

## BILL ANALYSIS

Senate Research Center

H.B. 782  
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Jurisprudence  
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Engrossed

### 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.

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 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 Subchapter A, Chapter 154, Family Code, by adding Section 154.015, as follows:

Sec. 154.015. PATERNITY TEST REQUIRED. (a) Prohibits a court from rendering an order requiring the payment of child support unless the court makes certain findings, except as provided by Subsections (b) and (c).

(b) Requires the court, if the parties to a suit affecting the parent-child relationship in which child support is requested have not completed a genetic test that complies with the requirements of Subchapter F (Genetic Testing), Chapter 160, to order the child, the child's mother, and the alleged father to submit to genetic testing not later than the 30th day after the date the order requiring genetic testing is rendered. Authorizes the court, if an alleged father fails to submit to a genetic test ordered under this section, to render an order adjudicating the alleged father to be the father of the child and requiring the alleged father to pay child support.

(c) Authorizes an alleged father of the child, in a suit affecting the parent-child relationship, to file an affidavit with the court admitting paternity of the child. Authorizes the court, after receiving an affidavit under this subsection, without requiring a genetic test, to render an order adjudicating the alleged father to be the father of the child and requiring the alleged father to pay child support. Prohibits an alleged father who files an affidavit under this subsection from challenging the adjudication of paternity.

(d) Requires the parties, other than a governmental entity, to bear the cost of the genetic test ordered under this section equally.

SECTION 2. 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 finds that the court order was obtained by fraud or material mistake of fact and the person identified in the court order as the father of the child meets certain standards.

(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 3. 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.

SECTION 4. Effective date: September 1, 2007.