SUBJECT: Adoption of the Uniform Parentage Act; providing penalties

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 6 ayes — Goodman, A. Reyna, P. King, Morrison, Naishtat, Nixon

0 nays

3 absent — E. Reyna, Menendez, Tillery

WITNESSES: For — Heidi Bruegel Cox, The Gladney Center; Harry Tindall, Texas Commission on Uniform State Laws

Against — Marjorie Jones, The Coalition for the Restoration of Parental Rights; Denise Valencia

On — Howard Baldwin, Office of the Attorney General; John J. Sampson; G.K. Sprinkle, Daily Court Review, Daily Commercial Record; Tom Stansbury

BACKGROUND: Family Code, Chapter 151 establishes guidelines relating to the parent-child relationship, including the mother-child relationship, the father-child relationship, and artificial insemination. Chapter 160 establishes guidelines for the determination of parentage, including acknowledgment and denial of paternity, parentage testing, and paternity registration.

Texas adopted the Uniform Parentage Act (UPA-1973) in part in 1989. The updated Uniform Parentage Act (UPA-2000) is the result of three years of study and drafting by the National Conference of Commissioners on Uniform State Laws. It updates all aspects of the UPA-1973, most significantly with regard to genetic testing to identify paternity.

DIGEST: CSHB 920 would update Family Code, ch. 160 to replace all language of the UPA-1973 with that of the UPA-2000 in order to conform statutory language with current case law and national standards. It would establish that if a provision of this chapter conflicted with another provision of this title or

another state statute and the conflict could not be resolved, this chapter would prevail. This chapter would govern every parentage case in this state.

The bill would define related terms and would reorder, reword, or expand provisions already in current statute, including:

- the establishment of the parent-child relationship;
- no discrimination based on marital status;
- presumption, acknowledgment, and denial of paternity;
- procedures for rescission of or challenges to paternity;
- paternity registration for notification of proceedings relating to the child;
- furnishing of paternity registration information;
- fees for paternity registration;
- proceedings to determine paternity;
- a child as party to a suit;
- a final order regarding parentage;
- retroactive child support; and
- a child of assisted reproduction.

Genetic testing. CSHB 920 would add a subchapter related to genetic testing, which would establish guidelines for probability paternity testing as opposed to the current exclusion paternity testing. It would establish requirements for testing, including approved laboratories and comparative databases, reporting of results, rebuttal of results by a second genetic test, costs, testing of necessary relatives or of a deceased person, and penalties for an unauthorized release of a specimen.

A court could deny a motion to order genetic testing if the court determined that the conduct of either parent would bar that party from denying parentage and that it would be inequitable to disprove the father-child relationship. The court would have to consider the best interest of the child, including the length of time between the date of the proceeding and the date the presumed father was told he might not be the father, the length of time the presumed father had acted as a father to the child, the age of the child, and any harm that could come to the child if the father-child relationship were disproved. If the motion to order genetic testing were denied, the presumed father would be considered adjudicated to be the father.

Paternity only could be disproved by admissible results of a genetic test that excluded the man as the father or identified another man as the father. Unless the results of genetic testing were admitted to rebut the results of another genetic test, the man identified by the results would be considered adjudicated as the father. Likewise, unless a man excluded from paternity by the results of genetic testing were to rebut the results with further genetic testing, he would be considered adjudicated as not being the father. In the event that the results did not identify the father, the court could not dismiss the case, and the results and other evidence would be admissible to adjudicate paternity.

Rebuttal of results by a second genetic test. A man rebuttably would be identified as the father of a child if the genetic testing disclosed that the man had:

- at least a 99 percent probability of paternity, as calculated using the combined paternity index; and
- a combined paternity index of at least 100 to 1.

A man identified as the father could rebut the testing results only by producing a second test that excluded the man as a genetic father of the child, or by identifying another man as the possible father. If more than one man were identified by genetic testing as the possible father, the court would have to order each man to submit to further genetic testing.

Testing of necessary relatives or a deceased person. If a genetic testing specimen were not available from the potential father, a court could order other relatives of the man to submit specimens for genetic testing, including:

- the parents of the man;
- any brothers or sisters of the man; and
- any other children of the man and their mothers.

For good cause, a court could order genetic testing of a deceased individual. The court also could order testing of an identical twin brother who potentially could be the father in order to adjudicate which brother were the actual father.

Proceedings. CSHB 920 would authorize a proceeding to determine parentage of a child that had no presumed, acknowledged, or adjudicated father to commence at any time. In the case of a presumed father, the proceeding would be required to commence within four years of the birth of the child, unless the presumed father and the mother did not live together or engage in sexual intercourse with each other during the probable time of conception or the presumed father never openly acted as a father to the child.

The court could issue an order dismissing the proceeding for want of prosecution only without prejudice.

Paternity registry. A form from the bureau of vital statistics for paternity registration would have to include a statement that information on registries in other states was available from the bureau. If a petitioner for adoption of a child or the termination of parental rights believed that the conception or birth of the child occurred in another state, the petitioner would be required to obtain a certificate of the results of any search of the paternity registry in the other state.

CSHB 920 would make an unauthorized release of information from the paternity registry a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) instead of a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000).

Assisted reproduction. The husband of a wife who gave birth by means of assisted reproduction could challenge his paternity if:

- he commenced a proceeding within four years of his learning of the birth of the child;
- the court found that he did not consent to assisted reproduction before or after the birth of the child;
- the husband did not provide sperm for the assisted reproduction;
- the husband and mother of the child had not lived together since the probable time of assisted reproduction; or
- the husband never openly treated the child as his own.

These provisions only would apply to a marriage that was declared invalid after assisted reproduction.

If a marriage were dissolved before the assisted reproduction, the former spouse would not be considered to be the parent of the child unless the parent consented. The consent of a former spouse to assisted reproduction could be withdrawn at any time before the assisted reproduction took place.

If a spouse died before the assisted reproduction took place, the deceased spouse would not be considered to be the parent of the resulting child unless the deceased spouse had consented on record.

Deletions. CSHB 920 would strike the words biological and adoptive in relation to parents in several places. It would replace "parentage testing" with "genetic testing." It also would strike:

- sec. 151.001, which laid out guidelines for the establishment of the relationship between a child to a mother and father;
- sec. 151.002, which established guidelines for the presumption of paternity; and
- sec. 151.101-103, which established guidelines for artificial insemination.

Effective date. The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

NOTES:

The substitute made several changes to the original, including:

- increasing from two years to four years the time period in which a challenge to paternity is allowed;
- expanding what is considered an offense for the intentional release of a genetic specimen; and
- changing the effective date to immediate effect.