

SUBJECT: Limiting attacks on adoption orders and terminations of parental rights

COMMITTEE: Juvenile Justice and Family Issues — favorable, with amendment

VOTE: 5 ayes — Goodman, J. Jones, McClendon, McReynolds, A. Reyna
0 nays
4 absent — Staples, Naishtat, Smith, Williams

SENATE VOTE: On final passage, March 26 — voice vote

WITNESSES: (*On House companion, HB 999*)
For — Marcia Hookie; Jane Quantan Piper

Against — David Shelton, Texas Fathers Alliance

On — Howard Baldwin, Department of Protective and Regulatory Services

DIGEST: SB 52, as amended, would reduce from two years to six months the time period during which the validity of an adoption order would be subject to attack.

The bill also would establish a six-month window after which the validity of an order terminating the parental rights of a person would not be subject to attack. This would apply to persons who had been personally served or executed an affidavit of relinquishment of parental rights or an affidavit of waiver of interest in a child and persons who were served by citation by publication.

An attack on an order terminating parental rights based on an unrevoked affidavit of relinquishment of parental rights or affidavit of waiver of interest in a child would be limited to issues relating to fraud, duress or coercion in the execution of the affidavit.

SB 52 would take effect September 1, 1997.

**SUPPORTERS
SAY:**

SB 52 would significantly reduce the time in which an adoption could be contested. Giving a biological parent two full years to come forward after the adoption is final is far too long. It can have tragic results for many adopted children who may be taken away from the only family they have ever known because a biological parent decided, often years later, that they want their child back. Shortening the time during which an adoption order could be attacked would provide children and adoptive parents with the stability and security they need and deserve.

The bill would also put a restraint on the length of time a person could contest the validity of an order terminating parental rights. Under Texas law, the parental rights of the biological parents must be terminated before a child is eligible to be adopted by another family. Children can remain in limbo for years before being eligible for adoption. Experts agree that extended delays before adoption can be extremely detrimental to a child's healthy emotional development.

Currently, Texas is not adoption-friendly. Too many Texans are going abroad to find eligible children to adopt when there are thousands of children in this state who are languishing in foster care. SB 52 would remove barriers that prevent Texas couples from adopting Texas children. If signed into law, Texas would become the fifth state to have a six-month statute of limitations for challenging adoptions.

In all cases where conservatorship is an issue, the state must act in the best interests of the child. Issues of family privacy and parental rights must take second place to the child's need for safety and security. In addition, the Legislature has already provided for the parental rights of those biological fathers who affirmatively assume responsibility for children they may have fathered by approving HB 1091 by Goodman, et al., which would create a paternity registry.

**OPPONENTS
SAY:**

SB 52 would make a drastic — and perhaps tragic — move in reducing the time during which adoption orders could be attacked from two years to only six months. This would not be enough time for many biological parents acting in good faith to come forward. For example, the bill could unfairly and prematurely cut off the rights of a biological father who did not know he had a child or whose child had been taken away by the mother.

The bill would have excessively harsh results for parents who are served citation by publication, which in reality provides no notice at all, in a suit for termination of parental rights. Six months is not a sufficient time period to protect the rights of those parents.

The paternity registry, if created, would not resolve these problems for fathers because it would be hard for many to provide the information required by the registry or meet the deadline for registering.

NOTES:

The committee amendment added references to a related rule of civil procedure.

A related bill, HB 1091 by Goodman, et al., which would create a paternity registry and amend Family Code sections addressing affidavits of relinquishment of parental rights and affidavits of waiver of interest in a child, has passed both houses and awaits action by the governor. SB 34, by Zaffirini, et al., which would limit to six months the time during which an adoption order could be subject to attack, was placed on the House General State Calendar for May 22.