BILL ANALYSIS

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law does not provide sufficient guidelines for the termination of the parent-child relationship and child support obligations in circumstances involving mistaken paternity.

C.S.S.B. 519 authorizes a judge to issue an order terminating the parent-child relationship if a man was misled to believe he was the parent and genetic testing disproves paternity. The bill prohibits a man from being able to petition the court under this section if he is the child's adoptive father, the child was conceived by assisted reproduction, or he entered into a gestational agreement.

The bill requires that a pretrial hearing be held to determine whether the petitioner has established a meritorious prima facie case for termination. If a meritorious prima facie claim is established, the court is required to order genetic testing for the petitioner and child, on the basis of which the court is required to deny or grant the petitioner's request.

C.S.S.B. 519 provides that an order to terminate the relationship ends the petitioner's obligation for future child support but does not affect the petitioner's obligation for past support.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 154.006(a), Family Code, as follows:

> (a) Provides that unless otherwise agreed in writing or expressly provided in the order or as provided by Subsection (b), the child support order terminates on, among other events, 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. Makes a nonsubstantive change.

SECTION 2. Amends Section 161.005, Family Code, by amending Subsection (a) and adding Subsections (c), (d), (e), (e-1), (f), (g), (h), (i), (j), and (k), as follows:

> (a) Authorizes a parent to file a suit for termination of the petitioner's parent-child relationship. Authorizes the court, except as provided by Subsection (h), to order termination if termination is in the best interest of the child.

> (c) Authorizes a man, subject to Subsection (d), to 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 acknowledgement of paternity of the child in accordance with Subchapter D (Voluntary Acknowledgement of Paternity), 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. Requires that the petition be verified and allege facts showing that the petitioner is not the child's genetic father; and signed the acknowledgement of paternity or failed to contest parentage in the previous proceeding because of the mistaken belief, at the time the acknowledgement 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) Prohibits a man from filing a petition under Subsection (c) if the man is the child's adoptive father, the child was conceived by assisted reproduction and the man consented to assisted reproduction by his wife under Subchapter H (Child of Assisted Reproduction), Chapter 160, or the man is the intended father of the child under a gestational agreement validated by a court under Subchapter I (Gestational Agreements), Chapter 160.

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

(e-1) Provides that Subsection (e) applies beginning September 1, 2010. Authorizes a petition, before that date, to be filed under Subsection (c) regardless of the date on which the petitioner became aware of the acts alleged in the petition indicating that the petitioner is not the child's genetic father. Provides that this subsection expires September 1, 2011.

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

(g) Requires the court, 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 (Genetic Testing Results; Rebuttal) 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, to deny the petitioner's request for termination of the parent-child relationship.

(h) Requires the court, if the results of genetic testing ordered under Subsection (f) exclude the petitioner as the child's genetic father, to render an order terminating the parent-child relationship.

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

(j) Provides that an order under Subsection (h) terminating the parent-child relationship does not preclude:

> (1) the initiation of a proceeding under Chapter 160 (Uniform Parentage Act) 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 (Child Support), subject to Subsection (k).

(k) Prohibits an order described by Subsection (j)(2), notwithstanding Section 154.131 (Retroactive Child Support), from requiring 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.

SECTION 3. Provides that 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. Effective date: upon passage or September 1, 2009.