

CHAPTER 689

S.B. No. 1123

AN ACT

relating to suits to establish paternity and voluntary legitimation, court-ordered support, and to termination of the rights of an alleged or probable father.

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

SECTION 1. Section 11.01, Family Code, as amended, is amended to read as follows:

Sec. 11.01. DEFINITIONS. As used in this subtitle and Subtitle C of this title, unless the context requires a different definition:

(1) "Child" or "minor" means a person under 18 years of age who is not and has not been married or who has not had his disabilities of minority removed for general purposes. "Adult" means any other person.

(2) "Court" means the district court, court of domestic relations, juvenile court having the jurisdiction of a district court, or other court expressly given jurisdiction of a suit under this subtitle.

(3) "Parent" means the mother, a man as to whom the child is legitimate *or a man who has been adjudicated to be the biological father by a court of competent jurisdiction*, or an adoptive mother or father, but does not include a parent as to whom the parent-child relationship has been terminated.

(4) "Parent-child relationship" means the rights, privileges, duties, and powers existing between a parent and child as provided by Section 12.04 of this code.

(5) "Suit affecting the parent-child relationship" means a suit brought under this subtitle in which the appointment of a managing conservator or a possessory conservator, access to or support of a child, or establishment or termination of the parent-child relationship is sought.

(6) "Managing conservatorship" means the relationship between a child and a managing conservator appointed by court order or designated in an affidavit of relinquishment under this subtitle.

(7) "Authorized agency" means a public social agency authorized to care for children or to place children for adoption, or a private association, corporation, or person approved for that purpose by the Texas Department of Human Services through a license, certification, or other means.

(8) "Illegitimate child" means a child:

(i) who is not and has never been the legitimate child of a man;

(ii) *who is the biological child of a man whose paternity has not been adjudicated by a court of competent jurisdiction;* and

(iii) whose parent-child relationship with its *biological* [natural] mother and biological father has not been terminated by a court decree.

(9) "Governmental entity" means the state, a political subdivision of the state, or an agency of the state.

(10) "Obligor" means any person required to make payments under the terms of a support order for a child.

(11) "Obligee" means any person or entity entitled to receive payments under an order of child support and shall include an agency of this state or of another jurisdiction to which a person has assigned his or her right to support.

SECTION 2. Subsection (b), Section 11.08, Family Code, as amended, is amended to read as follows:

(b) The petition must include:

(1) a statement that the court in which the petition is filed has continuing jurisdiction or that no court has continuing jurisdiction of the suit;

(2) the name, sex, place and date of birth, and place of residence of the child, except that if adoption of a child is sought, the name of the child may be omitted;

(3) the full name, age, and place of residence of the petitioner and his relationship to the child or the fact that no relationship exists;

(4) the names, ages, and place of residence of the parents, except in a suit in which adoption is sought;

(5) the name and place of residence of the managing conservator, if any, or the child's custodian, if any, appointed by an order of the court before January 1, 1974, or by order of a court of another state or nation;

(6) the names and places of residence of the guardians of the person and estate of the child, if any;

(7) the names and places of residence of possessory conservators or other persons, if any, having access to the child under an order of the court;

(8) ~~[in a suit in which termination of the parent-child relationship between an illegitimate child and its mother is sought,]~~ the name and place of residence of the alleged father or probable father of the child or a statement that the identity of the father of the child is unknown;

(9) a full description and statement of value of all property owned or possessed by the child;

(10) a statement describing what action the court is requested to make concerning the child and the statutory grounds on which the request is made; and

(11) any other information required by other provisions of this subtitle.

SECTION 3. Subsection (a), Section 11.09, Family Code, as amended, is amended to read as follows:

(a) Except as provided in Subsection (b) of this section, the following persons are entitled to service of citation on the filing of a petition in a suit affecting the parent-child relationship:

(1) the managing conservator, if any;

(2) possessory conservators, if any;

- (3) persons, if any, having access to the child under an order of the court;
- (4) persons, if any, required by law or by order of a court to provide for the support of a child;
- (5) the guardian of the person of the child, if any;
- (6) the guardian of the estate of the child, if any;
- (7) each parent as to whom the parent-child relationship has not been terminated or process has not been waived under Section 15.03(c)(2) of this code; *and*
- (8) [~~in a suit in which termination of the parent-child relationship between an illegitimate child and its mother is sought,~~] the alleged father or probable father, unless there is attached to the petition an affidavit of waiver of interest in a child executed by the alleged father or probable father as provided in Section 15.041 of this code, or unless the petition states that the identity of the father is unknown~~]; and~~
- ~~[(9) in a suit to determine the paternity of a child, the alleged father, unless the alleged father is a petitioner].~~

SECTION 4. Subsections (a) and (b), Section 12.02, Family Code, are amended to read as follows:

(a) A child is the legitimate child of his *biological* father if the child is born or conceived before [~~or during~~] the marriage of his *biological* father and mother. *A child is rebuttably presumed to be the legitimate child of a man if the child is born during the marriage of or within the period of gestation following the dissolution of the marriage of the man and the mother of the child.*

(b) A child is the legitimate child of his *biological* father if at any time his mother and *biological* father have attempted to marry in apparent compliance with the laws of this state or another state or nation, although the attempted marriage is or might be declared void, and the child is born or conceived before or during the attempted marriage.

SECTION 5. Subsections (a) and (c), Section 12.06, Family Code, are amended to read as follows:

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

(c) In any suit in which a question of paternity is raised under this section, the *husband or wife* [~~man~~] who is denying *the husband's* [~~his~~] paternity of the child has the burden of *rebutting the presumption of legitimacy*. *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 husband* [~~establishing that the man is not the father of the child~~].

SECTION 6. Section 13.01, Family Code, as amended, is amended to read as follows:

Sec. 13.01. *PARTIES: TIME LIMITATION OF SUIT.* A suit to establish the parent-child relationship between a child who is not the legitimate child of a man and the child's *biological* [~~natural~~] father by proof of paternity *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 7. Section 13.02, Family Code, as amended, is amended by adding Subsection (c) to read as follows:

(c) *If the respondent fails to appear and wholly defaults or if the allegation of paternity is admitted, the blood test shall be waived.*

SECTION 8. Section 13.21, Family Code, as amended, is amended to read as follows:

Sec. 13.21. VOLUNTARY LEGITIMATION. (a) If a statement of paternity has been executed by a man claiming to be the father of an illegitimate child, *he* ~~[the father]~~ or the mother of the child or the Texas Department of Human Services may file a petition for a decree *adjudicating him* ~~[designating the father]~~ as a parent of the child. The statement of paternity must be attached to the petition.

(b) The court shall enter a decree *adjudicating* ~~[designating]~~ the child *to be* ~~[as]~~ the legitimate child of its father and the father *to be* ~~[as]~~ a parent of the child if the court finds that:

~~(1) the parent-child relationship between the child and its original mother has not been terminated by a decree of a court;~~

~~(2) the statement of paternity was executed as provided in this chapter, and the facts stated therein are true; and~~

~~(3) the mother or the managing conservator, if any, has consented to the decree.~~

(c) *If the paternity of the child is uncertain or is disputed by any party in a suit filed under this subchapter, the provisions of Sections 13.02 through 13.07 of this code shall apply.* ~~[The requirement of consent of the mother is satisfied if she is the petitioner. If the entry of the decree is in the best interest of the child, the court may consent to the legitimation of the child in lieu of the consent of the mother or managing conservator.]~~

(d) A suit for voluntary legitimation may be joined with a suit for termination under Chapter 15 of this code.

(e) A suit under this section may be instituted at any time.

SECTION 9. Section 13.42, Family Code, as amended, is amended to read as follows:

Sec. 13.42. CONSERVATORSHIP, SUPPORT, FEES, AND PAYMENTS. (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. *On a finding of paternity, the court may order support retroactive to the time of the filing of the 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.*

(b) In addition to the payment authorized by Section 14.05 of this code, the court may award reasonable attorney's fees incurred in the suit.

(c) A payment ordered under Subsection (b) of this section is enforceable as provided in *Subchapter B of Chapter 14* ~~[Section 14.09]~~ of this code.

*(d) All of the provisions of Section 11.11 of this code are applicable to an alleged or probable father petitioning to have his paternity of a child adjudicated or who admits paternity in pleadings filed with the court.*

SECTION 10. Chapter 13, Family Code, is amended by adding Section 13.44 to read as follows:

Sec. 13.44. SUIT BARRED. (a) *Except as provided by Subsection (b) of this section, a suit under this chapter with respect to a child is barred if final judgment has been rendered by a court of competent jurisdiction:*

(1) *adjudicating a named individual to be the biological father of the child; or*

(2) *terminating the parent-child relationship between the child and each living parent of the child; or*

(3) *granting a petition for the adoption of the child.*

*(b) During the pendency of an appeal or direct attack on a judgment described in Subsection (a) of this section, a suit under this chapter may be filed but shall, upon motion of any party, be stayed pending the final disposition of the appeal or direct attack on the judgment.*

SECTION 11. The caption of Chapter 15, Family Code, is amended to read as follows:

CHAPTER 15. TERMINATION OF THE PARENT-CHILD RELATIONSHIP AND OF THE RIGHTS OF AN ALLEGED OR PROBABLE FATHER

SECTION 12. Section 15.021, Family Code, is amended to read as follows:

Sec. 15.021. FILING OF PETITION TO TERMINATE BEFORE BIRTH. (a) A petition in a suit affecting the parent-child relationship which requests the termination of the parent-child relationship with respect to either or both parents *or which requests involuntary termination of the rights of an alleged or probable father of an illegitimate child* may be filed before the birth of the child [~~and after the first trimester of the mother's pregnancy~~].

(b) If the petition is filed before the birth of the child, no hearing on the termination may be held nor may orders other than temporary orders be issued until the child is at least five days old.

(c) If the petition is filed before the birth of the child, the term "unborn child" shall be substituted for the name of the child in all records and documents required by this title that are filed before the birth of the child. After the birth of the child, the name of the child shall be entered in the record and used in subsequent proceedings other than an adoption.

SECTION 13. Chapter 15, Family Code, is amended by adding Section 15.023 to read as follows:

*Sec. 15.023. INVOLUNTARY TERMINATION OF THE RIGHTS OF AN ALLEGED OR PROBABLE FATHER. The procedural and substantive standards for termination of parental rights under Title 2 of this code shall apply to the termination of the rights of an alleged or probable father with respect to an illegitimate child. In addition, the rights of an alleged or probable father with respect to an illegitimate child may also be terminated if, after being served with citation in a suit affecting the parent-child relationship, the alleged or probable father does not respond by timely filing an admission of paternity or by filing a counterclaim for paternity or for voluntary legitimation to be adjudicated under Chapter 13 of this code prior to the final hearing in the suit.*

SECTION 14. 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, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on May 15, 1987, by a viva-voce vote; and that the Senate concurred in House amendment on May 28, 1987, by the following vote: Yeas 30, Nays 0.

Passed the House, with amendment, on May 27, 1987, by the following vote: Yeas 147, Nays 0, one present not voting.

Approved June 18, 1987.

Effective June 18, 1987.