

2019 Regular Session

HOUSE BILL NO. 254

BY REPRESENTATIVE LEGER

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CHILDREN/CUSTODY: Provides relative to an award of custody to a person other than a parent

1 AN ACT

2 To amend and reenact Civil Code Article 133, relative to child custody; to provide relative
3 to an award of custody to a nonparent; to provide for consideration of factors; to
4 provide for a burden of proof; to provide relative to petitioning the court for a change
5 in custody; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Civil Code Article 133 is hereby amended and reenacted to read as
8 follows:

9 Art. 133. Award of custody to person other than a parent; order of preference;
10 modification

11 A. If an award of joint custody or of sole custody to either parent would
12 result in substantial harm to the child, the court shall award custody to another
13 person with whom the child has been living in a wholesome and stable environment,
14 or otherwise to any other person able to provide an adequate and stable environment.
15 In making its determination, the court shall consider the factors listed in Civil Code
16 Article 134.

17 B. If custody is awarded to a person other than a parent by a previous
18 considered decree, a parent seeking custody of a child bears the burden of proof of
19 the risk of substantial harm to the child if joint or sole custody were to be
20 subsequently awarded to the parent.

1 C. If custody is awarded to a person other than a parent by a previous
2 custody decree other than a considered decree, a parent may petition the court at any
3 time to have the child's custody award reviewed by the court without a showing of
4 a material change in circumstances. The person awarded joint or sole custody shall
5 have the burden of proof of the risk of substantial harm to the child if joint or sole
6 custody were to be subsequently awarded to the parent.

7 D. For purposes of this Section, a considered decree shall not include a
8 consent decree that is reviewed by the court and remains unmodified after a final
9 judgment.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 254 Engrossed

2019 Regular Session

Leger

Abstract: Provides for the burden of proof required for consideration of a custody award to a person other than a parent.

Present law (C.C. Art. 133) provides that if an award of custody to either parent would result in substantial harm to the child, the court shall award custody to another person with whom the child has been living in a wholesome and stable environment, or otherwise to any other person able to provide an adequate and stable environment.

Present law requires a court to award custody of a child in accordance with the best interest of the child (C.C. Art. 131) and enumerates factors the court shall consider in determining the child's best interest (C.C. Art. 134).

Proposed law expressly requires the court to consider the factors listed in present law when awarding custody to a person other than a parent.

Proposed law provides that in seeking modification of custody awarded by considered decree to a person other than a parent, a parent seeking custody bears the burden of proof of the risk of substantial harm to the child if joint or sole custody were to be subsequently awarded to the parent.

Proposed law further provides that in seeking modification of custody awarded by nonconsidered decree to a person other than a parent, a parent may petition the court at any time to have the child's custody award reviewed by the court without a showing of a material change in circumstances. The person awarded joint or sole custody shall have the burden of proof of the risk of substantial harm to the child if joint or sole custody were to be subsequently awarded to the parent.

Proposed law provides that a considered decree shall not include a consent decree that is reviewed by the court and remains unmodified after a final judgment.

(Amends C.C. Art. 133)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Add that a considered decree shall not include a consent decree that is reviewed by the court and remains unmodified after a final judgment.