

By: Harris
(Thompson)

S.B. No. 785

A BILL TO BE ENTITLED

AN ACT

relating to the termination of the parent-child relationship and the duty to pay child support in circumstances involving mistaken paternity.

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

SECTION 1. Subsection (a), Section 154.006, 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); ~~or~~

(5) 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; or

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

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

2 SECTION 2. Section 161.005, Family Code, is amended by
3 amending Subsection (a) and adding Subsections (c), (d), (e),
4 (e-1), and (f) through (o) to read as follows:

5 (a) A parent may file a suit for termination of the
6 petitioner's parent-child relationship. Except as provided by
7 Subsection (h), the [~~The~~] court may order termination if
8 termination is in the best interest of the child.

9 (c) Subject to Subsection (d), a man may file a suit for
10 termination of the parent-child relationship between the man and a
11 child if, without obtaining genetic testing, the man signed an
12 acknowledgment of paternity of the child in accordance with
13 Subchapter D, Chapter 160, or was adjudicated to be the father of
14 the child in a previous proceeding under this title in which genetic
15 testing did not occur. The petition must be verified and must
16 allege facts showing that the petitioner:

17 (1) is not the child's genetic father; and
18 (2) signed the acknowledgment of paternity or failed
19 to contest parentage in the previous proceeding because of the
20 mistaken belief, at the time the acknowledgment was signed or on the
21 date the court order in the previous proceeding was rendered, that
22 he was the child's genetic father based on misrepresentations that
23 led him to that conclusion.

24 (d) A man may not file a petition under Subsection (c) if:
25 (1) the man is the child's adoptive father;
26 (2) the child was conceived by assisted reproduction
27 and the man consented to assisted reproduction by his wife under

1 Subchapter H, Chapter 160; or

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

5 (e) A petition under Subsection (c) must be filed not later
6 than the first anniversary of the date on which the petitioner
7 becomes aware of the acts alleged in the petition indicating that
8 the petitioner is not the child's genetic father.

9 (e-1) Subsection (e) applies beginning September 1, 2012.
10 Before that date, a petition may be filed under Subsection (c)
11 regardless of the date on which the petitioner became aware of the
12 acts alleged in the petition indicating that the petitioner is not
13 the child's genetic father. This subsection expires September 1,
14 2013.

15 (f) In a proceeding initiated under Subsection (c), the
16 court shall hold a pretrial hearing to determine whether the
17 petitioner has established a meritorious prima facie case for
18 termination of the parent-child relationship. If a meritorious
19 prima facie claim is established, the court shall order the
20 petitioner and the child to submit to genetic testing under
21 Subchapter F, Chapter 160.

22 (g) If the results of genetic testing ordered under
23 Subsection (f) identify the petitioner as the child's genetic
24 father under the standards prescribed by Section 160.505 and the
25 results of any further testing requested by the petitioner and
26 ordered by the court under Subchapter F, Chapter 160, do not exclude
27 the petitioner as the child's genetic father, the court shall deny

1 the petitioner's request for termination of the parent-child
2 relationship.

3 (h) If the results of genetic testing ordered under
4 Subsection (f) exclude the petitioner as the child's genetic
5 father, the court shall render an order terminating the
6 parent-child relationship.

7 (i) An order under Subsection (h) terminating the
8 parent-child relationship ends the petitioner's obligation for
9 future support of the child as of the date the order is rendered.
10 The order does not affect the petitioner's obligations for support
11 of the child incurred before that date or the petitioner's
12 obligation to pay interest that accrues after that date on the basis
13 of child support arrearages existing on that date. Those
14 obligations are enforceable until satisfied by any means available
15 for the enforcement of child support other than contempt.

16 (j) An order under Subsection (h) terminating the
17 parent-child relationship does not preclude:

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

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

24 (k) Notwithstanding Section 154.131, an order described by
25 Subsection (j)(2) may not require the other man to pay retroactive
26 child support for any period preceding the date on which the order
27 under Subsection (h) terminated the parent-child relationship

1 between the child and the man seeking termination under this
2 section.

3 (1) At any time before the court renders an order
4 terminating the parent-child relationship under Subsection (h),
5 the petitioner may request that the court also order periods of
6 possession of or access to the child by the petitioner following
7 termination of the parent-child relationship. If requested, the
8 court may order periods of possession of or access to the child only
9 if the court determines that denial of periods of possession of or
10 access to the child would significantly impair the child's physical
11 health or emotional well-being.

12 (m) The court may include provisions in an order under
13 Subsection (1) that require:

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

16 (A) has a background in family therapy; and

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

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

21 (n) Notwithstanding Subsection (m)(1), if a person who
22 possesses the qualifications described by that subdivision is not
23 available in the county in which the court is located, the court may
24 require that the counseling be conducted by another person the
25 court considers qualified for that purpose.

26 (o) During any period of possession of or access to the
27 child ordered under Subsection (1) the petitioner has the rights

1 and duties specified by Section 153.074, subject to any limitation
2 specified by the court in its order.

3 SECTION 3. The changes in law made by this Act to Section
4 154.006, Family Code, apply to an order for child support
5 regardless of whether the order was rendered before, on, or after
6 the effective date of this Act.

7 SECTION 4. The changes in law made by this Act to Section
8 161.005, Family Code, apply to a parent-child relationship
9 regardless of whether the relationship was established before, on,
10 or after the effective date of this Act.

11 SECTION 5. This Act takes effect immediately if it receives
12 a vote of two-thirds of all the members elected to each house, as
13 provided by Section 39, Article III, Texas Constitution. If this
14 Act does not receive the vote necessary for immediate effect, this
15 Act takes effect September 1, 2011.