

## **BILL ANALYSIS**

C.S.S.B. 1624

By: Watson

Judiciary

Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Disputed parentage, without genetic testing, relies on the veracity of witnesses. Currently, probate court judges use the provisions of the Uniform Parentage Act (UPA) or Chapter 160, Family Code, regarding genetic testing, but there are no set guidelines to assist probate court judges in using those provisions. In order for probate lawyers to take advantage of UPA provisions, a UPA proceeding and an heirship proceeding must be joined. Probate lawyers and judges are not always comfortable using the Family Code. Conversely, family court lawyers and judges rarely venture into the Probate Courts.

It is desirable to set out statutory guidelines for the use of genetic testing by probate lawyers and probate courts to resolve heirship issues and also to clarify that the probate courts have the option and authority to order genetic testing as provided under Chapter 160, Family Code. This would allow claims of parentage to be determined more quickly, efficiently, and economically because litigation expenses would decrease, poorly supported claims would be removed, and genetic testing results provide tangible evidence.

The purpose of the bill is to clarify that the probate courts are authorized to order genetic testing, and provide guidelines for the use of genetic testing.

### **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 Chapter III, Texas Probate Code, by adding Sections 53A, 53B, 53C, 53D, and 53E as follows:

Sec. 53A. ORDER FOR GENETIC TESTING AUTHORIZED. (a) Authorizes the court, on the court's own motion in a proceeding to declare heirship under this chapter, to order one or more specified individuals to submit to genetic testing as provided for in Subchapter F (Genetic Testing), Chapter 160, Family Code. Requires the court, on the request of a party to the proceeding, to order one or more specified individuals to submit to genetic testing. Authorizes the court, if two or more individuals are ordered to be tested, to order the testing of those individuals to be done concurrently or sequentially. Authorizes the court to enforce an order under this subsection by contempt.

(b) Requires the cost of genetic testing ordered by the court to be advanced by a party to the proceeding who requests the testing, as agreed by the parties and approved by the court, or as ordered by the court, and provides that the costs are subject to any assessment of costs following the proceeding in accordance with Rule 131 (Successful Party to Recover), Texas Rules of Civil Procedure.

(c) Requires the court, if a party to the proceeding contests the results of the testing ordered under Subsection (a) of this section and the party contesting the results requests that additional testing be conducted, to order genetic testing subsequent to the testing conducted under Subsection (a), subject to Subsection (d).

(d) Authorizes the court, if the results of the genetic testing ordered under Subsection (a) identify a tested individual as an heir of the decedent, and only if the party contesting those results pays for additional testing in advance, to order additional genetic testing in accordance with Subsection (c).

(e) Authorizes the court, if a sample of an individual's genetic material that could identify another individual as the decedent's heir is not available for purposes of conducting genetic testing under this section, on a finding of good cause and that the need for genetic testing outweighs the legitimate interests of the individual to be tested, to order certain other individuals related to the individual whose genetic material is not available to submit a sample of genetic material for the testing under circumstance the court considers just.

(f) Authorizes the court, on good cause shown, to order the genetic testing of a deceased individual under this section, and if necessary, removal of the remains of the deceased individual as provided by Section 711.004 (Removal of Remains), Health and Safety Code, for that testing.

(g) Provides that an individual commits a Class A misdemeanor if the individual intentionally releases an identifiable sample of genetic material of another individual that was provided for purposes of the genetic testing ordered under this section, the release is for a purposes not related to the proceeding to declare heirship, and the release was not ordered by the court or done in accordance with written permission obtained from the individual who provided the sample.

Sec. 53B. RESULTS OF GENETIC TESTING; ADMISSIBILITY. (a) Requires a report of the results of the genetic testing ordered under Section 53A of this chapter to comply with the requirements for a report prescribed by Section 160.504 (Report of Genetic Testing), Family Code, and provides that the report is admissible in a proceeding to declare heirship under this chapter as evidence of the truth of the facts asserted in the report.

(b) Provides that the presumption under Section 160.505 (Genetic Testing Results; Rebuttal), Family Code, applies to the results of the genetic testing ordered under this section and authorizes the presumption to be rebutted as provided by that section.

(c) Authorizes a party to the proceeding who contests the results of the genetic testing to call one or more genetic testing experts to testify in person or by videoconference, deposition, or another method approved by the court. Provides that unless otherwise ordered by the court, the party offering the testimony bears the expense for the expert testifying.

Sec. 53C. USE OF GENETIC TESTING RESULTS IN CERTAIN PROCEEDINGS TO DECLARE HEIRSHIP. (a) Provides that this section applies in a proceeding to declare heirship of a decedent only with respect to an individual who petitions the court for a determination of right of inheritance as authorized by Section 42(b) of this code, and claims to be a biological child of the decedent, but with respect to whom a parent-child relationship with the decedent was not established as provided by Section 160.201 (Establishment of Parent-Child Relationship), Family Code, or who claims inheritance through a biological child of the decedent, if a parent-child relationship between the individual through whom the inheritance is claimed and the decedent was not established as provided by Section 160.201, Family Code.

(b) Requires the court, unless the results of the genetic testing of another individual who is an heir of the decedent are admitted as rebuttal evidence, to find that the individual described by Subsection (a) of this section is an heir of the decedent if the results of the genetic testing ordered under Section 53A of this chapter identify a tested individual who is an heir of the decedent as the ancestor of the individual described by Subsection (a) of this section.

(c) Requires the court, unless the results of the genetic testing of another individual who is an heir of the decedent are admitted as rebuttal evidence, to find that the individual described by Subsection (a) of this section is not an heir of the decedent if the results of genetic testing ordered under Section 53A of this chapter exclude a tested individual who is an heir of the decedent as the ancestor of the individual described by Subsection (a) of this section.

(d) Prohibits the court from dismissing the proceeding to declare heirship and provides that the results of the genetic testing and other relevant evidence is admissible in the proceeding if the results of the genetic testing ordered under Section 53A of this chapter do not identify or exclude a tested individual as the ancestor of the individual described by Subsection (a) of this section.

Sec. 53D. ADDITIONAL ORDERS AUTHORIZED. (a) Authorizes the court, on the request of an individual determined by the results of genetic testing to be the heir of a decedent for good cause shown, to order the name of the individual to be changed to conform to parentage, and if the court orders a name change, to order the bureau of vital statistics to issue an amended birth record for the individual.

Sec. 53E PROCEEDINGS AND RECORDS PUBLIC. Requires proceedings and records related to genetic testing to be open to the public and public inspection as in other civil cases.

SECTION 2. Provides that Sections 53A, 53B, 53C, 53D and 53E, Texas Probate Code, as added by this Act, apply to a proceeding to declare heirship that is pending or commenced on or after the effective date of this Act.

#### **EFFECTIVE DATE**

September 1, 2007.

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute adds Sec. 53E, not found in the original bill. Deletes text in original bill permitting a closed hearing with records and evidence available to the public only on consent of the parties. The substitute also strikes the reference to telephone testimony in Sec. 53B(c).