

By: Dutton

H.B. No. 2636

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to court-ordered financial support by parents of an adult  
3 with a medically determinable disability.

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

5 SECTION 1. The legislature finds that:

6 (1) the office of the attorney general, the designated  
7 Title IV-D agency, and all courts in this state must comply with the  
8 regulations in the federal Social Security Act (42 U.S.C. Section  
9 301 et seq.) when establishing, modifying, and enforcing financial  
10 support for an adult with a medically determinable disability after  
11 attaining 18 years of age;

12 (2) the Social Security Act has a specific definition  
13 for the term "disability";

14 (3) the attorney general has determined in Tex. Att'y  
15 Gen. Op. No. GA-0868 (2011) that Section 1-b, Article VIII, Texas  
16 Constitution, uses the definition of the term "disability" in the  
17 Social Security Act for adults seeking tax benefits on real  
18 property;

19 (4) there is confusion among state courts regarding  
20 the meaning and application of Subchapter F, Chapter 154, Family  
21 Code; and

22 (5) clarification, guidance, and consistency are  
23 required to ensure compliance with the Social Security Act, the  
24 Texas Constitution, and the intent of the legislature.

1 SECTION 2. The heading to Chapter 154, Family Code, is  
2 amended to read as follows:

3 CHAPTER 154. CHILD SUPPORT AND SUPPORT OF CERTAIN ADULTS WITH  
4 DISABILITY

5 SECTION 3. The heading to Subchapter A, Chapter 154, Family  
6 Code, is amended to read as follows:

7 SUBCHAPTER A. COURT-ORDERED FINANCIAL [~~CHILD~~] SUPPORT OF CHILD OR  
8 ADULT WITH MEDICALLY DETERMINABLE DISABILITY

9 SECTION 4. The heading to Section 154.001, Family Code, is  
10 amended to read as follows:

11 Sec. 154.001. FINANCIAL SUPPORT OF CHILD OR ADULT WITH  
12 MEDICALLY DETERMINABLE DISABILITY.

13 SECTION 5. Sections 154.001(a) and (a-1), Family Code, are  
14 amended to read as follows:

15 (a) The court may order either or both parents to support a  
16 child in the manner specified by the order:

17 (1) until the child is 18 years of age or until  
18 graduation from high school, whichever occurs later;

19 (2) until the child is emancipated through marriage,  
20 through removal of the disabilities of minority by court order, or  
21 by other operation of law;

22 (3) until the death of the child; or

23 (4) as provided by Subchapter F, for a child who is an  
24 adult with a medically determinable disability [~~if the child is~~  
25 ~~disabled as defined in this chapter, for an indefinite period~~].

26 (a-1) The court may order each person who is financially  
27 able and whose parental rights have been terminated with respect to

1 either a child in substitute care for whom the department has been  
2 appointed managing conservator or a child who was conceived as a  
3 direct result of conduct that constitutes an offense under Section  
4 21.02, 22.011, 22.021, or 25.02, Penal Code, to support the child in  
5 the manner specified by the order:

6 (1) until the earliest of:

7 (A) the child's adoption;

8 (B) the child's 18th birthday or graduation from  
9 high school, whichever occurs later;

10 (C) removal of the child's disabilities of  
11 minority by court order, marriage, or other operation of law; or

12 (D) the child's death; or

13 (2) as provided by Subchapter F, for a child who is an  
14 adult with a medically determinable disability [~~if the child is~~  
15 ~~disabled as defined in this chapter, for an indefinite period~~].

16 SECTION 6. (a) Section 154.015(c), Family Code, as  
17 effective until September 1, 2018, is amended to read as follows:

18 (c) For purposes of this section, the court of continuing  
19 jurisdiction shall determine the amount of the unpaid child support  
20 obligation for each child of the deceased obligor. In determining  
21 the amount of the unpaid child support obligation, the court shall  
22 consider all relevant factors, including:

23 (1) the present value of the total amount of monthly  
24 periodic child support payments that would become due between the  
25 month in which the obligor dies and the month in which the child  
26 turns 18 years of age, based on the amount of the periodic monthly  
27 child support payments under the child support order in effect on

1 the date of the obligor's death;

2 (2) the present value of the total amount of health  
3 insurance premiums payable for the benefit of the child from the  
4 month in which the obligor dies until the month in which the child  
5 turns 18 years of age, based on the cost of health insurance for the  
6 child ordered to be paid on the date of the obligor's death;

7 (3) in the case of [~~a disabled child under 18 years of~~  
8 ~~age or~~] an adult with a medically determinable disability  
9 [~~disabled child~~], an amount to be determined by the court under  
10 Section 154.306;

11 (4) the nature and amount of any benefit to which the  
12 child would be entitled as a result of the obligor's death,  
13 including life insurance proceeds, annuity payments, trust  
14 distributions, social security death benefits, and retirement  
15 survivor benefits; and

16 (5) any other financial resource available for the  
17 support of the child.

18 (b) Section 154.015(c), Family Code, as effective on  
19 September 1, 2018, is amended to read as follows:

20 (c) For purposes of this section, the court of continuing  
21 jurisdiction shall determine the amount of the unpaid child support  
22 obligation for each child of the deceased obligor. In determining  
23 the amount of the unpaid child support obligation, the court shall  
24 consider all relevant factors, including:

25 (1) the present value of the total amount of monthly  
26 periodic child support payments that would become due between the  
27 month in which the obligor dies and the month in which the child

1 turns 18 years of age, based on the amount of the periodic monthly  
2 child support payments under the child support order in effect on  
3 the date of the obligor's death;

4 (2) the present value of the total amount of health  
5 insurance and dental insurance premiums payable for the benefit of  
6 the child from the month in which the obligor dies until the month  
7 in which the child turns 18 years of age, based on the cost of health  
8 insurance and dental insurance for the child ordered to be paid on  
9 the date of the obligor's death;

10 (3) in the case of [~~a disabled child under 18 years of~~  
11 ~~age or~~] an adult with a medically determinable disability  
12 [~~disabled child~~], an amount to be determined by the court under  
13 Section 154.306;

14 (4) the nature and amount of any benefit to which the  
15 child would be entitled as a result of the obligor's death,  
16 including life insurance proceeds, annuity payments, trust  
17 distributions, social security death benefits, and retirement  
18 survivor benefits; and

19 (5) any other financial resource available for the  
20 support of the child.

21 SECTION 7. (a) Section 154.016(b), Family Code, as  
22 effective until September 1, 2018, is amended to read as follows:

23 (b) In determining the nature and extent of the obligation  
24 to provide for the support of the child in the event of the death of  
25 the obligor, the court shall consider all relevant factors,  
26 including:

27 (1) the present value of the total amount of monthly

1 periodic child support payments from the date the child support  
2 order is rendered until the month in which the child turns 18 years  
3 of age, based on the amount of the periodic monthly child support  
4 payment under the child support order;

5 (2) the present value of the total amount of health  
6 insurance premiums payable for the benefit of the child from the  
7 date the child support order is rendered until the month in which  
8 the child turns 18 years of age, based on the cost of health  
9 insurance for the child ordered to be paid; and

10 (3) in the case of [~~a disabled child under 18 years of~~  
11 ~~age or~~] an adult with a medically determinable disability  
12 [~~disabled child~~], an amount to be determined by the court under  
13 Section 154.306.

14 (b) Section 154.016(b), Family Code, as effective on  
15 September 1, 2018, is amended to read as follows:

16 (b) In determining the nature and extent of the obligation  
17 to provide for the support of the child in the event of the death of  
18 the obligor, the court shall consider all relevant factors,  
19 including:

20 (1) the present value of the total amount of monthly  
21 periodic child support payments from the date the child support  
22 order is rendered until the month in which the child turns 18 years  
23 of age, based on the amount of the periodic monthly child support  
24 payment under the child support order;

25 (2) the present value of the total amount of health  
26 insurance and dental insurance premiums payable for the benefit of  
27 the child from the date the child support order is rendered until

1 the month in which the child turns 18 years of age, based on the cost  
2 of health insurance and dental insurance for the child ordered to be  
3 paid; and

4 (3) in the case of [~~a disabled child under 18 years of~~  
5 ~~age or~~] an adult with a medically determinable disability  
6 [~~disabled child~~], an amount to be determined by the court under  
7 Section 154.306.

8 SECTION 8. The heading of Subchapter F, Chapter 154, Family  
9 Code, is amended to read as follows:

10 SUBCHAPTER F. FINANCIAL SUPPORT FOR [A MINOR OR] ADULT WITH  
11 MEDICALLY DETERMINABLE DISABILITY [~~DISABLED CHILD~~]

12 SECTION 9. Subchapter F, Chapter 154, Family Code, is  
13 amended by adding Section 154.3001 to read as follows:

14 Sec. 154.3001. POLICY STATEMENT. It is the policy of this  
15 state that any financial support awarded to an adult with a  
16 medically determinable disability must comply with the federal  
17 Social Security Act (42 U.S.C. Section 301 et seq.), the Texas  
18 Constitution, and the laws of this state.

19 SECTION 10. Section 154.301, Family Code, is amended to  
20 read as follows:

21 Sec. 154.301. DEFINITIONS. In this subchapter:

22 (1) "Adult [~~child~~]" means an individual [~~a child~~] 18  
23 years of age or older.

24 (2) "Disability" means:

25 (A) the inability to engage in any substantial  
26 gainful activity by reason of any medically determinable physical  
27 or mental impairment that can be expected to result in death or that

1 has lasted or can be expected to last for a continuous period of not  
2 less than 12 months; and

3 (B) the impairment described by Paragraph (A) is  
4 of such severity that the adult:

5 (i) is unable to do work previously  
6 performed by the adult; and

7 (ii) considering the adult's age,  
8 education, and work experience, is unable to engage in any other  
9 kind of substantial gainful work that exists in the national  
10 economy.

11 (3) "Guardian" means a person appointed by a court in  
12 accordance with Chapter 1101, Estates Code.

13 (4) "Personal supervision" means guidance and  
14 instruction by someone who is physically present and in such  
15 proximity that visual contact can be maintained and immediate  
16 assistance given when required.

17 (5) "Physical custody" means actual possession and  
18 control by a person of another person, including continuously  
19 living in the same household and providing continuous and direct  
20 care ["Child" means a son or daughter of any age].

21 SECTION 11. Section 154.302, Family Code, is amended to  
22 read as follows:

23 Sec. 154.302. COURT-ORDERED FINANCIAL SUPPORT FOR ADULT  
24 WITH MEDICALLY DETERMINABLE DISABILITY [~~DISABLED CHILD~~]. (a) The  
25 court may order either or both parents of an adult to provide for  
26 the financial support of the adult [~~a child~~] for a [an indefinite]  
27 period of one year and may determine the rights and duties of the



1 parents if the court identifies competent evidence in the record  
2 and finds that:

3 (1) the adult [~~child~~], whether institutionalized or  
4 not, has a disability and requires continuous, substantial care and  
5 continuous, personal supervision by a person who has physical  
6 custody [~~because of a mental or physical disability and will not be~~  
7 ~~capable of self-support~~]; and

8 (2) the disability existed [~~exists, or the cause of~~  
9 ~~the disability is known to exist,~~] on or before the adult's 18th  
10 birthday [~~of the child~~].

11 (b) Except as otherwise provided by this subsection, a [A]  
12 court that orders financial support under this section shall  
13 designate the adult to receive the support directly. On  
14 presentation of competent evidence that the adult cannot manage the  
15 financial support, the court may designate a [~~parent of the child or~~  
16 ~~another~~] person, including a parent having physical custody of the  
17 adult or a guardian, [~~guardianship of the child under a court order~~]  
18 to receive the financial support [~~for the child. The court may~~  
19 ~~designate a child who is 18 years of age or older to receive the~~  
20 ~~support directly~~].

21 (c) Not later than the 60th day after the date of the  
22 expiration of an order establishing financial support for an adult  
23 with a medically determinable disability, a person may file a  
24 motion for the annual review of the financial support for the adult  
25 to determine if the facts and circumstances have changed since the  
26 order was rendered to warrant continuation or termination of the  
27 financial support ordered under this section.

1        (d) Before ordering the initial financial support or any  
2 future support, the court must issue findings specifically  
3 identifying competent evidence in the record establishing:

4                (1) the existence of the adult's disability;

5                (2) the severity of the adult's impairment;

6                (3) that the adult requires continuous, substantial  
7 care and continuous, personal supervision by a person, including a  
8 parent or a guardian, who has physical custody; and

9                (4) that the disability existed on or before the  
10 adult's 18th birthday.

11        (e) The findings required under Subsection (d) are in  
12 addition to any request for findings of fact and conclusions of law  
13 timely requested under Rules 296 and 297, Texas Rules of Civil  
14 Procedure. If a court fails to file the findings under Subsection  
15 (d), an order requiring the payment of financial support is  
16 unenforceable.

17        (f) An appeal of a final judgment ordering financial support  
18 may be stayed if competent evidence is presented that the  
19 requirements under this section were not satisfied. An appeal of  
20 the final judgment is an accelerated appeal and must be decided no  
21 later than the 180th day after the date a notice of appeal is filed.

22        SECTION 12. Section 154.303, Family Code, is amended to  
23 read as follows:

24        Sec. 154.303. STANDING TO SUE. (a) A suit provided by this  
25 subchapter may be filed only by:

26                (1) a parent of the adult who has physical custody of  
27 the adult, a guardian, [~~child~~] or another person having physical

1 custody [~~or guardianship of the child under a court order~~]; or

2 (2) the adult, [~~child~~] if the adult [~~child~~]:

3 (A) [~~is 18 years of age or older,~~

4 [~~(B)~~] does not have an intellectual [~~a mental~~]  
5 disability; and

6 (B) [~~(C)~~] is determined by the court to be  
7 capable of managing the adult's [~~child's~~] financial affairs.

8 (b) The person under Subsection (a) who filed the suit  
9 [~~parent, the child, if the child is 18 years of age or older, or~~  
10 ~~other person~~] may not transfer or assign the cause of action to any  
11 person, including a governmental or private entity [~~or agency~~],  
12 except for an assignment made to the Title IV-D agency under Section  
13 [231.104](#) or in the provision of financial [~~child~~] support  
14 enforcement services under Section [159.307](#).

15 SECTION 13. Section [154.305](#), Family Code, is amended to  
16 read as follows:

17 Sec. 154.305. SPECIFIC PROCEDURES. (a) A suit under this  
18 subchapter may be filed:

19 (1) regardless of the age of the adult [~~child~~]; and

20 (2) as an independent cause of action or joined with  
21 any other claim or remedy provided by this code.

22 (a-1) The person filing the suit must prove by a  
23 preponderance of the evidence that all the requirements under  
24 Section [154.302](#) have been met. If competent evidence is not  
25 provided satisfying each of the requirements under Section [154.302](#),  
26 the court shall dismiss the suit.

27 (b) If no court has continuing, exclusive jurisdiction of

1 the adult [~~child~~], an action under this subchapter may be filed as  
2 an original suit by filing a petition to determine the eligibility  
3 for financial support for an adult [~~affecting the parent-child~~  
4 ~~relationship~~].

5 (c) If there is a court of continuing, exclusive  
6 jurisdiction, an action under this subchapter may be filed as a suit  
7 for modification as provided by Chapter 156 by filing a petition to  
8 determine the eligibility for financial support for an adult.

9 SECTION 14. Section 154.306, Family Code, is amended to  
10 read as follows:

11 Sec. 154.306. AMOUNT OF FINANCIAL SUPPORT FOR ADULT WITH  
12 MEDICALLY DETERMINABLE DISABILITY [~~AFTER AGE 18~~]. (a) In  
13 calculating [~~determining~~] the amount of financial support to be  
14 paid to an adult by either or both parents after the adult's [~~a~~  
15 ~~child's~~] 18th birthday, the specific terms and conditions of that  
16 financial support, and the rights and duties of both parents with  
17 respect to the financial support of the adult [~~child~~], the court  
18 shall consider only [~~determine and give special consideration to~~]:

19 (1) the medical documentation and testimony in the  
20 record supporting any existing or future needs of the adult [~~child~~]  
21 directly related to the adult's intellectual [~~adult child's mental~~]  
22 or physical disability and the continuous, substantial care and  
23 continuous, personal supervision directly required by or related to  
24 that disability;

25 (2) whether the person who has physical custody,  
26 including a parent or guardian, directly pays for or will pay for  
27 the continuous, substantial care and continuous, personal [~~or~~]

1 supervision of the adult [~~child or provides or will provide~~  
2 ~~substantial care or personal supervision of the adult child~~];

3 (3) the financial resources available to both parents  
4 for the support, continuous, substantial care, and continuous,  
5 personal supervision of the adult [~~child~~]; and

6 (4) the adult's eligibility for any state or federal  
7 program providing services and [~~other~~] financial [~~resources or~~  
8 ~~other resources or programs available for the~~] support for adults  
9 with a medically determinable disability [~~, care, and supervision~~  
10 ~~of the adult child~~].

11 (b) An adult who is not eligible for a state or federal  
12 program providing services and financial support for adults with a  
13 medically determinable disability is not eligible to receive  
14 financial support under this section.

15 (c) In calculating the amount of financial support, a court  
16 shall offset the amount an adult receives from a state or federal  
17 program providing services and financial support for adults with a  
18 medically determinable disability. The court may not award more  
19 than the amount required to provide for the needs of the adult, as  
20 supported by competent evidence.

21 SECTION 15. Section 154.307, Family Code, is amended to  
22 read as follows:

23 Sec. 154.307. MODIFICATION AND ENFORCEMENT. An order  
24 provided by this subchapter may contain provisions governing the  
25 rights and duties of both parents with respect to the financial  
26 support of the adult [~~child~~] and may be modified or enforced in the  
27 same manner as any other order provided by this title.

1 SECTION 16. Section 154.308, Family Code, is amended to  
2 read as follows:

3 Sec. 154.308. REMEDY NOT EXCLUSIVE. (a) This subchapter  
4 does not affect ~~[a parent's]~~:

5 (1) a cause of action brought by any person, including  
6 a parent or guardian, for the support of an adult with a medically  
7 determinable disability ~~[a disabled child]~~ under any other law; or

8 (2) the ability of any person, including a parent or  
9 guardian, to contract for the support of an adult with a medically  
10 determinable disability ~~[a disabled child]~~.

11 (b) This subchapter does not affect the substantive or  
12 procedural rights or remedies of a person, other than a parent, a  
13 guardian, ~~[including]~~ a governmental agency, or a private entity,  
14 ~~[or agency,]~~ with respect to the support of an adult with a  
15 medically determinable disability ~~[a disabled child]~~ under any  
16 other law.

17 SECTION 17. Section 154.309, Family Code, is amended to  
18 read as follows:

19 Sec. 154.309. POSSESSION OF OR ACCESS TO ADULT WITH  
20 MEDICALLY DETERMINABLE DISABILITY ~~[DISABLED CHILD]~~. (a) A court  
21 may render an order for the possession of or access to an adult with  
22 a medically determinable disability ~~[disabled child]~~ that is  
23 appropriate under the circumstances.

24 (b) Possession of or access to an adult described by  
25 Subsection (a) ~~[disabled child]~~ is enforceable in the manner  
26 provided by Chapter 157. An adult ~~[disabled child]~~ may refuse  
27 possession or access if the adult does not have an intellectual

1 disability and [~~disabled child~~] is mentally competent.

2 (c) A court that obtains continuing, exclusive jurisdiction  
3 of a suit affecting the parent-child relationship involving a minor  
4 with a medically determinable disability [~~disabled person who is a~~  
5 ~~child~~] retains continuing, exclusive jurisdiction of subsequent  
6 proceedings involving the person[~~, including proceedings~~] after  
7 the person is an adult. Notwithstanding this subsection and any  
8 other law, a probate court may exercise jurisdiction in a  
9 guardianship proceeding under Subtitle D, Title 3, Estates Code,  
10 involving [~~for~~] the person after the person is an adult.

11 SECTION 18. (a) The changes in law made by this Act apply  
12 to a suit for the financial support of an adult with a medically  
13 determinable disability filed on or after the effective date of  
14 this Act. A suit filed before the effective date of this Act is  
15 governed by the law in effect on the date the suit was filed, and the  
16 former law is continued in effect for that purpose.

17 (b) The change in law made by this Act does not by itself  
18 constitute a material and substantial change of circumstances under  
19 Section 156.401, Family Code, sufficient to warrant modification of  
20 a court order or a portion of a decree that provides for the  
21 financial support of an adult with a medically determinable  
22 disability rendered before the effective date of this Act.

23 SECTION 19. This Act takes effect September 1, 2017.