

By: West

S.B. No. 230

A BILL TO BE ENTITLED

AN ACT

relating to the termination of the duty to pay child support based on the results of genetic testing excluding the obligor as the child's biological father.

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

SECTION 1. Section 154.006(a), Family Code, is amended to read as follows:

(a) Unless otherwise agreed in writing or expressly provided in the order or as provided by Subsection (b), the child support order terminates on:

(1) the marriage of the child;

(2) the removal of the child's disabilities for general purposes;

(3) the death of the child;

(4) a finding by a court that the child:

(A) is 18 years of age or older; and

(B) has failed to comply with the enrollment or attendance requirements described by Section 154.002(a);

(5) the issuance under Section 160.638 of an order terminating the obligor's child support obligation based on the results of genetic testing that exclude the obligor as the child's biological father; or

(6) [45] if the child enlists in the armed forces of the United States, the date on which the child begins active service

as defined by 10 U.S.C. Section 101.

SECTION 2. Section 160.607(a), Family Code, is amended to read as follows:

(a) Except as otherwise provided by Subsection (b) or Section 160.638, a proceeding brought by a presumed father, the mother, or another individual to adjudicate the parentage of a child having a presumed father shall be commenced not later than the fourth anniversary of the date of the birth of the child.

SECTION 3. Section 160.608(a), Family Code, is amended to read as follows:

(a) Except as otherwise provided by Section 160.638, in [In] a proceeding to adjudicate parentage, a court may deny a motion for an order for the genetic testing of the mother, the child, and the presumed father if the court determines that:

(1) the conduct of the mother or the presumed father estops that party from denying parentage; and

(2) it would be inequitable to disprove the father-child relationship between the child and the presumed father.

SECTION 4. Section 160.609(a), Family Code, is amended to read as follows:

(a) If a child has an acknowledged father, a signatory to the acknowledgment or denial of paternity may commence a proceeding seeking to rescind the acknowledgment or denial or to challenge the paternity of the child only within the time allowed under Section 160.307 or 160.308, or under Section 160.638 if a motion is filed under that section.

SECTION 5. Subchapter G, Chapter 160, Family Code, is amended by adding Section 160.638 to read as follows:

Sec. 160.638. ADJUDICATION OF PATERNITY FOR PURPOSE OF TERMINATING CHILD SUPPORT OBLIGATION. (a) A man ordered to pay support for a child under Chapter 154 who believes that he is not the child's biological father may file with the court at any time before the child's 18th birthday a motion requesting an adjudication of the man's paternity of the child for the purpose of terminating his child support obligation. The motion must allege specifically that:

(1) the man's paternity of the child was not determined as a result of genetic testing;

(2) a court has not denied any motion by the man for an order for the genetic testing of the man and the child;

(3) at the time the man was ordered to pay child support for the child, the man did not know that he was not the child's biological father; and

(4) for the reasons stated in the motion, including the existence of genetic evidence, the man believes he is not the child's biological father.

(b) Notice of a hearing on the motion filed under this section, together with a copy of the motion, shall be delivered to the obligee by personal service. If the suit is a Title IV-D case, the notice, together with a copy of the motion, shall be served on the Title IV-D agency.

(c) If, at the hearing on a motion filed under Subsection (a), the court finds that the man has failed to establish a

1 reasonable possibility that he is not the child's biological
2 father, the court shall dismiss the motion.

3 (d) If, at the hearing on the motion filed under Subsection
4 (a), the court finds that the allegations in the motion establish a
5 reasonable possibility that the man is not the child's biological
6 father, the court shall order the man and the child for whom the man
7 is obligated to pay child support to submit to genetic testing under
8 Subchapter F.

9 (e) If the results of genetic testing ordered under this
10 section identify the man as the child's biological father under the
11 standards prescribed by Section 160.505 and the results of any
12 further testing requested by the man and ordered by the court under
13 Subchapter F do not exclude the man as the child's biological
14 father, the court shall deny the man's motion to terminate his child
15 support obligation.

16 (f) If the results of genetic testing ordered under this
17 section exclude the man as the child's biological father, the court
18 may render an order terminating the man's child support obligation.
19 In determining whether to terminate the man's child support
20 obligation under this subsection, the court shall consider the best
21 interest of the child for whom support was ordered, including the
22 following factors:

23 (1) the length of time between the date the child
24 support obligation was established and the date the man had reason
25 to believe that he was not the child's biological father;

26 (2) the length of time the man has provided support for
27 the child;

1 (3) the child's age;

2 (4) the nature of the relationship between the man and
3 the child; and

4 (5) any harm that may result to the child if the child
5 support order is terminated.

6 (g) An order rendered under Subsection (f) terminating a
7 man's child support obligation terminates that obligation
8 effective on the date of the order. The man is not entitled to
9 recover any child support paid before that date. Child support
10 obligations incurred by the man before that date, including
11 existing and subsequent interest on arrearages, are enforceable
12 until satisfied by any means available for the enforcement of child
13 support other than contempt.

14 (h) The costs of genetic testing ordered by the court under
15 this section are the responsibility of the man seeking termination
16 of the support obligation.

17 (i) This section does not apply to a child support order
18 issued by a tribunal of another state and registered under
19 Subchapter G, Chapter 159, for enforcement in this state.

20 SECTION 6. The changes in law made by this Act apply to an
21 order for child support regardless of whether the order was
22 rendered before, on, or after the effective date of this Act.

23 SECTION 7. This Act takes effect immediately if it receives
24 a vote of two-thirds of all the members elected to each house, as
25 provided by Section 39, Article III, Texas Constitution. If this
26 Act does not receive the vote necessary for immediate effect, this
27 Act takes effect September 1, 2009.