

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 an award of joint custody is made to a parent and non-parent, an
18 individual may petition the court to have the custody award modified. The individual
19 seeking modification shall have the burden of proof of establishing a material change
20 in circumstances and that modification is in the best interest of the child. The court

- 1 shall consider the parent's paramount right to custody as a factor in the best interest
 2 determination.

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 Reengrossed

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 if an award of joint custody is made to a parent and non-parent, an individual may petition the court to have the custody award modified.

Proposed law further provides that the individual seeking modification shall have the burden of proof of establishing a material change in circumstances and that modification is in the best interest of the child. For such determinations, the court shall consider the parent's paramount right to custody as a factor in the best interest determination during a modification proceeding.

(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.

The House Floor Amendments to the engrossed bill:

1. Remove the distinction between considered and non-considered decrees with regard to the burden of proof in seeking modification of custody awarded.
2. Provide that if an award of joint custody is made to a parent and non-parent, any individual may petition the court to have the custody award modified; provide a burden of proof; and require the court to consider a parent's right to custody.