SUMMARIES:
BILLS SUGGESTED BY
THE FAMILY LAW SECTION OF THE STATE BAR OF TEXAS

The following bills are proposals of the Family Law Section of the State Bar of Texas. The bills were circulated to all of the other sections of the State Bar for their review and comment and approved by the full Board of the State Bar of Texas.

HB 553 (S. Thompson) / SB 266 (Rodriguez)--Relating to notice regarding summer weekend possession of a child under a standard possession order in a suit affecting the parent-child relationship

Under current law, the possessory conservator may designate a 30-day period during the summer when he/she will have "extended summer visitation" with the child(ren). The managing conservator may designate one weekend when the managing conservator can have visitation time with the child(ren) *during* the possessory conservator's previously-designated 30-day period of "extended summer visitation." For the managing conservator to exercise this weekend with the child(ren), the managing conservator must pick up from and return the child to the possessory conservator in the location where the possessory conservator/children will be during the selected weekend.

HB 553 requires the possessory conservator to give 15 days prior written notice to the managing conservator of the location at which the managing conservator will need to pick up and return the child(ren) for this weekend period of possession. HB 553 is intended to provide clarity on the actual location where the managing conservator is to pick up and return the child(ren), reduce "emergency" litigation to determine the proper location for pick-up and drop off during this weekend and avoid unnecessary conflict between the conservators.

HB 554 (S. Thompson) / SB 265 (Rodriguez)--Relating to temporary orders during the pendency of an appeal in a suit affecting the parent-child relationship

The bill would change the word "spouses" to "parties" in one part of a statute, which is necessary to clean up an error that resulted from 2017 legislation. Chapter 109, Family Code, uses the word "parties" throughout because the chapter applies to parties appealing an order in a suit affecting the parent child relationship. A person does not have to be a spouse to be a party in a suit affecting a parent child relationship.

Subsection 109.001(b)(1)(A) uses the word "spouses" instead of "parties." Section 109.001 was revised at the same time Section 6.709 was revised in the last legislative session. The word "spouses" is used throughout Section 6.709 because that section applies to *spouses* seeking to appeal an order that dissolves their marriage. When changes were made to Section 109.001 to

conform it with the changes made to Section 6.709, the word “spouses” made it into Section 109.001(b)(1)(A). In addition, the word “parties” should be used because Section 105.001(a), (b), and (d) contain similar language for pre-trial temporary orders which “enjoin a party from molesting or disturbing the peace of the child or another party” and the intent behind Section 109.001(b)(1)(A) is to allow the court to continue such orders while the case is being appealed.

HB 555 (S. Thompson) / SB 267 (Rodriguez)--Relating to certain rights of the sole managing conservator of a child in relation to the child’s passport

Under current law, the rights and duties of a person named sole managing conservator are listed in two parts of the Family Code, but the Code is silent as to which parent has the right to control the child's passport. This creates ambiguities regarding the right of the sole managing conservator to travel with the child, or authorize the child to travel, internationally. This ambiguity can also create unnecessary conflicts between sole managing conservators and the other parent. HB 555 recognizes that control of the child's travel is consistent with the status of being a *sole* managing conservator and clarifies that, absent a contrary court order, the sole managing conservator's role includes applying for, maintaining and possessing the child's passport.

HB 556 (S. Thompson) / SB 264 (Rodriguez)--Relating to the issuance of a protective order by default

Rule 107(h) of the Texas Rules of Civil Procedure provides that a default judgment may not be entered by a court unless proof of service of process on the defendant has been on file with the clerk for at least ten days after service. However, the Legislature has expedited family violence protective order cases by requiring a hearing no later than 14 days after the application for the order is filed. So, a protective order hearing can be required by statute to occur at a time that is before the time required by Rule 107(h) for the return of service to be on file, rendering any default judgment void. Rule 107(h) has been held to be jurisdictional, meaning the court has no authority to hold a hearing until the 10 days have passed.

HB 556 would negate the 10-day requirement of Rule 107(h) in family violence protective order cases by conferring jurisdiction on the court to enter a default order once the proof of citation has been on file with the clerk for 48 hours. This will further the Legislature's stated policy of expediting protection for victims of family violence.

HB 557 (S. Thompson) / SB 263 (Rodriguez)--Relating to the protection of certain information from disclosure in suits affecting the parent-child relationship and to service of process in those suits on a party whose information is protected from disclosure.

Family law judges have noticed an increase in cases--often for child support--that include a finding of possible family violence and an order of nondisclosure of the address of the parent

receiving child support (the "obligee"). This is creating an increasing problem in cases when the parent paying child support (the "obligor") seeks a modification of the existing order. Due process requires that the parent receiving child support be given notice and opportunity for hearing before a modification can be ordered. The problem is that the obligor does not know where process can be served on the parent receiving child support because the court has entered a nondisclosure order. Eligible obligees can achieve nondisclosure by voluntarily enrolling in a program run by the Attorney General's Office that allows service through the AG. However, obligees are not required to participate in that program; under current law, nondisclosure orders are entered without regard to the potential need for service in the future; some obligees may find the AG's program cumbersome and intrusive; and, there is no incentive for an obligee to enroll in the AG's program if doing so may result in a successful suit to decrease child support.

If the obligee does not enroll in the AG's program, the obligor's only option is to get the court to approve substituted service, which is often done by publication and is not effective for providing actual notice.

HB 554 creates a mechanism to serve the parent receiving child support with notice of the modification suit, while maintaining confidentiality of the parent's address. The bill is not intended to affect a person's right to enroll in the AG's program.

HB 558 (S. Thompson) / SB 262 (Rodriguez)--Relating to court-ordered support for a child with a disability

A Special Needs Trust is a trust that is specifically designed to manage the assets of individuals with special needs without compromising eligibility for important government benefits such as Supplemental Security Income (SSI) and Medicaid. Entitlement to SSI and Medicaid benefits is tied to the recipient's income and assets. Current law does not expressly authorize a judge to order that support for an adult disabled child can be paid to a Special Needs Trust. Consequently, there is a risk that support could be ordered to be paid directly to the adult disabled child which could result in the loss of benefits. This bill amends the Texas Family Code to expressly permit a judge to order that support payments for an adult disabled child be paid to a Special Needs Trust.

HB 559 (S. Thompson) / SB 261 (Rodriguez)--Relating to written agreements incident to divorce or annulment

It is common practice for lawyers to have an Agreement Incident to Divorce (AID), a separate document that accompanies a divorce decree which contains a detailed listing of the division of assets and liabilities. The practice is the judge signs the divorce decree at the time of the prove up and the parties either do not file the AID at all or file it and then ask the Court to withdraw it from the file. This leaves a simple divorce decree on file at the courthouse without the parties' personal financial information left in the court's file permanently. It also allows parties to

provide a copy of their divorce decree relating to issues involving children to a school, doctor or other interested person without disclosing all of their assets and liabilities. We recently learned that there some courts that will not allow this procedure because it not in the Family Code. This bill formally permits a practice that most judges throughout the state have been following for decades.

HB 560 (S. Thompson) / SB 260 (Rodriguez)--Relating to access to a residence or former residence to retrieve personal property by persons who are parties to certain suits and decrees.

Chapter 24A of the Texas Property Code provides a procedure for individuals to obtain a writ from a justice court granting them access to their residence or former residence for the purpose of retrieving their personal property. If individuals are or have been involved in a suit for divorce or annulment, Chapter 24A could be used to circumvent the authority of the court that has jurisdiction over the divorce or annulment. This bill requires a person who is or has been involved in a divorce or an annulment involving the property to go to the court that has jurisdiction over the divorce or annulment suit to determine whether and how to recovery the property.

HB 575 (Dutton)--Relating to a suit for possession of or access to a child by a grandparent.

Under current law, it is easier for a grandparent to obtain full custody of a grandchild than to just obtain some visitation. For a grandparent to obtain a court order to allow *visitation* (as distinguished from full custody) with a grandchild, the grandchild's parent must be dead, in jail, adjudicated incompetent or not have actual or court-ordered possession of or access to the grandchild. In addition, a Texas Supreme Court case (*In re Shiller*) has created an ambiguity regarding the kind of evidence needed to commence and prove the grandparent's case. For a grandparent to successfully obtain court-ordered visitation, the grandparent must prove that, in the absence of visitation with the grandparent, the grandchild will experience substantial impairment of the grandchild's physical health or emotional well-being.

HB 575 eliminates the requirement that the child's parent be dead, incompetent, in jail or not have possession of the child. The bill protects parents' rights by keeping the requirement of proof of substantial impairment to the child in the absence of visitation with the grandparent, a very high burden. If the grandparent can prove that the grandchild will be *actually harmed* (i.e., experience substantial impairment of his/her physical health or emotional well-being), what difference does it make if the child's parent is alive or out of jail? In addition, the bill clarifies that proof of substantial impairment and the allegations in the pleadings required to initiate the suit are not required to be based on expert testimony.