

Amend SB 228 on Third Reading by adding new appropriately numbered SECTIONS to read as follows:

SECTION _____. Section 102.008, Family Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The petition must include:

(1) a statement that the court in which the petition is filed has continuing, exclusive jurisdiction or that no court has continuing jurisdiction of the suit;

(2) the name and date of birth of the child, except that if adoption of a child is requested, the name of the child may be omitted;

(3) the full name of the petitioner and the petitioner's relationship to the child or the fact that no relationship exists;

(4) the names of the parents, except in a suit in which adoption is requested;

(5) the name of the managing conservator, if any, or the child's custodian, if any, appointed by order of a court of another state or country;

(6) the names of the guardians of the person and estate of the child, if any;

(7) the names of possessory conservators or other persons, if any, having possession of or access to the child under an order of the court;

(8) the name of an alleged father of the child or a statement that the identity of the father of the child is unknown;

(9) a full description and statement of value of all property owned or possessed by the child;

(10) a statement describing what action the court is requested to take concerning the child and the statutory grounds on which the request is made; ~~and~~

(11) notice to an alleged or presumed father of the child, if any, of the right to request paternity testing; and

(12) any other information required by this title.

(c) The notice described by Subsection (b)(11) must include the following statement printed in boldfaced type, in capital

letters, or underlined:

"YOU HAVE THE RIGHT TO REQUEST GENETIC TESTING TO DETERMINE THE PARENTAGE OF THE CHILD NAMED IN THIS SUIT. YOUR REQUEST FOR GENETIC TESTING MUST BE IN WRITING AND FILED WITH THE CLERK OF THE COURT IN WHICH THIS SUIT IS FILED. ANY ALLEGED OR PRESUMED FATHER WHO DOES NOT REQUEST GENETIC TESTING SHALL BE BARRED FROM BRINGING AN ACTION TO VACATE A CHILD SUPPORT ORDER OR A PARENTAGE ORDER."

SECTION _____. Chapter 105, Family Code, is amended by adding a new Section 105.0035 to read as follows:

Sec. 105.0035. PATERNITY TESTING. (a) Except as provided in this section, a court may not render an order in a suit unless the court finds that:

(1) based on court-ordered genetic testing which complies with Section 160.503, the man alleged to be the father of the child made the subject of the suit is rebuttably identified as the father of the child in accordance with Section 160.505(a);

(2) the party ordered to pay child support is an adoptive parent of the child;

(3) if the man is married to the mother of the child, the man:

(A) filed an affidavit acknowledging that he has received the notice required by Section 102.008 (b) (11) and does not dispute the presumption provided by Section 160.204;

(B) is duly served with notice of the suit, including the notice required by Section 102.008 (b) (11), and fails to answer and wholly makes default; or

(C) is ordered by the court to submit to genetic testing under Chapter 160 and fails to comply with the court's order; or

(4) if the man is not married to the mother of the child, the man:

(A) filed an affidavit acknowledging that he has received the notice required by Section 102.008(b)(11) and acknowledges that he is the biological father of the child as required by Section 160.302;

(B) is duly served with notice of the suit, including the notice required by 102.008(b)(11), and fails to

answer and wholly makes default; or

(C) is ordered by the court to submit to genetic testing under Chapter 160 and fails to comply with the court's order.

(b) If a man fails to file an affidavit required by Subsection (a)(3)(A) or (a)(4)(A), or fails to submit to genetic testing ordered by the court, the court may render an order declaring the man to be the biological father of the child.

(c) A man who files an affidavit pursuant to Subsection (a)(3)(A) or (a)(4)(A), or fails to submit to genetic testing ordered by the court, may not challenge the adjudication of paternity in any subsequent proceeding under Subchapter J, Chapter 160.

(d) Payment of the cost of genetic testing under this section shall be governed by Chapter 160.

(e) 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 _____. Chapter 160, Family Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. PROCEEDINGS TO VACATE COURT ORDER

Sec. 160.801. SUIT TO VACATE COURT ORDER. (a) A person identified in a court order as the father of a child may file a petition not later than the child's 18th birthday requesting the court to vacate a court order that:

(1) 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

(2) requires the person identified in the order as the father of the child to pay child support for the child.

(b) The petition to vacate a court order must be accompanied by:

(1) an affidavit stating:

(A) facts that show the court order was obtained by fraud or material mistake of fact; or

(B) that the man was duly served with notice of

the suit and failed to answer but did not receive the notice required by Section 102.008(b)(11); and

(2) a certified copy of the court order to be vacated.

(c) The court may not grant a petition to vacate a court order under this section if the person identified in the court order as the father of the child:

(1) is the child's adoptive father;

(2) consented to assisted reproduction by his wife under Subchapter H;

(3) was an intended father under a gestational agreement confirmed by a court under Subchapter I; or

(4) filed the petition under this section after the 180th day after the date the person received the results of a genetic test described by Section 160.802(b)(3).

Sec. 160.802. GENETIC TESTING. (a) 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, the court shall 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) 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:

(1) 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;

(2) at the time the court order was rendered, did not know that he was not the father of the child; and

(3) 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) Genetic testing under this section is governed by Subchapter F.

(d) If the affidavit filed with the petition does not

establish a prima facie case, the court shall, on a motion by the respondent, dismiss the petition.

Sec. 160.803. FAILURE TO SUBMIT TO GENETIC TEST. (a) 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, 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 child is genetically tested.

(b) 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, the court shall dismiss the person's petition to vacate with prejudice.

Sec. 160.804. GROUNDS FOR VACATING ORDER. (a) Except as otherwise provided by this section, the court shall vacate an order described by Section 160.801(a) if the court finds:

(1)(A) that the order was obtained by fraud or material mistake of fact; or,

(B) if the man was duly served with notice of the suit and failed to answer, that the man did not receive the notice required by Section 102.008(b)(11); and

(2) that the person identified in the court order as the father of the child:

(A) 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;

(B) at the time the order was rendered, did not know that he was not the father of the child;

(C) based on genetic testing, is not rebuttably identified as the father of the child in accordance with Section 160.505;

(D) is not the child's adoptive parent;

(E) is not the intended father of the child under a gestational agreement confirmed by a court under Subchapter I; and

(F) did not consent to assisted reproduction by his wife under Subchapter H.

(b) The court may not vacate 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:

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

(2) was determined to be the child's father in a proceeding to determine parentage; or

(3) filed an acknowledgment of paternity with the bureau of vital statistics.

Sec. 160.805. POSSESSION ORDER; CHILD SUPPORT ARREARAGE.

(a) 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, the court shall determine whether the possession order should be terminated, modified, or continued based on the best interest of the child.

(b) If the court modifies or continues the possession order under Subsection (a), the person identified in the court order as the father of the child shall have the rights and duties provided by Section 153.074 during the period he has possession of the child.

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

(d) 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) If the court vacates a parentage order in a proceeding under this subchapter, the court may order:

(1) the child or any party to participate in counseling with a licensed mental health professional who:

(A) has a background in family therapy; and

(B) holds a professional license that requires the person to possess at least a master's degree; and

(2) any party to pay the cost of counseling.

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

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

SECTION _____. Section 233.028, Family Code, is amended by adding Subsection (a-1) and amending Subsection (b) to read as follows:

(a-1) The notice described in Subsection (a) and sent to a man alleged to be the father of a child must include the following statement printed on the notice in boldfaced type, in capital letters, or underlined:

"YOU HAVE THE RIGHT TO REQUEST GENETIC TESTING TO DETERMINE THE PARENTAGE OF A CHILD WHOSE PARENTAGE HAS NOT BEEN ESTABLISHED. THE TITLE IV-D AGENCY WILL PAY FOR THE COSTS OF THE GENETIC TESTING, BUT IF THE RESULTS OF THE TESTING IDENTIFY YOU AS THE BIOLOGICAL FATHER OF THE CHILD, YOU MAY BE REQUIRED TO REIMBURSE THE AGENCY FOR THOSE COSTS."

(b) If all parties agree to the child's parentage, the agency may file an agreed child support review order as provided by this chapter. The agreed order must 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 _____. (a) 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) 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.

(c) Except as provided by Subsection (d) of this section, Section 105.0035, Family Code, as added by this Act, and the change in law made by this Act to Section 102.008, Family Code, apply only to a suit affecting the parent-child relationship filed on or after the effective date of this Act. A suit affecting the parent-child relationship filed before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

(d) 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, the court may not vacate the order on the ground that the alleged or presumed father did not receive the notice required by Section 102.008(b)(11), Family Code, as added by this Act.