. MILITARY DUTY

9 Sec. 153.701. DEFINITIONS. In this subchapter:

10 (1) "Designated person" means the person ordered by  
11 the court to temporarily exercise a conservator's rights, duties,  
12 and periods of possession and access with regard to a child during  
13 the conservator's military deployment, military mobilization, or  
14 temporary military duty.

15 (2) "Military deployment" means the temporary  
16 transfer of a service member of the armed forces of this state or  
17 the United States serving in an active-duty status to another  
18 location in support of combat or some other military operation.

19 (3) "Military mobilization" means the call-up of a  
20 national guard or reserve service member of the armed forces of this  
21 state or the United States to extended active duty status. The term  
22 does not include national guard or reserve annual training.

23 (4) "Temporary military duty" means the transfer of a  
24 service member of the armed forces of this state or the United

1 States from one military base to a different location, usually  
2 another base, for a limited time for training or to assist in the  
3 performance of a noncombat mission.

4 Sec. 153.702. TEMPORARY ORDERS. (a) If a conservator is  
5 ordered to military deployment, military mobilization, or  
6 temporary military duty that involves moving a substantial distance  
7 from the conservator's residence so as to materially affect the  
8 conservator's ability to exercise the conservator's rights and  
9 duties in relation to a child, either conservator may file for an  
10 order under this subchapter.

11 (b) The court may render a temporary order in a proceeding  
12 under this subchapter regarding:

13 (1) possession of or access to the child; or

14 (2) child support.

15 (c) A temporary order rendered by the court under this  
16 subchapter may grant rights to and impose duties on a designated  
17 person regarding the child, except the court may not require the  
18 designated person to pay child support.

19 (d) After a conservator's military deployment, military  
20 mobilization, or temporary military duty is concluded, and the  
21 conservator returns to the conservator's usual residence, the  
22 temporary orders under this section terminate and the rights of all  
23 affected parties are governed by the terms of any court order  
24 applicable when the conservator is not ordered to military  
25 deployment, military mobilization, or temporary military duty.

26 Sec. 153.703. APPOINTING DESIGNATED PERSON FOR CONSERVATOR  
27 WITH EXCLUSIVE RIGHT TO DESIGNATE PRIMARY RESIDENCE OF CHILD. (a)

1 If the conservator with the exclusive right to designate the  
2 primary residence of the child is ordered to military deployment,  
3 military mobilization, or temporary military duty, the court may  
4 render a temporary order to appoint a designated person to exercise  
5 the exclusive right to designate the primary residence of the child  
6 during the military deployment, military mobilization, or  
7 temporary military duty in the following order of preference:

8 (1) the conservator who does not have the exclusive  
9 right to designate the primary residence of the child;

10 (2) if appointing the conservator described by  
11 Subdivision (1) is not in the child's best interest, a designated  
12 person chosen by the conservator with the exclusive right to  
13 designate the primary residence of the child; or

14 (3) if appointing the conservator described by  
15 Subdivision (1) or the person chosen under Subdivision (2) is not in  
16 the child's best interest, another person chosen by the court.

17 (b) A designated person named in a temporary order rendered  
18 under this section has the rights and duties of a nonparent  
19 appointed as sole managing conservator under Section 153.371.

20 (c) The court may limit or expand the rights of a nonparent  
21 named as a designated person in a temporary order rendered under  
22 this section as appropriate to the best interest of the child.

23 Sec. 153.704. APPOINTING DESIGNATED PERSON TO EXERCISE  
24 VISITATION FOR CONSERVATOR WITH EXCLUSIVE RIGHT TO DESIGNATE  
25 PRIMARY RESIDENCE OF CHILD IN CERTAIN CIRCUMSTANCES. (a) If the  
26 court appoints the conservator without the exclusive right to  
27 designate the primary residence of the child under Section

1 153.703(a)(1), the court may award visitation with the child to a  
2 designated person chosen by the conservator with the exclusive  
3 right to designate the primary residence of the child.

4 (b) The periods of visitation shall be the same as the  
5 visitation to which the conservator without the exclusive right to  
6 designate the primary residence of the child was entitled under the  
7 court order in effect immediately before the date the temporary  
8 order is rendered.

9 (c) The temporary order for visitation must provide that:

10 (1) the designated person under this section has the  
11 right to possession of the child for the periods and in the manner  
12 in which the conservator without the exclusive right to designate  
13 the primary residence of the child is entitled under the court order  
14 in effect immediately before the date the temporary order is  
15 rendered;

16 (2) the child's other conservator and the designated  
17 person under this section are subject to the requirements of  
18 Section 153.316, with the designated person considered for purposes  
19 of that section to be the possessory conservator;

20 (3) the designated person under this section has the  
21 rights and duties of a nonparent possessory conservator under  
22 Section 153.376(a) during the period that the person has possession  
23 of the child; and

24 (4) the designated person under this section is  
25 subject to any provision in a court order restricting or  
26 prohibiting access to the child by any specified individual.

27 (d) The court may limit or expand the rights of a nonparent

1 designated person named in a temporary order rendered under this  
2 section as appropriate to the best interest of the child.

3 Sec. 153.705. APPOINTING DESIGNATED PERSON TO EXERCISE  
4 VISITATION FOR CONSERVATOR WITHOUT EXCLUSIVE RIGHT TO DESIGNATE  
5 PRIMARY RESIDENCE OF CHILD. (a) If the conservator without the  
6 exclusive right to designate the primary residence of the child is  
7 ordered to military deployment, military mobilization, or  
8 temporary military duty, the court may award visitation with the  
9 child to a designated person chosen by the conservator, if the  
10 visitation is in the best interest of the child.

11 (b) The temporary order for visitation must provide that:

12 (1) the designated person under this section has the  
13 right to possession of the child for the periods and in the manner  
14 in which the conservator described by Subsection (a) would be  
15 entitled if not ordered to military deployment, military  
16 mobilization, or temporary military duty;

17 (2) the child's other conservator and the designated  
18 person under this section are subject to the requirements of  
19 Section 153.316, with the designated person considered for purposes  
20 of that section to be the possessory conservator;

21 (3) the designated person under this section has the  
22 rights and duties of a nonparent possessory conservator under  
23 Section 153.376(a) during the period that the designated person has  
24 possession of the child; and

25 (4) the designated person under this section is  
26 subject to any provision in a court order restricting or  
27 prohibiting access to the child by any specified individual.

1        (c) The court may limit or expand the rights of a nonparent  
2 designated person named in a temporary order rendered under this  
3 section as appropriate to the best interest of the child.

4        Sec. 153.706. TEMPORARY ORDER FOR CHILD SUPPORT. A  
5 temporary order rendered under this subchapter may result in a  
6 change of circumstances sufficient to justify a temporary order  
7 modifying the child support obligations of a party.

8        Sec. 153.707. EXPEDITED HEARING. (a) On a motion by the  
9 conservator who has been ordered to military deployment, military  
10 mobilization, or temporary military duty, the court shall, for good  
11 cause shown, hold an expedited hearing if the court finds that the  
12 conservator's military duties have a material effect on the  
13 conservator's ability to appear in person at a regularly scheduled  
14 hearing.

15        (b) A hearing under this section shall, if possible, take  
16 precedence over other suits affecting the parent-child  
17 relationship not involving a conservator who has been ordered to  
18 military deployment, military mobilization, or temporary military  
19 duty.

20        (c) On a motion by any party, the court shall, after  
21 reasonable advance notice and for good cause shown, allow a party to  
22 present testimony and evidence by electronic means, including by  
23 teleconference or through the Internet.

24        Sec. 153.708. ENFORCEMENT. Temporary orders rendered under  
25 this subchapter may be enforced by or against the designated person  
26 to the same extent that an order would be enforceable against the  
27 conservator who has been ordered to military deployment, military

1 mobilization, or temporary military duty.

2 Sec. 153.709. ADDITIONAL PERIODS OF POSSESSION OR ACCESS.

3 (a) Not later than the 90th day after the date a conservator  
4 without the exclusive right to designate the primary residence of  
5 the child who is a member of the armed services concludes the  
6 conservator's military deployment, military mobilization, or  
7 temporary military duty, the conservator may petition the court to:

8 (1) compute the periods of possession of or access to  
9 the child to which the conservator would have otherwise been  
10 entitled during the conservator's deployment; and

11 (2) award the conservator additional periods of  
12 possession of or access to the child to compensate for the periods  
13 described by Subdivision (1).

14 (b) If the conservator described by Subsection (a)  
15 petitions the court under Subsection (a), the court:

16 (1) shall compute the periods of possession or access  
17 to the child described by Subsection (a)(1); and

18 (2) may award to the conservator additional periods of  
19 possession of or access to the child for a length of time and under  
20 terms the court considers reasonable, if the court determines that:

21 (A) the conservator was on military deployment,  
22 military mobilization, or temporary military duty in a location  
23 where access to the child was not reasonably possible; and

24 (B) the award of additional periods of possession  
25 of or access to the child is in the best interest of the child.

26 (c) In making the determination under Subsection (b)(2),  
27 the court:

1           (1) shall consider:

2                   (A) the periods of possession of or access to the  
3 child to which the conservator would otherwise have been entitled  
4 during the conservator's military deployment, military  
5 mobilization, or temporary military duty, as computed under  
6 Subsection (b)(1);

7                   (B) whether the court named a designated person  
8 under Section 153.705 to exercise limited possession of the child  
9 during the conservator's deployment; and

10                   (C) any other factor the court considers  
11 appropriate; and

12           (2) is not required to award additional periods of  
13 possession of or access to the child that equals the possession or  
14 access to which the conservator would have been entitled during the  
15 conservator's military deployment, military mobilization, or  
16 temporary military duty, as computed under Subsection (b)(1).

17           (d) After the conservator described by Subsection (a) has  
18 exercised all additional periods of possession or access awarded  
19 under this section, the rights of all affected parties are governed  
20 by the terms of the court order applicable when the conservator is  
21 not ordered to military deployment, military mobilization, or  
22 temporary military duty.

23           SECTION 2. Section 156.006, Family Code, is amended by  
24 adding Subsection (c) to read as follows:

25           (c) Subsection (b)(2) does not apply to a conservator who  
26 has the exclusive right to designate the primary residence of the  
27 child and who has temporarily relinquished the primary care and



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1 possession of the child to another person during the conservator's  
2 military deployment, military mobilization, or temporary military  
3 duty, as those terms are defined by Section 153.701.

4 SECTION 3. Section 156.101, Family Code, is amended to read  
5 as follows:

6 Sec. 156.101. GROUNDS FOR MODIFICATION OF ORDER  
7 ESTABLISHING CONSERVATORSHIP OR POSSESSION AND ACCESS. (a) The  
8 court may modify an order that provides for the appointment of a  
9 conservator of a child, that provides the terms and conditions of  
10 conservatorship, or that provides for the possession of or access  
11 to a child if modification would be in the best interest of the  
12 child and:

13 (1) the circumstances of the child, a conservator, or  
14 other party affected by the order have materially and substantially  
15 changed since the earlier of:

16 (A) the date of the rendition of the order; or  
17 (B) the date of the signing of a mediated or  
18 collaborative law settlement agreement on which the order is based;

19 (2) the child is at least 12 years of age and has filed  
20 with the court, in writing, the name of the person who is the  
21 child's preference to have the exclusive right to designate the  
22 primary residence of the child; or

23 (3) the conservator who has the exclusive right to  
24 designate the primary residence of the child has voluntarily  
25 relinquished the primary care and possession of the child to  
26 another person for at least six months.

27 (b) Subsection (a)(3) does not apply to a conservator who

1 has the exclusive right to designate the primary residence of the  
2 child and who has temporarily relinquished the primary care and  
3 possession of the child to another person during the conservator's  
4 military deployment, military mobilization, or temporary military  
5 duty, as those terms are defined by Section 153.701.

6 SECTION 4. Section 156.102, Family Code, is amended by  
7 adding Subsection (d) to read as follows:

8 (d) Subsection (b)(3) does not apply to a person who has the  
9 exclusive right to designate the primary residence of the child and  
10 who has temporarily relinquished the primary care and possession of  
11 the child to another person during the conservator's military  
12 deployment, military mobilization, or temporary military duty, as  
13 those terms are defined by Section 153.701.

14 SECTION 5. Section 156.105, Family Code, is amended to read  
15 as follows:

16 Sec. 156.105. MODIFICATION OF ORDER BASED ON MILITARY DUTY  
17 [~~DEPLOYMENT~~]. [~~(a) In this section, "military deployment" means~~  
18 ~~military duty ordered for a period of more than six months during~~  
19 ~~which the person ordered to duty.~~

20 [~~(1) is not provided the option of being accompanied~~  
21 ~~by the person's child, and~~

22 [~~(2) is serving in a location where access to the~~  
23 ~~person's child is not reasonably possible.~~

24 [~~(b)~~] The military duty of a conservator who is ordered to  
25 military deployment, military mobilization, or temporary military  
26 duty, as those terms are defined by Section 153.701, does not by  
27 itself constitute [~~of a person who is a possessory conservator or a~~

1 ~~joint managing conservator without the exclusive right to designate~~  
2 ~~the primary residence of the child is]~~ a material and substantial  
3 change of circumstances sufficient to justify a modification of an  
4 existing court order or portion of a decree that sets the terms and  
5 conditions for the possession of or access to a child except that  
6 the court may render a temporary order under Subchapter L, Chapter  
7 153.

8 [~~(c) If the court determines that modification is in the~~  
9 ~~best interest of the child, the court may modify the order or decree~~  
10 ~~to provide in a manner consistent with Section 153.3161 for~~  
11 ~~possession of the child during the period of the military~~  
12 ~~deployment by a person designated by the deployed conservator.]~~

13 SECTION 6. Sections 153.3161 and 156.410, Family Code, are  
14 repealed.

15 SECTION 7. The changes in law made by this Act apply to a  
16 suit affecting the parent-child relationship that is pending in a  
17 trial court on the effective date of this Act or filed on or after  
18 that date.

19 SECTION 8. This Act takes effect September 1, 2009.

S.B. No. 279

David Newkum  
President of the Senate

Jim Strawn  
Speaker of the House

I hereby certify that S.B. No. 279 passed the Senate on March 19, 2009, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 28, 2009, by the following vote: Yeas 31, Nays 0.

Datsy Spaw  
Secretary of the Senate

I hereby certify that S.B. No. 279 passed the House, with amendment, on May 25, 2009, by the following vote: Yeas 142, Nays 0, one present not voting.

Robert Hamey  
Chief Clerk of the House

Approved:

19 JUN '09

Date

RICK PERRY  
Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE

2 pm O'CLOCK

JUN 19 2009

Colby Shuter III