

BILL ANALYSIS

S.B. 785
By: Harris
Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Section 161.005 (Termination When Parent Is Petitioner), Family Code, provides that a parent may file a suit for termination of the parent-child relationship, and a court may order termination if the termination is in the best interest of the child; however, there are no provisions dealing with situations in which a father has mistakenly signed an acknowledgment of paternity or has been adjudicated as the father of a child. The father would be required to continue paying child support even if genetic testing proved that he could not be the father of the child.

S.B. 785 provides a way for a man who has either signed an acknowledgement of paternity or is adjudicated to be the father of a child without obtaining genetic testing to have the parent-child relationship terminated. The petition for termination must be verified and state that the petitioner is not the child's father, and that he had mistaken belief of paternity based on misrepresentations when he either signed the acknowledgement of paternity or when the court order was rendered.

The man may not file a petition for termination if he is the child's adoptive father, the child was conceived by assisted reproduction that was consented to by the man, or the man is the intended father under a court-approved gestational agreement.

A petition for termination must be filed not later than one year after the man becomes aware that he is not the father. The provision takes effect on September 1, 2012. Between the effective date of the bill and September 1, 2012, any man may bring a petition under the bill without regard to when the man learned that the child was not his biological child.

If the man establishes a meritorious prima facie case for termination, the court orders genetic testing. The result of the genetic testing then determines the outcome of the case.

This bill provides that if the parent-child relationship is terminated, the man may no longer be required to pay child support in the future; however, the termination does not affect the child support obligations already accrued prior to termination, nor does it affect the accrual of interest on any back child support owed.

If another man is determined to be the father of the child, that man may not be ordered to pay retroactive child support for any period of time preceding the date on which an order terminating another man's parent-child relationship is entered.

This bill provides that a man seeking to terminate a parent-child relationship may also petition the court to continue to allow him rights of possession and access to the child. If possession and access is granted, the court may require any party to participate in counseling with a mental health professional.

S.B. 785 amends current law relating to the termination of the parent-child relationship and the duty to pay child support in circumstances involving mistaken paternity.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

SECTION 1. Amends Section 154.006(a), Family Code, to provide that the child support order, unless otherwise agreed in writing or expressly provided in the order or as provided by Subsection (b) (relating

to provisions relating to conservatorship, possession, or access terminating on the marriage or remarriage), terminates under certain conditions, including on the issuance under Section 161.005(h) of an order terminating the parent-child relationship between the obligor and the child based on the results of genetic testing that exclude the obligor as the child's genetic father. Makes a nonsubstantive change.

SECTION 2. Amends Section 161.005, Family Code, by amending Subsection (a) and adding Subsections (c)-(e), (e-1), and (f)-(o), as follows:

(a) Creates an exception under Subsection (h) and makes a nonsubstantive change.

(c) Authorizes a man, subject to Subsection (d), 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 Subchapter D (Voluntary Acknowledgment of Paternity), Chapter 160 (Uniform Parentage Act), or was adjudicated to be the father of the child in a previous proceeding under this title in which genetic testing did not occur. Requires that the petition be verified and allege facts showing that the petitioner:

(1) is not the child's genetic father; and

(2) signed the acknowledgment of paternity or failed to contest parentage in the previous proceeding because of the mistaken belief, at the time the acknowledgment was signed or on the date the court order in the previous proceeding was rendered, that he was the child's genetic father based on misrepresentations that led him to that conclusion.

(d) Prohibits a man from filing a petition under Subsection (c) if:

(1) the man is the child's adoptive father;

(2) the child was conceived by assisted reproduction and the man consented to assisted reproduction by his wife under Subchapter H (Child of Assisted Reproduction), Chapter 160; or

(3) the man is the intended father of the child under a gestational agreement validated by a court under Subchapter I (Gestational Agreements), Chapter 160.

(e) Requires that a petition under Subsection (c) 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.

(e-1) Provides that Subsection (e) applies beginning September 1, 2012. Authorizes a petition, before that date, to be filed under Subsection (c) 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. Provides that this subsection expires September 1, 2013.

(f) Requires the court, in a proceeding initiated under Subsection (c), to hold a pretrial hearing to determine whether the petitioner has established a meritorious prima facie case for termination of the parent-child relationship. Requires the court, if a meritorious prima facie claim is established, to order the petitioner and the child to submit to genetic testing under Subchapter F (Genetic Testing), Chapter 160.

(g) Requires the court, if the results of genetic testing ordered under Subsection (f) identify the petitioner as the child's genetic father under the standards prescribed by Section 160.505 (Genetic Testing Results; Rebuttal) and the results of any further testing requested by the petitioner and ordered by the court under Subchapter F, Chapter 160, do not exclude the petitioner as the child's genetic father, to deny the petitioner's request for termination of the parent-child relationship.

(h) Requires the court, if the results of genetic testing ordered under Subsection (f) exclude the petitioner as the child's genetic father, to render an order terminating the parent-child relationship.

(i) Provides that an order under Subsection (h) terminating the parent-child relationship ends the petitioner's obligation for future support of the child as of the date the order is rendered. Provides that the 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. Provides that those obligations are enforceable until satisfied by any means available for the enforcement of child support other than contempt.

(j) Provides that an order under Subsection (h) terminating the parent-child relationship does not preclude:

(1) the initiation of a proceeding under Chapter 160 to adjudicate whether another man is the child's parent; or

(2) if the other man subject to a proceeding under Subdivision (1) is adjudicated as the child's parent, the rendition of an order requiring that man to pay child support for the child under Chapter 154 (Child Support), subject to Subsection (k).

(k) Prohibits an order described by Subsection (j)(2), notwithstanding Section 154.131 (Retroactive Child Support), from requiring the other man to pay retroactive child support for any period preceding the date on which the order under Subsection (h) terminated the parent-child relationship between the child and the man seeking termination under this section.

(l) Authorizes the petitioner, at any time before the court renders an order terminating the parent-child relationship under Subsection (h), 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. Authorizes the court, if 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.

(m) Authorizes the court to include provisions in an order under Subsection (l) that require:

(1) the child or any party to the proceeding to participate in counseling with a mental health professional who:

(A) has a background in family therapy; and

(B) holds a professional license that requires the person to possess at least a master's degree; and

(2) any party to pay the costs of the counseling described by Subdivision (1).

(n) Authorizes the court, notwithstanding Subsection (m)(1), if a person who possesses the qualifications described by that subdivision is not available in the county in which the court is located, to require that the counseling be conducted by another person the court considers qualified for that purpose.

(o) Provides that during any period of possession of or access to the child ordered under Subsection (l) the petitioner has the rights and duties specified by Section 153.074 (Rights and Duties During Period of Possession), subject to any limitation specified by the court in its order.

SECTION 3. Provides that the changes in law made by this Act to Section 154.006, Family Code, apply to an order for child support regardless of whether the order was rendered before, on, or after the effective date of this Act.

SECTION 4. Provides that the changes in law made by this Act to Section 161.005, Family Code, apply to a parent-child relationship regardless of whether the relationship was established before, on, or after the effective date of this Act.

EFFECTIVE DATE

Upon passage or September 1, 2011.