

## **BILL ANALYSIS**

C.S.H.B. 437

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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.437 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.

### **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. Other than a governmental entity, the parties shall also bear the cost of the genetic test equally.
- SECTION 2.** Amends Section 160.308(a), Family Code, to provide that a proceeding to challenge the signatory of an acknowledgment of paternity must 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 must be commenced before the child's 18th birthday.
- SECTION 4.** Amends Chapter 160, of the Family Code by adding Subchapter J. Section 160.801 which provides that a person may file a motion requesting the court to vacate a court order that states that the person identified in the order as the father of a child is the father of the child identified in the

motion or that requires the father to pay child support for the child. Section 160.801 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 160.802 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 160.803 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 160.804 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) 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 he 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 or filed an acknowledgment of paternity with the bureau of vital statistics.

Section 160.805 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 160.806 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 160.807 provides that this subchapter expires September 1, 2007.

**SECTION 5.** This section contains a waiver clause that provides that if before implementing any provision (Section 160.805(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 160.805(b)) until the waiver or authorization is granted.

**SECTION 6.** Prospective provisions.

**SECTION 7.** This Act takes effect September 1, 2005.

**EFFECTIVE DATE**

September 1, 2005

## **COMPARISON OF ORIGINAL TO SUBSTITUTE**

C.S.H.B.437 modifies the original H.B.437 by deleting Section 160.804(b)(1) and (b)(5), which 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; or otherwise admitted that he is, or acknowledges himself as, the child's biological father. C.S.H.B.437 additionally modifies H.B.437 by requiring that all parties, except a governmental entity, bear the cost of the genetic test equally.