

CHAPTER 730

H.B. No. 724

AN ACT

relating to the establishment of the parent-child relationship, determination of paternity, the payment of child support in a suit in which establishment of the parent-child relationship or a determination of paternity is sought, and to the administration of a statewide plan for child support by the attorney general's office.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 2.01, Family Code, is amended to read as follows:

Sec. 2.01. STATE POLICY. In order to promote the public health and welfare and to provide the necessary records, this code prescribes detailed and specific rules to be followed in establishing the marriage relationship. However, in order to provide stability for those entering into the marriage relationship in good faith and to provide *for an orderly determination of parentage* [legitimacy] and security for the children of the relationship, it is the policy of this state to preserve and uphold each marriage against claims of invalidity unless strong reasons exist for holding it void or voidable. Therefore, every marriage entered into in this state is considered valid unless it is expressly made void by this chapter or unless it is expressly made voidable by this chapter and is annulled as provided by this chapter. When two or more marriages of a person to different spouses are alleged, the most recent marriage

is presumed to be valid as against each marriage that precedes it until one who asserts the validity of a prior marriage proves its validity.

SECTION 2. Section 11.14(j), Family Code, is amended to read as follows:

(j) In any suit seeking the establishment of the parent-child relationship, after a hearing the court shall grant a motion for a preferential setting for a final hearing on the merits filed by a party to the suit or by the attorney or guardian ad litem for the child and shall give precedence to that hearing over other civil cases if discovery has been completed or sufficient time has elapsed since the filing of the suit for the completion of all necessary and reasonable discovery if diligently pursued. *The provisions of this section regarding preferential setting apply to final hearing on the merits without regard to whether the suit is set for a trial before the court or before a jury.*

SECTION 3. Sections 12.06(a) and (c), Family Code, are amended to read as follows:

(a) In any suit affecting the parent-child relationship, *a man who is a presumed father under Section 12.02(a) of this code, the biological mother, or a governmental entity [other than a suit under Chapter 13 of this code, a husband or wife]* is entitled to deny *any presumed father's [the husband's]* paternity of the child *[who is the subject of the suit and who was born or conceived during the marriage of the parties]*. The question of paternity under this section must be raised by an express statement denying paternity of the child in a party's *[the spouse's]* pleadings in the suit, without regard to whether the *presumed father or biological mother [spouse]* is a petitioner or respondent.

(c) In any suit in which a question of paternity is raised under this section, the *party [husband or wife who is]* denying the *presumed father's [husband's]* paternity of the child has the burden of rebutting the presumption of paternity as provided in this code. An order for temporary child support, conservatorship, or other relief entered under Section 11.11 of this code is valid and enforceable unless superseded by a final decree finding nonpaternity of the *presumed father [husband]*.

SECTION 4. Section 13.01, Family Code, is amended by amending the section heading and Subsection (a) to read as follows:

Sec. 13.01. ~~[PARTIES: TIME]~~ LIMITATION OF ACTION [SUIT]. (a) ~~[A suit to establish the parent child relationship between a child who has no presumed father and the child's biological father may be brought by the mother, by a man claiming to be or possibly to be the father, or by any other person or governmental entity having standing to sue under Section 11.03 of this code.]~~ A suit to establish paternity may be brought before the birth of the child, but must be brought on or before the second anniversary of the day the child becomes an adult, or the suit is barred.

SECTION 5. Section 13.02(a), Family Code, is amended to read as follows:

(a) When the respondent appears in a paternity suit, the court shall order the mother, alleged father, and child to submit to the taking of blood, body fluid, or tissue samples for the purpose of scientifically accepted paternity testing. The court shall require in its order testing necessary to ascertain the possibility of the alleged father's paternity and shall require that the tests exclude at least 99 [95] percent of the male population from the possibility of being the father of the child, except that the court shall permit the omission of any further testing if *the* testing has been conducted sufficient to establish that the alleged father is not the father of the child, or if the costs of testing have reached an amount that the court determines to be the greatest amount that may reasonably be borne by one or more parties to the suit. If the appearance is before the birth of the child, the court shall order the taking of blood, body fluid, or tissue samples to be made as soon as medically practical after the birth.

SECTION 6. Section 13.04, Family Code, is amended by amending Subsection (f) and adding Subsection (g) to read as follows:

(f) At the pretrial conference the court may issue a temporary order under Section 11.11 of this code, including an order for the temporary support of the child, if the court finds that:

- (1) the respondent is not excluded as the biological father of the child; and
- (2) at least 99 [95] percent of the male population is excluded from being the biological father of the child.

(g) *Paternity test results offered at a pretrial conference are admissible as evidence if the tests were conducted under a court order or by agreement of the parties without regard to whether the tests were performed before or after the filing of a suit under this title.*

SECTION 7. Section 13.05, Family Code, is amended by amending the section heading and adding Subsection (c) to read as follows:

Sec. 13.05. PRETRIAL PROCEEDINGS: EFFECT OF PATERNITY [BLOOD] TESTS.

(c) *If the court finds that at least 99 percent of the male population is excluded from the possibility of being the child's father, the court shall, in making a finding under this section, shift the burden of proof to the party opposing the establishment of the alleged father's paternity.*

SECTION 8. Section 13.06, Family Code, is amended by amending Subsection (c) and adding Subsection (g) to read as follows:

(c) *If the paternity tests show the possibility of the alleged father's paternity, the court shall [may] admit this evidence if offered at the trial. Paternity test results offered at the trial shall be admissible as evidence if the tests were conducted under court order or by agreement of the parties, without regard to whether such tests were performed before or after the filing of a suit under this title. If the paternity tests show the possibility of the alleged father's paternity and that at least 99 [95] percent of the male population is excluded from the possibility of being the father, then evidence of these facts constitutes a prima facie showing of the alleged father's paternity, and the party opposing the establishment of the alleged father's paternity has the burden of proving that the alleged father is not the father of the child.*

(g) *The party seeking to establish the alleged father's paternity retains the right to open and close at trial without regard to whether the court has shifted the burden of proof to the opposing party.*

SECTION 9. Section 13.09, Family Code, is amended to read as follows:

Sec. 13.09. EFFECT OF DECREE ESTABLISHING PATERNITY. *The effect of a decree designating the alleged father as the father of the child is to create the parent-child relationship between the father and the child for all purposes [as if the child were born to the father and mother during marriage].*

SECTION 10. Section 13.22(b), Family Code, is amended to read as follows:

(b) The statement of paternity must clearly state that *the man signing the statement[;*

~~[(1) the father]~~ *acknowledges the child as his biological child[;*

~~[(2) he and the mother, who is named in the statement, were not married to each other at the time of conception of the child or at any subsequent time; and~~

~~[(3) the child is not the biological child of another man].~~

SECTION 11. Section 13.42(a), Family Code, is amended to read as follows:

(a) *In a suit in which a determination of paternity is sought, the court may provide for the managing and possessory conservatorship and support of and access to the child; except that no alleged father denying paternity may be required to make any payment for the support of the child until paternity is established or, in the case of temporary orders as authorized by Section 13.04 of this code, the court finds that the alleged father is not excluded as the biological father of the child and at least 99 percent of the male population is excluded from being the biological father of the child. On a finding of paternity, the court may order support retroactive to the time of the birth [filing] of the child [suit] and, on a proper showing, may order a party to pay an equitable portion of all prenatal and postnatal related health care expenses of the mother and child. In making an order for retroactive child support under this subsection, the court shall use the child support guidelines provided by Section 14.053 of this code together with any relevant factors.*

SECTION 12. Section 14.053, Family Code, is amended by adding Subsection (l) to read as follows:

(l) *Retroactive Support. The guidelines for the support of a child in this chapter are intended to guide the court in determining the amount of retroactive child support, if any, to*

be ordered under this chapter or Chapter 13 of this code. In ordering retroactive child support, the court shall consider the net resources of the obligor during the relevant time period. In making an order of retroactive support under this subsection, the court shall consider the following evidentiary factors:

- (1) whether the mother of the child had made any previous attempts to notify the biological father of his paternity or probable paternity;
- (2) whether the biological father had knowledge of his paternity or probable paternity;
- (3) whether the order of retroactive child support will impose an undue financial hardship on the obligor or his family; and
- (4) whether the obligor has provided actual support or other necessities before the filing of the action.

SECTION 13. Section 14.80, Family Code, is amended by amending Subdivision (4) and adding Subdivision (7) to read as follows:

(4) "Child support services" means administrative or court actions to:

- (A) establish paternity;
- (B) establish, modify, or enforce child support or medical support obligations;
- (C) [~~(B)~~] locate absent parents; or

(D) [(C)] cooperate with other states in these actions and any other action authorized or as required under Part D of Title IV of the federal Social Security Act (42 U.S.C. Section 651 et seq.) or Chapter 76, Human Resources Code.

(7) "Child support review officer" means an individual designated by a child support agency to conduct reviews under this subchapter who has received certified family law mediation training.

SECTION 14. Subchapter D, Chapter 14, Family Code, is amended by adding Sections 14.801–14.809 to read as follows:

Sec. 14.801. ADMINISTRATIVE PROCEDURE AND TEXAS REGISTER ACT NOT APPLICABLE. The child support review process under this subchapter is not governed by the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes).

Sec. 14.802. CHILD SUPPORT REVIEW PROCESS: GENERAL PROVISIONS. (a) The purpose of the child support review process authorized under this subchapter is to provide child support agencies an opportunity to resolve child support actions through negotiations and by the agreement of the parties. To the extent permitted by this subchapter, child support agencies shall make the child support review process understandable to all parties and shall encourage agreements through mediation.

(b) An administrative action under this subchapter may be initiated by the issuance of a notice of child support review under Section 14.803 of this code by a child support agency.

(c) In a child support review under this subchapter, a child support agency may issue an administrative subpoena to a parent, a person presumed or alleged to be the father of a child for whom support is sought, or any individual or organization believed to have information on the financial resources of the parent or presumed or alleged father.

(d) To determine the appropriate amount of child support, in applying the child support guidelines in this code, a child support agency shall use any information obtained by the child support agency through a notice of child support review or any other source. If the child support agency determines that the support amount in an existing child support order is not in substantial compliance with the guidelines, the child support agency shall issue an appropriate child support review order, including a review order that, notwithstanding Section 14.08 of this code, has the effect of modifying an existing order for child support without the necessity of filing a motion to modify.

(e) A notice required in an administrative action under this subchapter must be delivered or served by first class mail or certified mail on each party entitled to citation or notice under Section 11.09 of this code.

(f) If notice is served by mail in an administrative action under this subchapter, three days must be added to both the time in which the person is required to respond and the time by which the person is entitled to notification of a hearing.

(g) A notice or other form used to implement the child support review process must be printed in both Spanish and English. If a party participating in a negotiation conference under Section 14.804 of this code does not speak English or is hearing impaired, the child support agency shall provide for interpreter services at no charge to the parties.

Sec. 14.803. NOTICE OF CHILD SUPPORT REVIEW; ASSESSMENT OF FINANCIAL RESOURCES. (a) A child support agency may review and assess the financial resources of the child's parents or of a person presumed or alleged to be the child's father from whom child support is sought to determine the resources that are available for the support of the child and to determine what action is appropriate. The child support agency shall notify the parents of a child and the presumed or alleged father of a child of a child support review by delivering to the person a notice of child support review.

(b) The notice of child support review must:

- (1) describe the procedure for a child support review;
- (2) inform the recipient that the recipient is not required to participate in the child support review and may be represented by legal counsel during the review process or at a court hearing;
- (3) inform the recipient that the recipient may cease participation in the child support review during any stage of the review but that the review will continue to completion and that afterward the recipient may request a court hearing;
- (4) include an affidavit of financial resources; and
- (5) include a request that the recipient designate, on a form provided by the child support agency, an address for mailing any additional notice to the recipient.

(c) In addition to the information required by Subsection (b) of this section, the notice of child support review must inform the recipient that:

- (1) the information requested on the form must be returned to the child support agency not later than the 15th day after the date the notice is received or delivered; and
- (2) if the requested information is not returned as required, the child support agency:
 - (A) may proceed with the review using the information that is available to the agency; and
 - (B) may file a legal action without further notice to the recipient, except as otherwise required by law.

Sec. 14.804. NEGOTIATION CONFERENCE. (a) A person who receives a notice of child support review and who completes an affidavit of financial resources may request, at the time the affidavit of financial resources is returned, a negotiation conference in an effort to reach an agreement. The child support agency may schedule a negotiation conference without regard to whether a conference is requested by any party.

(b) A negotiation conference under this section shall be held not later than the 45th day after the date all notices of child support review have been sent to the parties to the action.

(c) All parties entitled to notice of the negotiation conference shall be notified of the date, time, and place of the negotiation conference not later than the 10th day before the date of the negotiation conference.

(d) A negotiation conference may be rescheduled on the request of any party and all parties must be given timely notice of the rescheduling. All parties shall be sent notice not later than the third day before the date of the rescheduled negotiation conference.

(e) At the beginning of the negotiation conference, the child support review officer shall inform all parties in attendance that:

- (1) the purpose of the negotiation conference is to attempt to reach an agreement regarding child support payments;
- (2) a party does not have to participate in the negotiation conference and may request a court hearing;

(3) a party may be represented by an attorney chosen by the party;

(4) the parties may stop participating in the negotiation conference at any time but that the child support review will continue until completed, and, if a child support review order is issued, a party may request a court hearing;

(5) if the parties reach an agreement, the review officer will prepare an agreed review order for the parties' signatures;

(6) a party does not have to sign a review order prepared by the child support review officer; and

(7) even though a party signs an agreed review order, the party may request a court hearing at any time before the child support review order is confirmed by a court.

(f) For the purposes of this subchapter, a written affidavit, the written findings, and the child support review order from a negotiation conference are a sufficient record of the proceedings. A child support agency is not required to make any other record or transcript of the negotiation conference.

(g) If a negotiation conference results in an agreement by all parties, a child support review order must be signed by all parties to the action and must contain:

(1) a waiver by each party of the right to service and of the right to a court hearing and the making of a record;

(2) the mailing address of each party; and

(3) the following statement printed on the order in boldfaced type or in all capital letters:

"I KNOW THAT I DO NOT HAVE TO SIGN THIS AGREED CHILD SUPPORT REVIEW ORDER. I KNOW THAT I HAVE A RIGHT TO HAVE A COURT HEAR EVIDENCE AND MAKE A DECISION IN THIS MATTER BUT IF I SIGN THIS ORDER, I LOSE THAT RIGHT. I KNOW THAT I HAVE A RIGHT TO CHANGE MY MIND AND WITHDRAW MY AGREEMENT TO THE TERMS OF THIS ORDER AND REQUEST THAT A COURT DECIDE THIS MATTER BY FILING A REQUEST FOR COURT HEARING AT ANY TIME BEFORE THE 20TH DAY AFTER THE DATE THE PETITION FOR CONFIRMATION OF THE ORDER IS FILED WITH THE CLERK OF THE COURT. I KNOW THAT IF I FAIL TO FILE A REQUEST FOR A COURT HEARING A COURT MAY CONFIRM AND APPROVE THIS ORDER AND THE ORDER WILL BECOME A VALID COURT ORDER. I KNOW THAT IF I DO NOT OBEY THE TERMS OF THIS ORDER I MAY BE HELD IN CONTEMPT OF COURT."

(h) If the negotiation conference does not result in an agreed child support review order, the review officer shall issue and sign a final decision in the form of a child support review order not later than the fifth day after the date of the negotiation conference unless the review officer provides specific reasons why a child support review order cannot be issued.

(i) On the day that a child support review order is issued or if a determination is made that a child support order will not be issued, each party to a child support review proceeding shall be furnished by hand delivery or by mail a copy of the order or the notice of a determination that an order will not be issued.

(j) A finding by the review officer that a child support review order is not appropriate does not affect the right of the child support agency or any other party to proceed in any matter provided by law.

(k) The review officer may vacate a child support review order on the officer's own motion at any time before the order is filed with the court. A new negotiation conference, with notice to all parties, shall be scheduled to take place not later than the 10th day after the date the child support review order was vacated.

Sec. 14.805. CONTENTS OF CHILD SUPPORT REVIEW ORDER. A child support review order under this subchapter must contain all provisions that are appropriate for an order under this title. A child support review order may contain other provisions for the establishment, modification, or enforcement of a child support or medical support order and for the establishment of paternity. A child support review order providing for the enforce-

ment of an order may not contain a provision that imposes incarceration or a fine or contains a finding of contempt.

Sec. 14.806. PETITION FOR CONFIRMATION OF CHILD SUPPORT REVIEW ORDER; DUTIES OF CLERK OF COURT. (a) *The child support agency shall file a petition of confirmation with the clerk of the court having continuing jurisdiction of the child who is the subject of the order. If there is not a court that has continuing jurisdiction, the child support agency shall file the petition for confirmation with the clerk of a court having jurisdiction under this title.*

(b) *A petition for confirmation must include the final child support review order and a form for a party to request a court hearing as attachments to the petition. Each affidavit of financial resources for a party to the order that was completed by the party and any other documentary evidence relied on by the child support agency, including a verified written report of a paternity testing expert concerning the results of paternity testing conducted in the case or a statement of paternity, shall be filed with the clerk as exhibits to the petition. The petition must identify the exhibits that are filed with the clerk.*

(c) *On the filing of a petition under this section, the clerk of court shall endorse on the petition the date and time that the petition is filed and sign the endorsement. If the petition is for an original action, the clerk shall endorse the appropriate court and cause number on the petition. If the petition is to confirm an agreed child support review order under this subchapter, the clerk shall mail to each party, at the address shown on the order, a copy of the petition and written notice of the filing of the petition that states the court and cause number of the case. The clerk shall note on the docket that the notice was mailed. If the petition is to confirm an order other than an agreed order, the clerk shall issue service of citation, including a copy of the petition and the child support review order, to each party entitled to service.*

(d) *A clerk of a district court is entitled to collect a fee for:*

(1) *the filing of a petition under this section as provided by Section 51.317(b)(1), Government Code;*

(2) *the issuance of notice or process as provided by Section 51.317(b)(4), Government Code; and*

(3) *service of notice or citation as provided by Section 51.319(4), Government Code, or as otherwise provided by law.*

(e) *In addition to attaching a copy of a form to request a court hearing to a party's copy of the petition for confirmation of a child support review order, the child support agency shall make available to the clerk of court and to a party to the child support review proceeding on the party's request a form to request a court hearing. The clerk shall furnish the form to a party to a proceeding under this section on the request of the party. A court shall consider any responsive pleading filed under this section that is intended as an objection to confirmation of a child support review order, including a general denial, as a request for a court hearing.*

Sec. 14.807. CONFIRMATION OF CHILD SUPPORT REVIEW ORDER. (a) *The court shall refer a proceeding that results from a child support review to a master appointed under this subchapter. If a master is not appointed, the judge of the court shall preside over the proceedings.*

(b) *Not later than the 30th day after the date a petition for confirmation of an agreed child support review order is filed, the court shall confirm the terms and provisions of the order by signing a confirmation order unless a request for a court hearing is timely filed or the court sets a hearing as provided by Subsection (d) of this section.*

(c) *Not later than the 30th day after the date of service on the last party to be served with citation of a petition for confirmation for a child support review order other than an agreed child support review order, the court shall confirm the terms and provisions of the order by signing a confirmation order unless a request for a court hearing is timely filed or the court sets a hearing as provided by Subsection (d) of this section.*

(d) *If the court finds that confirmation of a child support review order without a hearing would not be in the best interests of a child who is the subject of the order, the court may stay*

confirmation of the order and schedule a hearing. The order setting the hearing on the confirmation of the order must state the court's specific reasons for conducting the hearing.

(e) A party may file a request for a court hearing not later than the 20th day after the date the petition for confirmation of an agreed administrative order is filed or not later than the Monday following the 20th day after the date the party received service of citation in a case involving the confirmation of any other type of order.

(f) On the timely filing of a request for a court hearing, all issues in the child support review order shall be heard in a de novo hearing before the court. The petition for confirmation and the child support review order constitute a sufficient pleading for relief on any issue addressed in the petition and order.

(g) A court shall hold a hearing on the confirmation of a child support review order not later than the 30th day after the date the court determines that a hearing should be held or a party files a request for a court hearing.

(h) After the hearing on the confirmation of a child support review order, the court shall:

(1) if the court finds that the order should be confirmed, immediately sign a confirmation order and enter the order as an order of the court;

(2) if the court finds that the relief granted in the child support review order is inappropriate, sign an appropriate order at the conclusion of the hearing or as soon after the conclusion of the hearing as is practical and enter the order as an order of the court; or

(3) if the court finds that all relief should be denied, enter an order that denies relief and includes specific findings explaining the reasons that relief is denied.

(i) On the signing of a confirmation order by the judge of the court, the child support review order becomes a final judgment of the court.

Sec. 14.808. SPECIAL CHILD SUPPORT REVIEW PROCEDURES RELATING TO ESTABLISHMENT OF PATERNITY. (a) If the paternity of a child has not been established by court order, the notice of child support review served on the parties must include an allegation that the alleged father is the biological father of the child. The notice shall inform the parties that the alleged father of the child may sign a statement of paternity and that any party may request that scientifically accepted paternity testing be conducted to assist in determining whether the alleged father is the child's father.

(b) A negotiation conference shall be conducted to resolve any issues of support in an action in which all parties agree that the alleged father is the child's biological father.

(c) If a party denies that the alleged father is the child's biological father or, in the case of a presumed father, if either party files a verified denial of paternity, the child support agency may schedule paternity testing.

(d) If paternity testing does not exclude the alleged father from being the child's father and a party continues to deny that the alleged father is the child's biological father, the child support agency may schedule a negotiation conference as provided by this subchapter. If the results of a verified written report of a paternity testing expert meet the requirements of Section 13.04 of this code for issuing a temporary order, the child support agency may issue a child support review order.

(e) If the results of paternity testing exclude the alleged or presumed father from being the biological father of the child, the child support agency shall issue a child support review order that declares that the alleged or presumed father is not the father of the child. Any party may file a petition for confirmation of a child support review order issued under this subsection.

Sec. 14.809. EXPIRATION. Sections 14.801–14.809 of this code expire September 1, 1997.

SECTION 15. Section 11.08(c) and Sections 14.871–14.876, Family Code, are repealed.

SECTION 16. (a) Sections 1–12 of this Act take effect September 1, 1993, and Sections 13 and 14 of this Act take effect January 1, 1994.

(b) Sections 1–12 of this Act apply to a pending paternity proceeding without regard to whether the proceeding was commenced before, on, or after the effective date of those sections.

(c) The change in law made by Section 11 of this Act authorizing the court to order the payment of child support retroactive to the child's birth applies to the payment of child support in a pending paternity proceeding without regard to whether the child was born before, on, or after the effective date of that section.

(d) Sections 13 and 14 of this Act apply to a suit commenced, notice of child support review filed, or administrative proceeding initiated on or after the effective date of those sections. A suit commenced, notice of child support review filed, or administrative proceeding initiated before the effective date of Sections 13 and 14 of this Act is governed by the law in effect on that date, and the former law is continued in effect for that purpose.

SECTION 17. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 7, 1993, by a non-record vote; the House refused to concur in Senate amendments to H.B. No. 724 on May 22, 1993, and requested the appointment of a conference committee to consider the differences between the two houses; the House adopted the conference committee report on H.B. No. 724 on May 28, 1993, by a non-record vote; passed by the Senate, with amendments, on May 13, 1993, by a viva-voce vote; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; the Senate adopted the conference committee report on H.B. No. 724 on May 28, 1993, by a viva-voce vote.

Approved June 16, 1993.

Effective Aug. 30, 1993, 90 days after date of adjournment, except §§ 1 to 12 effective Sept. 1, 1993, and §§ 13 and 14 effective Jan. 1, 1994.