

By: Dutton, Garcia

H.B. No. 3446

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

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

SECTION 3. The heading to Section 154.001, Family Code, is amended to read as follows:

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

SECTION 4. Sections 154.001(a) and (a-1), Family Code, are amended to read as follows:

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

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

(2) until the child is emancipated through marriage, through removal of the disabilities of minority by court order, or

1 by other operation of law;

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

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

6 (a-1) The court may order each person who is financially
7 able and whose parental rights have been terminated with respect to
8 a child in substitute care for whom the department has been
9 appointed managing conservator, a child for a reason described by
10 Section 161.001(b)(1)(T)(iv) or (b)(1)(U), or a child who was
11 conceived as a direct result of conduct that constitutes an offense
12 under Section 21.02, 22.011, 22.021, or 25.02, Penal Code, to
13 support the child in the manner specified by the order:

14 (1) until the earliest of:

15 (A) the child's adoption;

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

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

20 (D) the child's death; or

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

24 SECTION 5. Section 154.015(c), Family Code, is amended to
25 read as follows:

26 (c) For purposes of this section, the court of continuing
27 jurisdiction shall determine the amount of the unpaid child support

1 obligation for each child of the deceased obligor. In determining
2 the amount of the unpaid child support obligation, the court shall
3 consider all relevant factors, including:

4 (1) the present value of the total amount of monthly
5 periodic child support payments that would become due between the
6 month in which the obligor dies and the month in which the child
7 turns 18 years of age, based on the amount of the periodic monthly
8 child support payments under the child support order in effect on
9 the date of the obligor's death;

10 (2) the present value of the total amount of health
11 insurance and dental insurance premiums payable for the benefit of
12 the child from the month in which the obligor dies until the month
13 in which the child turns 18 years of age, based on the cost of health
14 insurance and dental insurance for the child ordered to be paid on
15 the date of the obligor's death;

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

20 (4) the nature and amount of any benefit to which the
21 child would be entitled as a result of the obligor's death,
22 including life insurance proceeds, annuity payments, trust
23 distributions, social security death benefits, and retirement
24 survivor benefits; and

25 (5) any other financial resource available for the
26 support of the child.

27 SECTION 6. Section 154.016(b), Family Code, is amended to

1 read as follows:

2 (b) In determining the nature and extent of the obligation
3 to provide for the support of the child in the event of the death of
4 the obligor, the court shall consider all relevant factors,
5 including:

6 (1) the present value of the total amount of monthly
7 periodic child support payments from the date the child support
8 order is rendered until the month in which the child turns 18 years
9 of age, based on the amount of the periodic monthly child support
10 payment under the child support order;

11 (2) the present value of the total amount of health
12 insurance and dental insurance premiums payable for the benefit of
13 the child from the date the child support order is rendered until
14 the month in which the child turns 18 years of age, based on the cost
15 of health insurance and dental insurance for the child ordered to be
16 paid; and

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

21 SECTION 7. The heading of Subchapter F, Chapter 154, Family
22 Code, is amended to read as follows:

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

25 SECTION 8. Section 154.301, Family Code, is amended to read
26 as follows:

27 Sec. 154.301. DEFINITIONS. In this subchapter:

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

3 (2) "Disability" means:

4 (A) the inability to engage in any substantial
5 gainful activity by reason of any medically determinable physical
6 or mental impairment that can be expected to result in death or that
7 has lasted or can be expected to last for a continuous period of not
8 less than 12 months; and

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

11 (i) is unable to do work previously
12 performed by the adult; and

13 (ii) considering the adult's age,
14 education, skills, and work experience, is unable to engage in any
15 other kind of substantial gainful work that exists in the national
16 economy.

17 (3) "Personal supervision" means guidance and
18 instruction by someone who is physically present and in such
19 proximity that visual contact can be maintained and immediate
20 assistance given when required.

21 (4) "Substantial" means ample or sustaining [~~"Child"~~
22 ~~means a son or daughter of any age~~].

23 SECTION 9. Section 154.302, Family Code, is amended to read
24 as follows:

25 Sec. 154.302. COURT-ORDERED FINANCIAL SUPPORT FOR ADULT
26 WITH MEDICALLY DETERMINABLE DISABILITY [~~DISABLED CHILD~~]. (a) The
27 court may:

1 (1) order either or both parents of an adult to provide
2 for the financial support of the adult until the adult reaches 21
3 years of age or [a child] for a [an indefinite] period of three
4 years if the adult is 21 years of age or older; and

5 (2) ~~may~~ determine the rights and duties of the
6 parents if the court identifies competent evidence in the record,
7 including medical evidence, and finds that:

8 (A) ~~(1)~~ the adult:

9 (i) ~~child,~~ whether institutionalized or
10 not, has a medically determinable disability and requires
11 substantial care and personal supervision; ~~[because of a mental or~~
12 ~~physical disability]~~ and

13 (ii) considering the adult's age,
14 education, skills, and work experience, cannot engage in any kind
15 of substantial gainful work ~~[will not be capable of self-support];~~
16 and

17 (B) ~~(2)~~ the medically determinable disability
18 exists~~[, or the cause of the disability is known to exist,]~~ on or
19 before the adult's 18th birthday ~~[of the child].~~

20 (a-1) A court must order a medical examination of the adult
21 under Rule 204, Texas Rules of Civil Procedure, before making a
22 finding of a medically determinable disability under Subsection
23 (a). The court shall order both parents to share the cost of the
24 medical examination equally.

25 (b) A court that orders financial support under this section
26 shall designate a parent of the adult ~~[child]~~ or another person
27 having physical custody or guardianship of the adult ~~[child]~~ under

1 a court order to receive the financial support for the adult
2 [~~child~~]. The court may designate an adult [~~a child who is 18 years~~
3 ~~of age or older~~] to receive the financial support directly. The
4 court shall order that the financial support payable to a recipient
5 under this subsection be paid directly to the recipient and may not
6 order the financial support be paid to the state disbursement unit.

7 (c) Notwithstanding Subsection (b), a court that orders
8 financial support under this section for an adult [~~child~~] with a
9 medically determinable disability may designate a special needs
10 trust and provide that the financial support may be paid directly to
11 the trust for the benefit of the adult [~~child~~]. The court shall
12 order that financial support payable to a special needs trust under
13 this subsection be paid directly to the trust and may not order the
14 financial support be paid to the state disbursement unit. [~~This~~
15 ~~subsection does not apply in a Title IV-D case.~~]

16 (d) An appeal of the final judgment is an accelerated appeal
17 and must be decided by a court of appeals not later than the 180th
18 day after the date a notice of appeal is filed.

19 (e) Notwithstanding Section 231.101 or any other law,
20 payment of financial support ordered under this section may not be
21 enforced by the Title IV-D agency.

22 SECTION 10. 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 [~~child~~] or another person
27 having physical custody or guardianship of the adult [~~child~~] under

1 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 parent, adult [~~the child, if the child is 18 years of~~
9 ~~age or older~~], or other person may not transfer or assign the cause
10 of action to any person, including a governmental or private entity
11 or agency[, ~~except for an assignment made to the Title IV-D agency~~
12 ~~under Section 231.104 or in the provision of child support~~
13 ~~enforcement services under Section 159.307~~].

14 SECTION 11. Section 154.305, Family Code, is amended to
15 read as follows:

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

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

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

21 (b) If no court has continuing, exclusive jurisdiction of
22 the adult [~~child~~], an action under this subchapter may be filed as
23 an original suit affecting the parent-child relationship.

24 (c) If there is a court of continuing, exclusive
25 jurisdiction, an action under this subchapter may be filed as a suit
26 for modification as provided by Chapter 156.

27 SECTION 12. Section 154.306, Family Code, is amended to

1 read as follows:

2 Sec. 154.306. AMOUNT OF FINANCIAL SUPPORT FOR ADULT WITH
3 MEDICALLY DETERMINABLE DISABILITY [~~AFTER AGE 18~~]. In determining
4 the amount of financial support to be paid after an adult's [~~a~~
5 ~~child's~~] 18th birthday, the specific terms and conditions of that
6 financial support, and the rights and duties of both parents with
7 respect to the financial support of the adult [~~child~~], the court
8 shall determine and give special consideration to:

9 (1) any existing or future needs of the adult [~~child~~]
10 directly related to the adult's intellectual [~~adult child's mental~~]
11 or physical disability and the substantial care and personal
12 supervision directly required by or related to that disability;

13 (2) whether the parent pays for or will pay for the
14 care or supervision of the adult [~~child~~] or provides or will provide
15 substantial care or personal supervision of the adult [~~child~~];

16 (3) the financial resources available to both parents
17 for the support, care, and supervision of the adult [~~child~~]; and

18 (4) any other financial resources or other resources
19 or programs available for the support, care, and supervision of the
20 adult [~~child~~].

21 SECTION 13. Section 154.307, Family Code, is amended to
22 read as follows:

23 Sec. 154.307. MODIFICATION, TERMINATION, AND ENFORCEMENT.

24 (a) An order provided by this subchapter may contain provisions
25 governing the rights and duties of both parents with respect to the
26 financial support of the adult [~~child~~] and, except as otherwise
27 provided by this subchapter, may be modified or enforced in the same

1 manner as any other order provided by this title.

2 (b) Either parent may file a motion for termination of an
3 order for support for an indefinite period rendered under this
4 subchapter as it existed before September 1, 2023, if the adult who
5 is the subject of the order has attained a postsecondary education,
6 acquired skills to be gainfully employed, has an employment history
7 of more than six months, is able to perform living functions on the
8 adult's own, does not receive continuous medical treatment for a
9 disability, or does not require substantial care and personal
10 supervision. The court shall make a determination on the motion by
11 a preponderance of the evidence.

12 SECTION 14. Section 154.308, Family Code, is amended to
13 read as follows:

14 Sec. 154.308. REMEDY NOT EXCLUSIVE. (a) This subchapter
15 does not affect a parent's:

16 (1) cause of action for the support of an adult with a
17 medically determinable disability [~~a disabled child~~] under any
18 other law; or

19 (2) ability to contract for the support of an adult
20 with a medically determinable disability [~~a disabled child~~].

21 (b) This subchapter does not affect the substantive or
22 procedural rights or remedies of a person other than a parent,
23 including a governmental or private entity or agency, with respect
24 to the support of an adult with a medically determinable disability
25 [~~a disabled child~~] under any other law.

26 SECTION 15. Section 154.309, Family Code, is amended to
27 read as follows:

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

6 (b) Possession of or access to an adult described by
7 Subsection (a) [~~disabled child~~] is enforceable in the manner
8 provided by Chapter 157. An adult [~~disabled child~~] may refuse
9 possession or access if the adult [~~disabled child~~] is mentally
10 competent.

11 (c) A court that obtains continuing, exclusive jurisdiction
12 of a suit affecting the parent-child relationship involving an
13 adult with a medically determinable disability [~~a disabled person~~
14 ~~who is a child~~] retains continuing, exclusive jurisdiction of
15 subsequent proceedings involving the person[, ~~including~~
16 ~~proceedings~~] after the person is an adult. Notwithstanding this
17 subsection and any other law, a probate court may exercise
18 jurisdiction in a guardianship proceeding for the person after the
19 person is an adult.

20 SECTION 16. (a) The changes in law made by this Act apply to
21 a suit for the financial support of an adult with a medically
22 determinable disability filed on or after the effective date of
23 this Act. A suit filed before the effective date of this Act is
24 governed by the law in effect on the date the suit was filed, and the
25 former law is continued in effect for that purpose.

26 (b) The change in law made by this Act does not by itself
27 constitute a material and substantial change of circumstances under

1 Section 156.401, Family Code, sufficient to warrant modification of
2 a court order or a portion of a decree that provides for the
3 financial support of an adult with a medically determinable
4 disability rendered before the effective date of this Act.

5 SECTION 17. This Act takes effect September 1, 2023.