

MEMORANDUM

TO: Parties Receiving Letter Opinion
LO-88-102
FROM: Opinion Committee
SUBJECT: Corrected Version

COPY TO:
DATE: September 9, 1988
REPLY BY:

PLEASE

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Attached is a new copy of LO-88-102 with references to House Bills 617 and 614 corrected on pages 2 and 3 respectively. Please discard the version distributed earlier.



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

September 6, 1988

Honorable Gib Lewis
Speaker
Texas House of Representatives
P. O. Box 2910
Austin, Texas 78769

Honorable Doyle Willis
Chairman
Select Committee on Child Abuse
Texas House of Representatives
P. O. Box 2910
Austin, Texas 78769

[Corrected version]
LO-88-102

Gentlemen:

You ask our opinion about two acts passed during the same session of the 70th Legislature, both of which purport to amend the same provision of the Family Code. See Acts 1987, 70th Leg., ch. 720, at 2595 (House Bill 614) and Acts 1987, 70th Leg., ch. 744, at 2666 (House Bill 617) and Fam. Code § 14.01(b).

You note that both bills became effective on September 1, 1987. House Bill 617 was adopted by the legislature on May 26, 1987; House Bill 614 was adopted later, on May 30, 1987. The bills amend the portion of the Family Code that deals with the appointment of managing conservatorships in suits affecting the parent-child relationship by permitting the appointment of joint managing conservatorships. House Bill 614, the later enactment, specifically states that it does not apply to suits pending before September 1, 1987, while House Bill 617 contains no explicit provision regarding retroactive effect.

You ask whether the later enacted bill, House Bill 614, prevails so as to limit the retroactive application of the

amendments to section 14.01(b) of the Family Code¹ or whether the two are in conflict.

The Code Construction Act provides:

(a) [T]he . . . amendment . . . of a statute does not affect:

(4) any investigation, proceeding, or remedy concerning any privilege, obligation, liability, penalty, forfeiture, or punishment

Gov't Code § 311.031. Additionally, the Code provides that a "statute is presumed to be prospective in its operation unless expressly made retrospective." Id. § 311.022. In the absence of any indication that the legislature intended for an amendment to apply retroactively, it will operate prospectively only. State v. Humble Oil & Refining Co., 169 S.W.2d 707 (Tex. 1943); Lubbock Independent School District v. Bradley, 579 S.W.2d 78 (Tex. Civ. App. - Amarillo 1979, writ ref'd n.r.e.).

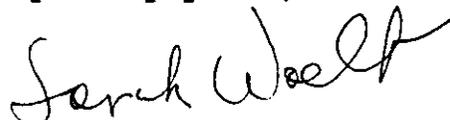
The measure first adopted -- House Bill 617 -- is silent as to its retroactive application. Thus, according to both the Government Code and common law canons of statutory construction, it should not be applied retroactively. See generally Attorney General Opinion H-1115

1. We note that the revision of section 14.01(b) in the 1987-88 "pocket part" for Vernon's Annotated Texas Statutes does not reflect the fact that House Bill 614, which was adopted after House Bill 617, contains language not found in the earlier bill. The revision prepared for Vernon's omits the following language included in section 1(b)(2) of House Bill 614 with reference to the evidence a court may examine in determining who to appoint as a conservator: "evidence of the intentional use of abusive physical force by a parent against his or her spouse or against any person younger than 18 years of age committed within a two-year period preceding the filing of the petition for divorce or annulment or during the pendency of the suit."

Honorable Gib Lewis
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(1978). House Bill 614 specifically states that the substantive amendments to the Family Code affected by the measure are to be applied prospectively only. Therefore, there is no conflict as to retroactivity.

Very truly yours,



Sarah Woelk, Chief
Letter Opinion Section



Rick Gilpin, Chairman
Opinion Committee

Prepared by: D. R. Bustion, II

APPROVED: OPINION COMMITTEE

RG/SW/DB/bc

RQ-1529, ID# 4131



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OF TEXAS**

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ATTORNEY GENERAL**

September 6, 1988

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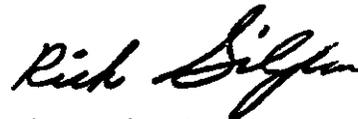
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