

By: Dutton

H.B. No. 437

A BILL TO BE ENTITLED

AN ACT

1
2 relating to determinations of paternity in a suit affecting the
3 parent-child relationship.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subchapter A, Chapter 154, Family Code, is
6 amended by adding Section 154.015 to read as follows:

7 Sec. 154.015. PATERNITY TEST REQUIRED. (a) Except as
8 provided by Subsection (b), a court may not render an order
9 requiring the payment of child support unless the court finds that:

10 (1) the parties have completed a genetic test to
11 determine parentage that complies with the requirements of
12 Subchapter F, Chapter 160; and

13 (2) based on the genetic test, the man named as the
14 father in the suit affecting the parent-child relationship is
15 rebuttably identified as the father of the child in accordance with
16 Section 160.505(a).

17 (b) If the parties to a suit affecting the parent-child
18 relationship in which child support is requested have not completed
19 a genetic test that complies with the requirements of Subchapter F,
20 Chapter 160, the court shall order the child, the child's mother,
21 and the alleged father to submit to genetic testing not later than
22 the 30th day after the date the order requiring genetic testing is
23 rendered. If an alleged father fails to submit to a genetic test
24 ordered under this section, the court may render an order

1 adjudicating the alleged father to be the father of the child and
2 requiring the alleged father to pay child support.

3 (c) Except in a Title IV-D case, the parties shall bear the
4 cost of the genetic test ordered under this section equally.

5 SECTION 2. Section 160.308(a), Family Code, is amended to
6 read as follows:

7 (a) After the period for rescission under Section 160.307
8 has expired, a signatory of an acknowledgment of paternity or
9 denial of paternity may commence a proceeding to challenge the
10 acknowledgment or denial only on the basis of fraud, duress, or
11 material mistake of fact. The proceeding must be commenced before
12 the child's 18th birthday [~~fourth anniversary of the date the~~
13 ~~acknowledgment or denial is filed with the bureau of vital~~
14 ~~statistics~~].

15 SECTION 3. Section 160.607, Family Code, is amended to read
16 as follows:

17 Sec. 160.607. TIME LIMITATION: CHILD HAVING PRESUMED
18 FATHER. A [~~(a) Except as otherwise provided by Subsection (b), a~~]
19 proceeding brought by a presumed father, the mother, or another
20 individual to adjudicate the parentage of a child having a presumed
21 father must [~~shall~~] be commenced before the child's 18th birthday
22 [~~not later than the fourth anniversary of the date of the birth of~~
23 ~~the child~~].

24 [~~(b) A proceeding seeking to disprove the father-child~~
25 ~~relationship between a child and the child's presumed father may be~~
26 ~~maintained at any time if the court determines that:~~

27 [~~(1) the presumed father and the mother of the child~~

1 ~~did not live together or engage in sexual intercourse with each~~
2 ~~other during the probable time of conception; and~~

3 ~~[(2) the presumed father never represented to others~~
4 ~~that the child was his own.]~~

5 SECTION 4. Chapter 160, Family Code, is amended by adding
6 Subchapter J to read as follows:

7 SUBCHAPTER J. PROCEEDINGS TO VACATE COURT ORDER

8 Sec. 160.801. MOTION TO VACATE COURT ORDER. (a) A person
9 identified in a court order as the father of the child or the mother
10 of the child may file a motion requesting the court to vacate the
11 court order that states that the person identified in the order as
12 the father of the child is the father of the child identified in the
13 motion or that requires the person identified in the order as the
14 father of the child to pay child support for the child. The motion
15 may be filed at any time.

16 (b) The motion to vacate a court order must be accompanied
17 by a certified copy of the court order to be vacated.

18 Sec. 160.802. GENETIC TESTING. (a) In a proceeding under
19 this subchapter, the court, on application by or on behalf of either
20 party, or on its own motion, shall order the child, the child's
21 mother, and the person identified in the court order as the father
22 of the child to submit to genetic testing not later than the 30th
23 day after the date the order requiring genetic testing is rendered.

24 (b) Genetic testing under this section is subject to the
25 same procedures as genetic testing ordered under Subchapter F.

26 Sec. 160.803. FAILURE TO SUBMIT TO GENETIC TEST. (a) If a
27 mother fails to submit to a genetic test ordered under Section

1 160.802, the court may suspend the legal obligation of the person
2 identified in the court order as the father of the child to pay
3 child support until the mother submits to the genetic test.

4 (b) If the person identified in the court order as the
5 father of the child fails to submit to a genetic test ordered under
6 Section 160.802, the court may dismiss the person's motion to
7 vacate with prejudice.

8 Sec. 160.804. GROUNDS FOR VACATING ORDER. (a) Except as
9 otherwise provided by this section, the court shall vacate an order
10 described by Section 160.801 if the court finds that the person
11 identified in the court order as the father of the child:

12 (1) is not the child's adoptive parent;

13 (2) did not consent to assisted reproduction by his
14 wife under Subchapter H; and

15 (3) based on genetic testing, is not rebuttably
16 identified as the father of the child in accordance with Section
17 160.505.

18 (b) The court may not grant a motion under this section if
19 the court finds that at any time the person who filed the motion
20 knew that the person identified in the court order as the father of
21 the child was not the child's biological parent, and the person
22 identified in the court order as the father of the child:

23 (1) acknowledged paternity of the child in writing;

24 (2) consented to his name being entered as the child's
25 biological father on the child's birth certificate;

26 (3) was determined to be the child's father in a
27 proceeding to determine parentage;

1 (4) filed an acknowledgment of paternity with the
2 bureau of vital statistics; or

3 (5) otherwise admitted that he is, or acknowledges
4 himself as, the child's biological father.

5 Sec. 160.805. POSSESSION ORDER; CHILD SUPPORT ARREARAGE.

6 (a) If the court vacates a parentage or support order in a
7 proceeding under this subchapter and the moving party is also
8 entitled under an order to the possession of or access to the child
9 who is the subject of the vacated order, the court shall determine
10 whether the possession order should be terminated, modified, or
11 continued based on the best interest of the child.

12 (b) If the court vacates a child support order under this
13 subchapter and an arrearage exists under that child support order,
14 the court may reduce the amount of the arrearage to zero. If the
15 court eliminates an arrearage under this subsection, the court
16 shall issue an order stating that the child support obligation,
17 including any arrearage, is terminated.

18 (c) The elimination of an arrearage under a support order
19 that is vacated as provided by this subchapter is for purposes of
20 correcting a mistake and is not a retroactive modification.

21 Sec. 160.806. COURT COSTS. If the court does not grant the
22 motion to vacate a court order under this subchapter, the court
23 shall order the moving party to pay the costs of the action and each
24 opposing party's reasonable attorney's fees.

25 Sec. 160.807. EXPIRATION. This subchapter expires
26 September 1, 2007.

27 SECTION 5. If before implementing any provision of this Act

1 the Title IV-D agency determines that a waiver or authorization
2 from a federal agency is necessary for implementation of the change
3 in law made by this Act, the agency shall request the waiver or
4 authorization and may delay implementing that provision until the
5 waiver or authorization is granted.

6 SECTION 6. Section 154.015, Family Code, as added by this
7 Act, and the change in law made by this Act to Sections 160.308 and
8 160.607, Family Code, apply only to a suit affecting the
9 parent-child relationship filed on or after the effective date of
10 this Act. A suit affecting the parent-child relationship filed
11 before the effective date of this Act is governed by the law in
12 effect on the date the suit was filed, and the former law is
13 continued in effect for that purpose.

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