

1-1 By: Harris S.B. No. 785
1-2 (In the Senate - Filed February 18, 2011; March 1, 2011,
1-3 read first time and referred to Committee on Jurisprudence;
1-4 March 14, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; March 14, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 785 By: Harris

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the termination of the parent-child relationship and
1-11 the duty to pay child support in circumstances involving mistaken
1-12 paternity.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subsection (a), Section 154.006, Family Code, is
1-15 amended to read as follows:

1-16 (a) Unless otherwise agreed in writing or expressly
1-17 provided in the order or as provided by Subsection (b), the child
1-18 support order terminates on:

1-19 (1) the marriage of the child;

1-20 (2) the removal of the child's disabilities for
1-21 general purposes;

1-22 (3) the death of the child;

1-23 (4) a finding by a court that the child:

1-24 (A) is 18 years of age or older; and

1-25 (B) has failed to comply with the enrollment or
1-26 attendance requirements described by Section 154.002(a); ~~or~~

1-27 (5) the issuance under Section 161.005(h) of an order
1-28 terminating the parent-child relationship between the obligor and
1-29 the child based on the results of genetic testing that exclude the
1-30 obligor as the child's genetic father; or

1-31 (6) if the child enlists in the armed forces of the
1-32 United States, the date on which the child begins active service as
1-33 defined by 10 U.S.C. Section 101.

1-34 SECTION 2. Section 161.005, Family Code, is amended by
1-35 amending Subsection (a) and adding Subsections (c), (d), (e),
1-36 (e-1), and (f) through (o) to read as follows:

1-37 (a) A parent may file a suit for termination of the
1-38 petitioner's parent-child relationship. Except as provided by
1-39 Subsection (h), the [The] court may order termination if
1-40 termination is in the best interest of the child.

1-41 (c) Subject to Subsection (d), a man may file a suit for
1-42 termination of the parent-child relationship between the man and a
1-43 child if, without obtaining genetic testing, the man signed an
1-44 acknowledgment of paternity of the child in accordance with
1-45 Subchapter D, Chapter 160, or was adjudicated to be the father of
1-46 the child in a previous proceeding under this title in which genetic
1-47 testing did not occur. The petition must be verified and must
1-48 allege facts showing that the petitioner:

1-49 (1) is not the child's genetic father; and

1-50 (2) signed the acknowledgment of paternity or failed
1-51 to contest parentage in the previous proceeding because of the
1-52 mistaken belief, at the time the acknowledgment was signed or on the
1-53 date the court order in the previous proceeding was rendered, that
1-54 he was the child's genetic father based on misrepresentations that
1-55 led him to that conclusion.

1-56 (d) A man may not file a petition under Subsection (c) if:

1-57 (1) the man is the child's adoptive father;

1-58 (2) the child was conceived by assisted reproduction
1-59 and the man consented to assisted reproduction by his wife under
1-60 Subchapter H, Chapter 160; or

1-61 (3) the man is the intended father of the child under a
1-62 gestational agreement validated by a court under Subchapter I,
1-63 Chapter 160.

2-1 (e) A petition under Subsection (c) must be filed not later
2-2 than the first anniversary of the date on which the petitioner
2-3 becomes aware of the acts alleged in the petition indicating that
2-4 the petitioner is not the child's genetic father.

2-5 (e-1) Subsection (e) applies beginning September 1, 2012.
2-6 Before that date, a petition may be filed under Subsection (c)
2-7 regardless of the date on which the petitioner became aware of the
2-8 acts alleged in the petition indicating that the petitioner is not
2-9 the child's genetic father. This subsection expires September 1,
2-10 2013.

2-11 (f) In a proceeding initiated under Subsection (c), the
2-12 court shall hold a pretrial hearing to determine whether the
2-13 petitioner has established a meritorious prima facie case for
2-14 termination of the parent-child relationship. If a meritorious
2-15 prima facie claim is established, the court shall order the
2-16 petitioner and the child to submit to genetic testing under
2-17 Subchapter F, Chapter 160.

2-18 (g) If the results of genetic testing ordered under
2-19 Subsection (f) identify the petitioner as the child's genetic
2-20 father under the standards prescribed by Section 160.505 and the
2-21 results of any further testing requested by the petitioner and
2-22 ordered by the court under Subchapter F, Chapter 160, do not exclude
2-23 the petitioner as the child's genetic father, the court shall deny
2-24 the petitioner's request for termination of the parent-child
2-25 relationship.

2-26 (h) If the results of genetic testing ordered under
2-27 Subsection (f) exclude the petitioner as the child's genetic
2-28 father, the court shall render an order terminating the
2-29 parent-child relationship.

2-30 (i) An order under Subsection (h) terminating the
2-31 parent-child relationship ends the petitioner's obligation for
2-32 future support of the child as of the date the order is rendered.
2-33 The order does not affect the petitioner's obligations for support
2-34 of the child incurred before that date or the petitioner's
2-35 obligation to pay interest that accrues after that date on the basis
2-36 of child support arrearages existing on that date. Those
2-37 obligations are enforceable until satisfied by any means available
2-38 for the enforcement of child support other than contempt.

2-39 (j) An order under Subsection (h) terminating the
2-40 parent-child relationship does not preclude:

2-41 (1) the initiation of a proceeding under Chapter 160
2-42 to adjudicate whether another man is the child's parent; or

2-43 (2) if the other man subject to a proceeding under
2-44 Subdivision (1) is adjudicated as the child's parent, the rendition
2-45 of an order requiring that man to pay child support for the child
2-46 under Chapter 154, subject to Subsection (k).

2-47 (k) Notwithstanding Section 154.131, an order described by
2-48 Subsection (j)(2) may not require the other man to pay retroactive
2-49 child support for any period preceding the date on which the order
2-50 under Subsection (h) terminated the parent-child relationship
2-51 between the child and the man seeking termination under this
2-52 section.

2-53 (l) At any time before the court renders an order
2-54 terminating the parent-child relationship under Subsection (h),
2-55 the petitioner may request that the court also order periods of
2-56 possession of or access to the child by the petitioner following
2-57 termination of the parent-child relationship. If requested, the
2-58 court may order periods of possession of or access to the child only
2-59 if the court determines that denial of periods of possession of or
2-60 access to the child would significantly impair the child's physical
2-61 health or emotional well-being.

2-62 (m) The court may include provisions in an order under
2-63 Subsection (l) that require:

2-64 (1) the child or any party to the proceeding to
2-65 participate in counseling with a mental health professional who:

2-66 (A) has a background in family therapy; and

2-67 (B) holds a professional license that requires

2-68 the person to possess at least a master's degree; and

2-69 (2) any party to pay the costs of the counseling

3-1 described by Subdivision (l).

3-2 (n) Notwithstanding Subsection (m)(1), if a person who
3-3 possesses the qualifications described by that subdivision is not
3-4 available in the county in which the court is located, the court may
3-5 require that the counseling be conducted by another person the
3-6 court considers qualified for that purpose.

3-7 (o) During any period of possession of or access to the
3-8 child ordered under Subsection (l) the petitioner has the rights
3-9 and duties specified by Section 153.074, subject to any limitation
3-10 specified by the court in its order.

3-11 SECTION 3. The changes in law made by this Act to Section
3-12 154.006, Family Code, apply to an order for child support
3-13 regardless of whether the order was rendered before, on, or after
3-14 the effective date of this Act.

3-15 SECTION 4. The changes in law made by this Act to Section
3-16 161.005, Family Code, apply to a parent-child relationship
3-17 regardless of whether the relationship was established before, on,
3-18 or after the effective date of this Act.

3-19 SECTION 5. This Act takes effect immediately if it receives
3-20 a vote of two-thirds of all the members elected to each house, as
3-21 provided by Section 39, Article III, Texas Constitution. If this
3-22 Act does not receive the vote necessary for immediate effect, this
3-23 Act takes effect September 1, 2011.

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