

## **BILL ANALYSIS**

C.S.H.B. 909  
By: Thompson  
Judiciary & Civil Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently, the options to terminate the parent-child relationship and to terminate child support for a victim of paternity fraud who finds out that he is not the biological father of a child are very limited. C.S.H.B. 909 addresses some aspects of this problem by, among other provisions, establishing standing to initiate proceedings to terminate the parent-child relationship.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 909 amends the Family Code to authorize a man to file a suit for termination of the parent-child relationship between the man and a child if, without obtaining genetic testing, the man signed an acknowledgment of paternity of the child in accordance with the Uniform Parentage Act or was adjudicated to be the father of the child in a previous proceeding for a suit affecting the parent-child relationship in which genetic testing did not occur. The bill requires the petition to be verified and to allege facts showing that the petitioner is not the child's genetic father and that the petitioner signed the acknowledgment of paternity or failed to contest parentage because he mistakenly believed at the time of the previous proceeding that he was the child's genetic father based on misrepresentations that led him to that conclusion. The bill prohibits a man from filing a petition if the man is the child's adoptive father, the child was conceived by assisted reproduction and the man consented to the assisted reproduction by his wife, or the man is the intended father of the child under a valid gestational agreement. The bill, in a provision applicable beginning September 1, 2012, requires the petition to be filed not later than the first anniversary of the date on which the petitioner becomes aware of the acts alleged in the petition indicating that the petitioner is not the child's genetic father. The bill adds a temporary provision, set to expire September 1, 2013, to specify that before September 1, 2012, a petition may be filed regardless of the date on which the petitioner became aware of the acts alleged in the petition indicating that the petitioner is not the child's genetic father.

C.S.H.B. 909 requires the court to hold a pretrial hearing on a petition filed in a suit for termination of the parent-child relationship under the bill's provisions to determine whether the petitioner has established a meritorious prima facie case for the termination. The bill requires the court to order the petitioner and the child to submit to genetic testing under the Uniform Parentage Act if such a meritorious prima facie claim is established. The bill requires the court to deny the petitioner's request for termination of the parent-child relationship if the results of genetic testing identify the petitioner as the child's genetic father under the standards prescribed by the act and the results of any further testing requested by the petitioner and ordered by the court do not exclude the petitioner as the child's genetic father. The bill requires the court to render an order terminating the parent-child relationship if the results of genetic testing exclude the petitioner as the child's genetic father.

C.S.H.B. 909 specifies that such a termination order ends the petitioner's obligation for future support of the child as of the date the order is rendered. The bill provides that such an order does not affect the petitioner's obligations for support of the child incurred before that date or the petitioner's obligation to pay interest that accrues after that date on the basis of child support arrearages existing on that date. The bill makes those obligations enforceable until satisfied by any means available, other than contempt, for the enforcement of child support. The bill provides that such a termination order does not preclude the initiation of a proceeding under the Uniform Parentage Act to adjudicate whether another man is the child's parent or, if the other man subject to such a proceeding is adjudicated as the child's parent, the rendition of an order requiring that man to pay child support for the child. The bill prohibits the child support order from requiring the other man to pay retroactive child support for any period preceding the date on which the order terminated the parent-child relationship between the child and the man seeking termination under the bill's provisions.

C.S.H.B. 909 authorizes the petitioner requesting termination of the parent-child relationship under the bill's provisions, at any time before the court renders a termination order, to request that the court also order periods of possession of or access to the child by the petitioner following termination of the parent-child relationship. The bill authorizes the court, if such possession or access is requested, to order periods of possession of or access to the child only if the court determines that denial of periods of possession of or access to the child would significantly impair the child's physical health or emotional well-being. The bill sets out provisions relating to the court's authorization to include provisions in the order for mental health counseling. The bill gives the petitioner, during any period of possession of or access to the child, the rights and duties under provisions of law relating to conservatorship, possession, and access, subject to any limitation specified by the court in its order. The bill makes conforming changes, including a conforming change to a provision of law relating to the termination of a child support order.

#### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 909 differs from the original by authorizing a court, if a request for possession of or access to a child is made, to order periods of possession or access only if the court determines that denial of such periods would significantly impair the child's physical health or emotional well-being, rather than, as in the original, requiring a court to determine whether to order periods of possession or access based on the best interest of the child and, if the court determines such an order should be rendered, to render an order based on the best interests of the child.