

By: Lucio III

H.B. No. 1617

A BILL TO BE ENTITLED

AN ACT

relating to procedures in a suit for dissolution of a marriage or a suit affecting the parent-child relationship.

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

SECTION 1. Section 6.709, Family Code, is amended to read as follows:

Sec. 6.709. TEMPORARY ORDERS DURING APPEAL. (a) In a suit for dissolution of a marriage ~~[Not later than the 30th day after the date an appeal is perfected]~~, on the motion of a party or on the court's own motion, after notice and hearing, the trial court may render a temporary order as considered equitable and necessary for the preservation of the property and for the protection of the parties during an ~~[the]~~ appeal, including an order ~~[to]~~:

(1) requiring ~~[require]~~ the support of either spouse;

(2) requiring ~~[require]~~ the payment of reasonable attorney's fees and expenses incurred or anticipated to be incurred after trial and on appeal;

(3) appointing ~~[appoint]~~ a receiver for the preservation and protection of the property of the parties; ~~[or]~~

(4) awarding ~~[award]~~ one spouse exclusive occupancy of the parties' residence pending the appeal;

(5) enjoining a party from dissipating or transferring the property awarded to the other party in the trial court's property division; or

1           (6) suspending the operation of all or part of the  
2 property division that is being appealed.

3           (b) A temporary order under this section enjoining a party  
4 from dissipating or transferring the property awarded to the other  
5 party in the trial court's property division:

6                 (1) may be rendered without:

7                         (A) the issuance of a bond between the spouses;  
8 or

9                         (B) an affidavit or a verified pleading stating  
10 specific facts showing that immediate and irreparable injury, loss,  
11 or damage will result;

12                 (2) is not required to:

13                         (A) define the injury or state why the injury is  
14 irreparable; or

15                         (B) include an order setting the suit for trial  
16 on the merits with respect to the ultimate relief sought; and

17                 (3) may not prohibit a party's use, transfer,  
18 conveyance, or dissipation of the property awarded to the other  
19 party in the trial court's property division if the use, transfer,  
20 conveyance, or dissipation of the property is for the purpose of  
21 suspending the enforcement of the property division that is the  
22 subject of the appeal.

23           (c) A temporary order under this section that suspends the  
24 operation of all or part of the property division that is the  
25 subject of the appeal may not be rendered unless the trial court  
26 takes reasonable steps to ensure that the party awarded property in  
27 the trial court's property division is protected from the other

1 party's dissipation or transfer of that property.

2 (d) In considering a party's request to suspend the  
3 enforcement of the property division, the trial court shall  
4 consider whether:

5 (1) any relief granted under Subsection (a) is  
6 adequate to protect the party's interest in the property awarded to  
7 the party; or

8 (2) the party who was not awarded the property should  
9 also be required to provide security for the appeal in addition to  
10 any relief granted under Subsection (a).

11 (e) If the trial court determines that the party awarded the  
12 property can be adequately protected from the other party's  
13 dissipation of assets during the appeal only if the other party  
14 provides security for the appeal, the trial court shall set the  
15 appropriate amount of security, taking into consideration any  
16 relief granted under Subsection (a) and the amount of security that  
17 the other party would otherwise have to provide by law if relief  
18 under Subsection (a) was not granted.

19 (f) In rendering a temporary order under this section that  
20 suspends enforcement of all or part of the property division, the  
21 trial court may grant any relief under Subsection (a), in addition  
22 to requiring the party who was not awarded the property to post  
23 security for that part of the property division to be suspended.  
24 The trial court may require that the party who was not awarded the  
25 property post all or only part of the security that would otherwise  
26 be required by law.

27 (g) This section does not prevent a party who was not

1 awarded the property from exercising that party's right to suspend  
2 the enforcement of the property division as provided by law.

3 (h) A motion seeking an original temporary order under this  
4 section:

5 (1) may be filed before trial; and

6 (2) may not be filed by a party after the date by which  
7 that party is required to file the party's notice of appeal under  
8 the Texas Rules of Appellate Procedure.

9 (i) The trial court retains jurisdiction to conduct a  
10 hearing and sign an original temporary order under this section  
11 until the 60th day after the date any eligible party has filed a  
12 notice of appeal from final judgment under the Texas Rules of  
13 Appellate Procedure.

14 (j) The trial court retains jurisdiction to modify and  
15 enforce a temporary order under this section unless the appellate  
16 court, on a proper showing, supersedes the trial court's order.

17 (k) On the motion of a party or on the court's own motion,  
18 after notice and hearing, the trial court may modify a previous  
19 temporary order rendered under this section if:

20 (1) the circumstances of a party have materially and  
21 substantially changed since the rendition of the previous order;  
22 and

23 (2) modification is equitable and necessary for the  
24 preservation of the property or for the protection of the parties  
25 during the appeal.

26 (l) A party may seek review of the trial court's temporary  
27 order under this section by:

1           (1) motion filed in the court of appeals with  
2 jurisdiction or potential jurisdiction over the appeal from the  
3 judgment in the case;

4           (2) proper assignment in the party's brief; or

5           (3) petition for writ of mandamus.

6           (m) A temporary order rendered under this section is not  
7 subject to interlocutory appeal.

8           (n) The remedies provided in this section are cumulative of  
9 all other remedies allowed by law.

10          SECTION 2. Section 6.711, Family Code, is amended by  
11 amending Subsection (a) and adding Subsection (c) to read as  
12 follows:

13          (a) In a suit for dissolution of a marriage in which the  
14 court has rendered a judgment dividing the estate of the parties, on  
15 request by a party, the court shall state in writing its findings of  
16 fact and conclusions of law, including ~~[concerning]~~

17               ~~[(1)]~~ the characterization and value of all ~~[each~~  
18 ~~party's]~~ assets, liabilities, claims, and offsets on which disputed  
19 evidence has been presented~~[, and~~

20               ~~[(2) the value or amount of the community estate's~~  
21 ~~assets, liabilities, claims, and offsets on which disputed evidence~~  
22 ~~has been presented]~~.

23          (c) The findings of fact and conclusions of law required by  
24 this section are in addition to any other findings or conclusions  
25 required or authorized by law.

26          SECTION 3. Section 9.007(c), Family Code, is amended to  
27 read as follows:

1           (c) The trial court may not [~~power of the court to~~] render an  
 2 order [~~further orders~~] to assist in the implementation of or to  
 3 clarify the property division made or approved in the decree before  
 4 the 30th day after the date the final judgment is signed. If a  
 5 timely motion for new trial or to vacate, modify, correct, or reform  
 6 the decree is filed, the trial court may not render an order to  
 7 assist in the implementation of or to clarify the property division  
 8 made or approved in the decree before the 30th day after the date  
 9 the order overruling the motion is signed or the motion is overruled  
 10 by operation of law [~~is abated while an appellate proceeding is~~  
 11 ~~pending~~].

12           SECTION 4. Section 109.001, Family Code, is amended by  
 13 amending Subsections (a) and (b) and adding Subsections (b-1),  
 14 (b-2), (b-3), (b-4), (b-5), and (e) to read as follows:

15           (a) In a suit affecting the parent-child relationship [~~Not~~  
 16 ~~later than the 30th day after the date an appeal is perfected~~], on  
 17 the motion of any party or on the court's own motion and after  
 18 notice and hearing, the court may make any order necessary to  
 19 preserve and protect the safety and welfare of the child during the  
 20 pendency of an [~~the~~] appeal as the court may deem necessary and  
 21 equitable. In addition to other matters, an order may:

22                   (1) appoint temporary conservators for the child and  
 23 provide for possession of the child;

24                   (2) require the temporary support of the child by a  
 25 party;

26                   (3) enjoin [~~restrain~~] a party from molesting or  
 27 disturbing the peace of the child or another party;

(4) prohibit a person from removing the child beyond a geographical area identified by the court;

(5) require payment of reasonable attorney's fees and expenses; or

(6) suspend the operation of the order or judgment that is being appealed.

(b) A temporary order under this section enjoining a party from molesting or disturbing the peace of the child or another party:

(1) may be rendered without:

(A) the issuance of a bond between the spouses;

or

(B) an affidavit or a verified pleading stating specific facts showing that immediate and irreparable injury, loss, or damage will result; and

(2) is not required to:

(A) define the injury or state why the injury is irreparable; or

(B) include an order setting the suit for trial on the merits with respect to the ultimate relief sought.

(b-1) A motion seeking an original temporary order under this section:

(1) may be filed before trial; and

(2) may not be filed by a party after the date by which that party is required to file the party's notice of appeal under the Texas Rules of Appellate Procedure.

(b-2) The trial court retains jurisdiction to conduct a

1 hearing and sign a temporary order under this section until the 60th  
2 day after the date any eligible party has filed a notice of appeal  
3 from final judgment under the Texas Rules of Appellate Procedure.

4 (b-3) The trial court retains jurisdiction to modify and  
5 enforce a temporary order [~~its orders rendered~~] under this section  
6 unless the appellate court, on a proper showing, supersedes the  
7 court's order.

8 (b-4) On the motion of a party or on the court's own motion,  
9 after notice and hearing, the trial court may modify a previous  
10 temporary order rendered under this section if:

11 (1) the circumstances of a party have materially and  
12 substantially changed since the rendition of the previous order;  
13 and

14 (2) modification is equitable and necessary for the  
15 safety and welfare of the child.

16 (b-5) A party may seek review of the trial court's temporary  
17 order under this section by:

18 (1) petition for writ of mandamus; or

19 (2) proper assignment in the party's brief.

20 (e) The remedies provided in this section are cumulative of  
21 all other remedies allowed by law.

22 SECTION 5. The heading to Section 109.002, Family Code, is  
23 amended to read as follows:

24 Sec. 109.002. APPELLATE REVIEW [~~APPEAL~~].

25 SECTION 6. Section 109.002, Family Code, is amended by  
26 amending Subsection (a) and adding Subsection (a-1) to read as  
27 follows:



1 (a) An appeal from a final order rendered in a suit, when  
2 allowed under this section or under other provisions of law, shall  
3 be as in civil cases generally under the Texas Rules of Appellate  
4 Procedure, except that an appeal from a final order rendered under  
5 Subchapter D, Chapter 152, must comply with Section 152.314.

6 (a-1) An appeal in a suit in which termination of the  
7 parent-child relationship is ordered ~~[in issue]~~ shall be given  
8 precedence over other civil cases by the appellate courts, ~~[and]~~  
9 shall be accelerated, and shall follow ~~[by]~~ the ~~[appellate courts.~~  
10 ~~The]~~ procedures for an accelerated appeal under the Texas Rules of  
11 Appellate Procedure ~~[apply to an appeal in which the termination of~~  
12 ~~the parent-child relationship is in issue]~~.

13 SECTION 7. Section 109.003, Family Code, is amended to read  
14 as follows:

15 Sec. 109.003. PAYMENT FOR COURT REPORTER'S RECORD  
16 ~~[STATEMENT OF FACTS]~~. (a) If the party requesting a court  
17 reporter's record ~~[statement of facts]~~ in an appeal of a suit has  
18 filed an affidavit stating the party's inability to pay costs as  
19 provided by Rule 20, Texas Rules of Appellate Procedure, and the  
20 affidavit is approved by the trial court, the trial court may order  
21 the county in which the trial was held to pay the costs of preparing  
22 the court reporter's record ~~[statement of facts]~~.

23 (b) Nothing in this section shall be construed to permit an  
24 official court reporter to be paid more than once for the  
25 preparation of the court reporter's record ~~[statement of facts]~~.

26 SECTION 8. Section 152.314, Family Code, is amended to read  
27 as follows:

1           Sec. 152.314. ACCELERATED APPEALS. An appeal may be taken  
2 from a final order in a proceeding under this subchapter in  
3 accordance with accelerated ~~[expedited]~~ appellate procedures in  
4 other civil cases. Unless the court enters a temporary emergency  
5 order under Section 152.204, the enforcing court may not stay an  
6 order enforcing a child custody determination pending appeal.

7           SECTION 9. Section 153.258, Family Code, is amended to read  
8 as follows:

9           Sec. 153.258. REQUEST FOR FINDINGS WHEN ORDER VARIES FROM  
10 STANDARD ORDER. (a) In ~~[Without regard to Rules 296 through 299,~~  
11 ~~Texas Rules of Civil Procedure, in]~~ all cases in which possession of  
12 a child by a parent is contested and the possession of the child  
13 varies from the standard possession order, including a possession  
14 order for a child under three years of age, on [written] request by  
15 a party ~~[made or filed with the court not later than 10 days after~~  
16 ~~the date of the hearing or on oral request made in open court during~~  
17 ~~the hearing]~~, the court shall state in writing ~~[the order]~~ the  
18 specific reasons for the variance from the standard order.

19           (b) A request for findings of fact under this section must  
20 conform to the Texas Rules of Civil Procedure.

21           SECTION 10. Section 154.130, Family Code, is amended by  
22 amending Subsection (a) and adding Subsection (c) to read as  
23 follows:

24           (a) Without regard to Rules 296 through 299, Texas Rules of  
25 Civil Procedure, in rendering an order of child support, the court  
26 shall make the findings required by Subsection (b) if:

27           (1) a party files a written request with the court

1 before the final order is signed, but not later than 20 [~~10~~] days  
2 after the date of rendition of the order [~~the hearing~~];

3 (2) a party makes an oral request in open court during  
4 the hearing; or

5 (3) the amount of child support ordered by the court  
6 varies from the amount computed by applying the percentage  
7 guidelines under Section [154.125](#) or [154.129](#), as applicable.

8 (c) Findings under Subsection (b)(2) are required only if  
9 evidence of the monthly net resources of the obligee has been  
10 offered.

11 SECTION 11. Section [156.005](#), Family Code, is amended to  
12 read as follows:

13 Sec. 156.005. FRIVOLOUS FILING OF SUIT FOR MODIFICATION.  
14 Notwithstanding Rules 296 through 299, Texas Rules of Civil  
15 Procedure, if [~~if~~] the court finds that a suit for modification is  
16 filed frivolously or is designed to harass a party, the court shall  
17 state that finding in the order and assess [~~tax~~] attorney's fees as  
18 costs against the offending party.

19 SECTION 12. The following sections of the Family Code are  
20 repealed:

21 (1) Sections [153.254](#)(b) and (c); and

22 (2) Section [154.130](#)(a-1).

23 SECTION 13. Notwithstanding Section [6.709](#), Family Code, as  
24 amended by this Act, if any eligible parties have filed a notice of  
25 appeal from a final judgment under the Texas Rules of Appellate  
26 Procedure before September 1, 2017, any party to the appeal may file  
27 a motion in the trial court for an original temporary order under

1 Section 6.709, Family Code, as it existed immediately before the  
2 effective date of this Act, and the trial court has jurisdiction to  
3 conduct a hearing and sign an original temporary order under that  
4 section until October 30, 2017.

5 SECTION 14. Except as provided by Section 13 of this Act,  
6 the changes in law made by this Act apply only to an order that is  
7 rendered on or after the effective date of this Act. An order  
8 rendered before the effective date of this Act is governed by the  
9 law in effect immediately before that date, and the former law is  
10 continued in effect for that purpose.

11 SECTION 15. This Act takes effect September 1, 2017.