

BILL ANALYSIS

C.S.H.B. 503

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Juvenile Justice & Family Issues
Committee Report (Substituted)

BACKGROUND AND PURPOSE

With better and proven methods available, genetic testing has provided Texas fathers another tool in determining paternity. These methods, in some instances, have resulted in a Texas parent being scientifically excluded as the father of a child and yet the parent has been ordered to pay child support for the child by the court. However, there are no current legal alternatives available to the father to stay the child support or to even have the court respond to his scientific exclusion as the father of the child. Often the mother of the child knows that the child is not the child of either the acknowledged, adjudicated or presumed father who is subsequently scientifically excluded. Even in cases where the mother may not know or have some uncertainty about the fatherhood of the child, there is still no process whereby the father can elect to invalidate a prior court order designating him as father of the child and requiring him to pay child support. In these instances, the refusal to vacate a child support order in the face of scientific evidence, like DNA, of non-paternity places the state in the position of legalizing fraud, at best, and at worst, being a participant in a crime.

C.S.H.B.503 establishes a proceeding to vacate an order of paternity and child support where the scientific evidence determines non-paternity.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

SECTION BY SECTION ANALYSIS

- SECTION 1.** Amends Subchapter A, Chapter 154, Family Code, by adding Section 154.015 to provide that a court may not render an order requiring the payment of child support, unless the court finds that the parties have completed a genetic test to determine parentage, and based on the genetic test, the man named as the father in the suit affecting the parent-child relationship is rebuttably identified as the father of the child. If the parties have not completed a genetic test, the court shall order the parties to genetic testing no later than the 30th day after the date the order is rendered. This section also provides that if an alleged father fails to submit to a genetic test, the court may adjudicate him as the father. The parties shall also bear the cost of the genetic test equally, unless it is a Title IV-D case.
- SECTION 2.** Amends Section 160.308(a), Family Code, to provide that a proceeding to challenge the acknowledgment of paternity may commence before the child's 18th birthday.
- SECTION 3.** Amends Section 160.607, Family Code by providing that a proceeding to adjudicate the parentage of a child having a presumed father may be commenced before the child's 18th birthday.

SECTION 4.

Amends Chapter 160, of the Family Code by adding Subchapter I. Proceedings to Vacate Court Order. Section 160.751 which provides that a person may file a motion requesting the court to vacate a court order that states that person is the father of a child identified in the motion or that requires the father to pay child support for the child. Section 160.751 also provides that the motion may be filed at any time and must be accompanied by a certified copy of the court order to be vacated.

Section 160.752 provides for genetic testing not later than the 30th day after the order is rendered, for the child, child's mother, and the person filing the motion to submit to genetic testing.

Section 160.753 provides that if the mother fails to submit to a genetic test ordered, the court may suspend the legal obligation of the person identified in the court order as the father of the child to pay child support until the mother submits to the genetic test. Additionally, if the father fails to submit to a genetic test ordered, the court may dismiss the order to vacate with prejudice.

Section 160.754 provides grounds for vacating the order. The court shall vacate an order if the person is not the child's adoptive parent; did not consent to assisted reproduction by his wife under Subchapter H; and based on genetic testing, is not rebuttably identified as the father of the child in accordance with Section 160.505.

Subsection (b), however, provides that a court may not grant a motion under this section if the court finds that the person knew that he was not the child's biological parent, and the person acknowledged paternity of the child in writing; 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 biological father in a proceeding to determine parentage; filed an acknowledgment of paternity with the bureau of vital statistics; or otherwise admitted that he is, or acknowledges himself as, the child's biological father.

Section 160.755 provides that if a court vacates a parentage or support order in a proceeding under this subchapter and the moving party is also entitled to possession and access to the child who is the subject of the vacated order, the court shall determine whether the possession order is in the best interests of the child. Additionally, if an arrearage exist under a vacated child support order, the court may retroactively reduce the amount to zero. The elimination of an arrearage under a support order that is vacated, is for purposes of correcting a mistake and is not a retroactive modification.

Section 160.756 provides that if the court does not grant the motion to vacate a court order for child support, the court shall order the moving party to pay court costs and opposing party's reasonable attorney's fees.

Section 160.757 provides that this subchapter expires September 1, 2005.

SECTION 5.

This section contains a waiver clause that provides that if before implementing any provision (Section 160.755(b)) of this Act, the Title IV-D agency determines that a waiver or authorization from a federal agency is necessary for implementation of the change in law made by this Act, the agency shall request the waiver or authorization and may delay implementing that provision (Section 160.755(b)) until the waiver or authorization is granted.

SECTION 6.

Prospective provisions.

SECTION 7. This Act takes effect September 1, 2003.

EFFECTIVE DATE

September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B.503 modifies the original H.B.503 by changing the caption to “relating to determinations of paternity in a suit affecting the parent-child relationship.” C.S.H.B.503 also changes Section 154.015 to require paternity testing to be administered before ordering child support. The parties shall also bear the cost of the genetic test equally, unless it is a Title IV-D case. This section also provides a provision that provides that if the father refuses to comply with an order for genetic testing, the court may adjudicate him as the father. Adds and amends Section 160.308 to provide that a proceeding to challenge the acknowledgment of paternity may commence before the child’s 18th birthday, and adds and amends Section 160.607 to provide that a proceeding to adjudicate the parentage of a child having a presumed father may commence before the child’s 18th birthday. This section also provides that if the mother refuses a genetic testing order, any child support order may be suspended pending compliance of the order. Additionally, if the father refuses to comply with an order for genetic testing, a judge may dismiss the order to vacate with prejudice.

C.S.H.B.503 amends Section 160.751(a) to provide that a person identified in a court order as the father of the child or the mother of the child may file a motion requesting the court to vacate the 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 that requires the person identified in the order as the father of the child to pay child support for the child.

The substitute adds Section 160.753 to provide for the failure of submitting to a genetic test and places the heading, “Grounds for Vacating Order” under Section 160.754. The substitute deletes Section 160.753(b)(1), in the original H.B.503, and changes the numbering of Section 160.753 (b)(2) in the original H.B.503 from “(A-E)” to “(1-5)” under Section 160.754 in the substitute. C.S.H.B.503 amends Section 160.754 by adding (c) to provide that the elimination of an arrearage under a support order that is vacated as provided by this subchapter is for purposes of correcting a mistake and it is not a retroactive modification.

In the substitute, Section 160.755 is changed to Section 160.756 and Section 160.757 is added to provide that this subchapter expires September 1, 2005.

C.S.H.B.503 adds a waiver clause that provides that if before implementing any provision of this Act, the Title IV-D agency determines that a waiver or authorization from a federal agency is necessary for implementation of the change in law made by this Act, the agency shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted. Lastly, the substitute adds SECTION 6, which provides prospective provisions.