

FAMILY CODE

TITLE 2. CHILD IN RELATION TO THE FAMILY

SUBTITLE B. PARENTAL LIABILITY

CHAPTER 42. CIVIL LIABILITY FOR INTERFERENCE WITH POSSESSORY

INTEREST IN CHILD

Sec. 42.001. DEFINITIONS. In this chapter:

(1) "Order" means a temporary or final order of a court of this state or another state or nation.

(2) "Possessory right" means a court-ordered right of possession of or access to a child, including conservatorship, custody, and visitation.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 42.002. LIABILITY FOR INTERFERENCE WITH POSSESSORY RIGHT. (a) A person who takes or retains possession of a child or who conceals the whereabouts of a child in violation of a possessory right of another person may be liable for damages to that person.

(b) A possessory right is violated by the taking, retention, or concealment of a child at a time when another person is entitled to possession of or access to the child.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 42.003. AIDING OR ASSISTING INTERFERENCE WITH POSSESSORY RIGHT. (a) A person who aids or assists in conduct for which a cause of action is authorized by this chapter is jointly and severally liable for damages.

(b) A person who was not a party to the suit in which an order was rendered providing for a possessory right is not liable unless the person at the time of the violation:

(1) had actual notice of the existence and contents of the order; or

(2) had reasonable cause to believe that the child was the subject of an order and that the person's actions were likely to violate the order.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 42.005. VENUE. A suit may be filed in a county in which:

- (1) the plaintiff resides;
- (2) the defendant resides;
- (3) a suit affecting the parent-child relationship as provided by Chapter 102 may be brought, concerning the child who is the subject of the court order; or
- (4) a court has continuing, exclusive jurisdiction as provided by Chapter 155.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 42.006. DAMAGES. (a) Damages may include:

- (1) the actual costs and expenses incurred, including attorney's fees, in:
  - (A) locating a child who is the subject of the order;
  - (B) recovering possession of the child if the petitioner is entitled to possession; and
  - (C) enforcing the order and prosecuting the suit;and
- (2) mental suffering and anguish incurred by the plaintiff because of a violation of the order.

(b) A person liable for damages who acted with malice or with an intent to cause harm to the plaintiff may be liable for exemplary damages.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995; Acts 1995, 74th Leg., ch. 751, Sec. 7, eff. Sept. 1, 1995.

Sec. 42.007. AFFIRMATIVE DEFENSE. The defendant may plead as an affirmative defense that the defendant acted in violation of the order with the express consent of the plaintiff.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995; Acts 1999, 76th Leg., ch. 437, Sec. 1, eff. Sept. 1, 1999.

Sec. 42.008. REMEDIES NOT AFFECTED. This chapter does not affect any other civil or criminal remedy available to any person, including the child, for interference with a possessory right, nor does it affect the power of a parent to represent the interest of a child in a suit filed on behalf of the child.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 42.009. FRIVOLOUS SUIT. A person sued for damages as provided by this chapter is entitled to recover attorney's fees and court costs if:

(1) the claim for damages is dismissed or judgment is awarded to the defendant; and

(2) the court or jury finds that the claim for damages is frivolous, unreasonable, or without foundation.

Amended by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.