

By: Puente

H.B. No. 3997

A BILL TO BE ENTITLED

AN ACT

relating to the Uniform Parentage Act, termination of parental rights, and matters relating to determination of paternity.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 102.009(a), Family Code, is amended to read as follows:

(a) Except as provided by Subsection (b), the following are entitled to service of citation on the filing of a petition in an original suit:

(1) a managing conservator;

(2) a possessory conservator;

(3) a person having possession of or access to the child under an order;

(4) a person required by law or by order to provide for the support of the child;

(5) a guardian of the person of the child;

(6) a guardian of the estate of the child;

(7) each parent as to whom the parent-child relationship has not been terminated or process has not been waived under Chapter 161;

(8) an alleged father, unless there is attached to the petition an affidavit of waiver of interest in a child executed by the alleged father as provided by Chapter 161 or unless the petitioner has complied with the provisions of Section

1 161.002(b)(2), (3), or (4) [~~161.002(b)(2) or (b)(3)~~];

2 (9) a man who has filed a notice of intent to claim
3 paternity as provided by Chapter 160;

4 (10) the Department of Family and Protective Services,
5 if the petition requests that the department be appointed as
6 managing conservator of the child;

7 (11) the Title IV-D agency, if the petition requests
8 the termination of the parent-child relationship and support rights
9 have been assigned to the Title IV-D agency under Chapter 231;

10 (12) a prospective adoptive parent to whom standing
11 has been conferred under Section 102.0035; and

12 (13) a person designated as the managing conservator
13 in a revoked or unrevoked affidavit of relinquishment under Chapter
14 161 or to whom consent to adoption has been given in writing under
15 Chapter 162.

16 SECTION 2. Section 160.403, Family Code, is amended to read
17 as follows:

18 Sec. 160.403. NOTICE OF PROCEEDING. Except as provided by
19 Sections 161.002(b)(2), (3), and (4) and (f), notice [~~Notice~~] of a
20 proceeding to adopt or to terminate parental rights regarding a
21 child must be given to a registrant who has timely registered with
22 regard to that child. Notice must be given in a manner prescribed
23 for service of process in a civil action.

24 SECTION 3. Section 160.422(d), Family Code, is amended to
25 read as follows:

26 (d) A search of the registry is not required if a
27 parent-child relationship exists between a man and the child, as

1 provided by Section 160.201(b), and that man:

2 (1) has been served with citation of the proceeding
3 for termination of the parent-child relationship; or

4 (2) [the only man alleged to be the father of the
5 child] has signed a [waiver of interest in, or] relinquishment of
6 parental rights with regard to[~~r~~] the child.

7 SECTION 4. Section 161.002, Family Code, is amended to read
8 as follows:

9 Sec. 161.002. TERMINATION OF THE RIGHTS OF AN ALLEGED
10 BIOLOGICAL FATHER. (a) Except as otherwise provided by this
11 section, the [The] procedural and substantive standards for
12 termination of parental rights apply to the termination of the
13 rights of an alleged father.

14 (b) The rights of an alleged father may be terminated if:

15 (1) after being served with citation, he does not
16 respond by timely filing an admission of paternity or a
17 counterclaim for paternity under Chapter 160;

18 (2) the child is over one year of age at the time the
19 petition for termination of the parent-child relationship or for
20 adoption is filed, he has not registered with the paternity
21 registry under Chapter 160, and after the exercise of due diligence
22 by the petitioner:

23 (A) his identity and location are unknown; or

24 (B) his identity is known but he cannot be
25 located; [~~or~~]

26 (3) the child is under one year of age at the time the
27 petition for termination of the parent-child relationship or for

1 adoption is filed and he has not registered with the paternity
2 registry under Chapter 160; or

3 (4) he has registered with the paternity registry
4 under Chapter 160, but the petitioner's attempt to personally serve
5 citation at the address provided to the registry and at any other
6 address for the alleged father known by the petitioner has been
7 unsuccessful, despite the due diligence of the petitioner.

8 (c) The termination of the rights of an alleged father under
9 Subsection (b)(2) rendered on or after January 1, 1998, and before
10 January 1, 2008, does not require personal service of citation or
11 citation by publication on the alleged father.

12 (c-1) The termination of the rights of an alleged father
13 under Subsection (b)(2) or (3) rendered on or after January 1, 2008,
14 does not require personal service of citation or citation by
15 publication on the alleged father, and there is no requirement to
16 identify or locate an alleged father who has not registered with the
17 paternity registry under Chapter 160.

18 (d) The termination of rights of an alleged father under
19 Subsection (b)(4) [~~(b)(3)~~] does not require service of citation by
20 publication on the alleged father.

21 (e) The court shall not render an order terminating parental
22 rights under Subsection (b)(2) or (3) unless the court receives
23 evidence of a certificate of the results of a search of the
24 paternity registry under Chapter 160 from the bureau of vital
25 statistics indicating that no man has registered the intent to
26 claim paternity[~~, after reviewing the petitioner's sworn affidavit~~
27 ~~describing the petitioner's effort to identify and locate the~~

1 ~~alleged father and considering any evidence submitted by the~~
2 ~~attorney ad litem for the alleged father, has found that the~~
3 ~~petitioner exercised due diligence in attempting to identify and~~
4 ~~locate the alleged father. The order shall contain specific~~
5 ~~findings regarding due diligence of the petitioner].~~

6 (f) The court shall not render an order terminating parental
7 rights under Subsection (b)(4) [~~(b)(3)~~] unless the court, after
8 reviewing the petitioner's sworn affidavit describing the
9 petitioner's effort to obtain personal service of citation on the
10 alleged father and considering any evidence submitted by the
11 attorney ad litem for the alleged father, has found that the
12 petitioner exercised due diligence in attempting to obtain service
13 on the alleged father. The order shall contain specific findings
14 regarding the exercise of due diligence of the petitioner.

15 SECTION 5. Section 161.103(b), Family Code, is amended to
16 read as follows:

17 (b) The affidavit must contain:

18 (1) the name, address, and age of the parent whose
19 parental rights are being relinquished;

20 (2) the name, age, and birth date of the child;

21 (3) the names and addresses of the guardians of the
22 person and estate of the child, if any;

23 (4) a statement that the affiant is or is not presently
24 obligated by court order to make payments for the support of the
25 child;

26 (5) a full description and statement of value of all
27 property owned or possessed by the child;

1 (6) an allegation that termination of the parent-child
2 relationship is in the best interest of the child;

3 (7) one of the following, as applicable:

4 (A) the name and address of the other parent;

5 (B) a statement that the parental rights of the
6 other parent have been terminated by death or court order; or

7 (C) a statement that the child has no presumed
8 father [~~and that an affidavit of status of the child has been~~
9 ~~executed as provided by this chapter~~];

10 (8) a statement that the parent has been informed of
11 parental rights and duties;

12 (9) a statement that the relinquishment is revocable,
13 that the relinquishment is irrevocable, or that the relinquishment
14 is irrevocable for a stated period of time;

15 (10) if the relinquishment is revocable, a statement
16 in boldfaced type concerning the right of the parent signing the
17 affidavit to revoke the relinquishment only if the revocation is
18 made before the 11th day after the date the affidavit is executed;

19 (11) if the relinquishment is revocable, the name and
20 address of a person to whom the revocation is to be delivered; and

21 (12) the designation of a prospective adoptive parent,
22 the Department of Family and Protective [~~and Regulatory~~] Services,
23 if the department has consented in writing to the designation, or a
24 licensed child-placing agency to serve as managing conservator of
25 the child and the address of the person or agency.

26 SECTION 6. Section 161.1035, Family Code, is amended to
27 read as follows:

1 Sec. 161.1035. REVOCABILITY OF CERTAIN AFFIDAVITS. An
2 affidavit of relinquishment of parental rights [~~or affidavit of~~
3 ~~waiver of interest in a child~~] that fails to state that the
4 relinquishment or waiver is irrevocable for a stated time is:

5 (1) revocable only if the revocation is made before
6 the 11th day after the date the affidavit is executed; and

7 (2) irrevocable on or after the 11th day after the date
8 the affidavit is executed.

9 SECTION 7. Section 161.106(f), Family Code, is amended to
10 read as follows:

11 (f) A waiver in an affidavit under this section [~~that~~
12 ~~designates the Department of Protective and Regulatory Services or~~
13 ~~a licensed child-placing agency to serve as the managing~~
14 ~~conservator~~] is irrevocable. [~~A waiver in any other affidavit~~
15 ~~under this section is revocable unless it expressly provides that~~
16 ~~it is irrevocable for a stated period not to exceed 60 days after~~
17 ~~the date of execution.~~]

18 SECTION 8. Section 161.107(a)(1), Family Code, is amended
19 to read as follows:

20 (1) "Parent" means a parent, as defined by Section
21 160.102, whose parent-child relationship with a child has not been
22 terminated. The term does not include a man who does not have a
23 parent-child relationship established under Chapter 160.

24 SECTION 9. Section 161.107(b), Family Code, is amended to
25 read as follows:

26 (b) If a parent of the child has not been personally served
27 in a suit in which the Department of Family and Protective [~~and~~

1 ~~Regulatory~~] Services seeks termination, the department must make a
2 diligent effort to locate that parent.

3 SECTION 10. Section 161.109(a), Family Code, is amended to
4 read as follows:

5 (a) If a parent-child relationship does not exist between
6 the child and any man [~~an affidavit of status of child as provided~~
7 ~~by this chapter states that the father of the child is unknown and~~
8 ~~no probable father is known~~], a certificate from the bureau of vital
9 statistics signed by the registrar that a diligent search has been
10 made of the paternity registry maintained by the bureau and that a
11 registration has not been found pertaining to the father of the
12 child in question must be filed with the court before a trial on the
13 merits in the suit for termination may be held.

14 SECTION 11. Section 162.018(d), Family Code, is amended to
15 read as follows:

16 (d) At the time an adoption order is rendered, the court
17 shall provide to the parents of an adopted child information
18 provided by the bureau of vital statistics that describes the
19 functions of the voluntary adoption registry under Subchapter E.
20 The licensed child-placing agency shall provide to each of the
21 child's biological parents known to the agency, the information
22 when the parent signs an affidavit of relinquishment of parental
23 rights[~~, affidavit of status of child,~~] or affidavit of waiver of
24 interest in a child. The information shall include the right of the
25 child or biological parent to refuse to participate in the
26 registry. If the adopted child is 14 years old or older the court
27 shall provide the information to the child.

1 SECTION 12. Sections 263.407(a) and (c), Family Code, are
2 amended to read as follows:

3 (a) There is a rebuttable presumption that a parent who
4 delivers a child to a designated emergency infant care provider in
5 accordance with Subchapter D, Chapter 262:

6 (1) is the child's biological parent; ~~and~~

7 (2) intends to relinquish parental rights and consents
8 to the termination of parental rights with regard to the child; and

9 (3) intends to waive the right to notice of the suit
10 terminating the parent-child relationship.

11 (c) Before the court may render an order terminating ~~[filing~~
12 ~~a petition to terminate the]~~ parental rights with regard to a child
13 taken into the department's custody under Section 262.303, the
14 department must:

15 (1) verify with the National Crime Information Center
16 and state and local law enforcement agencies that the child is not a
17 missing child; and

18 (2) obtain a certificate of the search of the
19 paternity registry under Subchapter E, Chapter 160, not earlier
20 than the date the department estimates to be the 30th day after the
21 child's date of birth.

22 SECTION 13. Sections 161.105 and 161.106(g), (h), and (j),
23 Family Code, are repealed.

24 SECTION 14. The change in law made by this Act by the
25 amendment of Sections 263.407(a) and (c), Family Code, applies to a
26 child for whom the Department of Family and Protective Services
27 assumes responsibility under Subchapter D, Chapter 262, Family

1 Code, regardless of whether the department assumed responsibility
2 for the child before, on, or after the effective date of this Act.

3 SECTION 15. The changes in law made by this Act apply only
4 to a suit affecting the parent-child relationship filed on or after
5 the effective date of this Act. A suit affecting the parent-child
6 relationship filed before the effective date of this Act is
7 governed by the law in effect on the date the suit was filed, and the
8 former law is continued in effect for that purpose.

9 SECTION 16. This Act takes effect September 1, 2007.