

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

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

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

(c) Subject to Subsection (d), a man may 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, Chapter 160, or was adjudicated to be the father of the child in a previous proceeding under this title in which genetic

testing did not occur. The petition must be verified and must 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) A man may not file 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, Chapter 160; or

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

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

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

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

(g) 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 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, the court shall deny the petitioner's request for termination of the parent-child relationship.

(h) If the results of genetic testing ordered under Subsection (f) exclude the petitioner as the child's genetic father, the court shall render an order terminating the

parent-child relationship.

(i) 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. 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. Those obligations are enforceable until satisfied by any means available for the enforcement of child support other than contempt.

(j) 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, subject to Subsection (k).

(k) Notwithstanding Section 154.131, an order described by Subsection (j)(2) may not require 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) At any time before the court renders an order terminating the parent-child relationship under Subsection (h), the petitioner may 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. If requested, the court may 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) The court may 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) 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, the court may

require that the counseling be conducted by another person the court considers qualified for that purpose.

(o) 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, subject to any limitation specified by the court in its order.

SECTION 3. 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. 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.

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

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 785 passed the Senate on March 24, 2011, by the following vote: Yeas 31, Nays 0; and that the Senate adopted S.C.R. No. 48, recalling S.B. No. 785 from the Governor for a clerical correction on April 26, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 785 passed the House on April 14, 2011, by the following vote: Yeas 142, Nays 0, one present not voting; and that the House adopted S.C.R. No. 48, recalling S.B. No. 785 from the Governor on April 26, 2011, by the following vote: Yeas 147, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor