

BILL ANALYSIS

Senate Research Center

C.S.H.B. 782
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Jurisprudence
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law operates under the presumption that a father is the parent of a child instead of utilizing DNA testing.

C.S.H.B. 782 amends provisions in the Family Code regarding paternity. The bill changes provisions governing the rights of a putative father to exclude paternity through genetic testing and legal remedies. The bill also requires that petitions for paternity include notice to the alleged father that failure to submit to genetic testing would bar the alleged father from bringing an action to vacate an order of parentage or child support. Furthermore, the bill states that if the parties agree to the child's parentage, the agreement is final. Finally, the bill defines the reasons a court would be or would not be able to vacate an order.

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 102.008, Family Code, by amending Subsection (b) and adding Subsection (c), as follows:

- (b) Requires a petition affecting the parent-child relationship to include certain information, including a notice to an alleged or presumed father of the child, if any, of the right to request paternity testing.
- (c) Requires the aforementioned notice to include a certain statement in printed boldfaced type, in capital letters, or underlined.

SECTION 2. Amends Chapter 105, Family Code, by adding Section 105.0035, as follows:

- Sec. 105.0035. PATERNITY TESTING. (a) Prohibits a court, except as provided by this section, from rendering an order in a suit unless the court makes certain findings set forth in this section.
- (b) Authorizes a court, if a man fails to file an affidavit required by Subsection (a), or fails to submit to genetic testing ordered by the court, to render an order declaring the man to be the biological father of the child.
 - (c) Prohibits a man who files an affidavit pursuant to Subsection (a), or fails to submit to genetic testing ordered by the court, from challenging the adjudication of paternity in any subsequent proceeding under Subchapter J, Chapter 160.
 - (d) Requires payment of the cost of genetic testing under this section to be governed by Chapter 160.
 - (e) Provides that nothing in this section affects the power of a court to order temporary child support to be paid by a presumed father pending the outcome of a determination of whether the presumed father is the parent of the child.

SECTION 3. Amends Chapter 160, Family Code, by adding Subchapter J, as follows:

SUBCHAPTER J. PROCEEDINGS TO VACATE COURT ORDER

Sec. 160.801. SUIT TO VACATE COURT ORDER. (a) Authorizes a person identified in a court order as the father of a child to file a petition not later than the child's 18th birthday requesting the court to vacate a court order that states that the person identified in the order as the father of the child is the father of the child identified in the motion; or requires the person identified in the order as the father of the child to pay child support for the child.

(b) Requires the petition to vacate a court order to be accompanied by a certain affidavit and a certified copy of the court order to be vacated.

(c) Prohibits the court from granting a petition to vacate a court order under this section if the person identified in the court order as the father of the child is determined to be the father's child by a certain method.

Sec. 160.802. GENETIC TESTING. (a) Requires the court, in a proceeding under this subchapter, if the court finds that the affidavit filed with the petition under Section 160.801 establishes a prima facie case that the court order was obtained by fraud or material mistake of fact, to order the child and the person identified in the court order as the father of the child to submit to genetic testing not later than the 30th day after the date the order requiring genetic testing is rendered.

(b) Provides that a person establishes a prima facie case that a court order was obtained by fraud or material mistake of fact if the person's affidavit states that the person was the presumed father of the child or was induced by representations made by the child's mother to believe that the person was the child's father; at the time the court order was rendered, did not know that he was not the father of the child; and took a genetic test after the date the court order sought to be vacated was rendered that establishes that the person is not rebuttably identified as the father of the child in accordance with Section 160.505.

(c) Provides that genetic testing under this section is governed by Subchapter F.

(d) Require the court, if the affidavit filed with the petition does not establish a prima facie case, on a motion by the respondent, to dismiss the petition.

Sec. 160.803. FAILURE TO SUBMIT TO GENETIC TEST. (a) Authorizes the court, if the person who has been awarded the exclusive right to designate the child's primary residence fails to allow the child to be genetically tested under Section 160.802, to suspend the legal obligation of the person identified in the court order as the father of the child to pay child support until the child is genetically tested.

(b) Requires the court, if the person identified in the court order as the father of the child fails to submit to a genetic test ordered under Section 160.802, to dismiss the person's petition to vacate with prejudice.

Sec. 160.804. GROUNDS FOR VACATING ORDER. (a) Requires the court to vacate an order described by Section 160.801(a) if the court makes certain findings set forth in this subsection.

(b) Prohibits the court from vacating an order under this section if the court finds that at any time the person identified in the court order as the father of the child knew that he was not the child's biological parent and consented to his name being entered as the child's biological father on the child's birth certificate; was determined to be the child's father in a proceeding to determine parentage; or filed an acknowledgment of paternity with the bureau of vital statistics.

Sec. 160.805. POSSESSION ORDER; CHILD SUPPORT ARREARAGE. (a) Requires the court, if the court vacates a parentage or child support order in a proceeding under this subchapter and the person identified in the court order as the father of the child is also entitled under an order to the possession of or access to the child who is the subject of the vacated order, to determine whether the possession order should be terminated, modified, or continued based on the best interest of the child.

(b) Requires the person identified in the court order as the father of the child, if the court modifies or continues the possession order under Subsection (a), to have the rights and duties provided by Section 153.074 (Rights and Duties During Period of Possession) during the period he has possession of the child.

(c) Authorizes the court, if the court vacates a child support order under this subchapter and an arrearage exists under that child support order, to reduce the amount of the arrearage to zero. Requires the court, if the court eliminates an arrearage under this subsection, to issue an order stating that the child support obligation, including any arrearage, is terminated.

(d) Provides that the elimination of an arrearage under a child support order that is vacated as provided by this subchapter is for purposes of correcting an act induced by fraud, duress, or material mistake of fact and is not a retroactive modification.

(e) Authorizes the court, if the court vacates a parentage order in a proceeding under this subchapter, to order the child or any party to participate in counseling with a certain licensed mental health professional.

(f) Authorizes the court, if a person possessing the qualifications of Subsection (e)(1) is not available in the county in which the court presides, to appoint a person the court believes is qualified to conduct the counseling under Subsection (e).

Sec. 160.806. ATTORNEY'S FEES AND COURT COSTS. Authorizes the court, if the court vacates a parentage order or a child support order in a proceeding under this subchapter, to award reasonable attorney's fees to the petitioner. Requires the court, if the court does not grant the petition to vacate a parentage order or a child support order under this subchapter, to order the petitioner to pay the costs of the action and each opposing party's reasonable attorney's fees.

SECTION 4. Amends Section 233.028, Family Code, by adding Subsection (a-1) and amending Subsection (b), as follows:

(a-1) Requires a notice described in Subsection (a) and sent to a man alleged to be the father of a child to include a certain statement in a certain manner.

(b) Authorizes the Title IV-D agency, if all parties agree to the child's parentage, to file an agreed child support review order as provided by this chapter. Requires the order to include a statement signed by the parties entitled to genetic testing in the case that the parties have waived their rights to request genetic testing.

SECTION 5. (a) Provides that Section 233.028, Family Code, as amended by this Act, applies only to an administrative proceeding under Chapter 233, Family Code, for the determination of parentage commenced on or after the effective date of this Act.

(b) Requires Title IV-D agency, if before implementing any provision of this Act the agency determines that a waiver or authorization from a federal agency is necessary for implementation of the change in law made by this Act, to request the waiver or authorization and to delay implementing that provision until the waiver or authorization is granted.

(c) Makes application of Section 105.0035, Family Code, as added by this Act, and Section 102.008, Family Code, as amended by this Act, prospective, except as provided by Subsection (d) of this section.

(d) Prohibits the court, in a proceeding under Subchapter J, Chapter 160, Family Code, as added by this Act, to vacate an order rendered in a suit affecting the parent-child relationship filed before the effective date of this Act, from vacating the order on the ground that the alleged or presumed father did not receive notice required by Section 102.008(b)(11), Family Code, as added by this Act.

SECTION 4. Effective date: September 1, 2007.