

By: Dutton

H.B. No. 782

A BILL TO BE ENTITLED

AN ACT

1
2 relating to genetic testing in the determination of parentage and
3 to a proceeding to vacate an order of paternity or child support.

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 Subsections (b) and (c), 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, based on the genetic test, the man
13 named as the father in the suit affecting the parent-child
14 relationship is rebuttably identified as the father of the child in
15 accordance with Section 160.505(a); or

16 (2) the party being ordered to pay child support is an
17 adoptive parent of the child.

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

1 ordered under this section, the court may render an order
2 adjudicating the alleged father to be the father of the child and
3 requiring the alleged father to pay child support.

4 (c) In a suit affecting the parent-child relationship, an
5 alleged father of the child may file an affidavit with the court
6 admitting paternity of the child. After receiving an affidavit
7 under this subsection, the court may, without requiring a genetic
8 test, render an order adjudicating the alleged father to be the
9 father of the child and requiring the alleged father to pay child
10 support. An alleged father who files an affidavit under this
11 subsection may not challenge the adjudication of paternity.

12 (d) The parties, other than a governmental entity, shall
13 bear the cost of the genetic test ordered under this section
14 equally.

15 SECTION 2. Chapter 160, Family Code, is amended by adding
16 Subchapter J to read as follows:

17 SUBCHAPTER J. PROCEEDINGS TO VACATE COURT ORDER

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

22 (1) states that the person identified in the order as
23 the father of the child is the father of the child identified in the
24 motion; or

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

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

1 by:

2 (1) an affidavit stating facts that show the court
3 order was obtained by fraud or material mistake of fact; and

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

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

8 (1) is the child's adoptive father;

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

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

13 (4) filed the petition under this section after the
14 180th day after the date the person received the results of a
15 genetic test described by Section 160.802(b)(3).

16 Sec. 160.802. GENETIC TESTING. (a) In a proceeding under
17 this subchapter, if the court finds that the affidavit filed with
18 the petition under Section 160.801 establishes a prima facie case
19 that the court order was obtained by fraud or material mistake of
20 fact, the court shall order the child and the person identified in
21 the court order as the father of the child to submit to genetic
22 testing not later than the 30th day after the date the order
23 requiring genetic testing is rendered.

24 (b) A person establishes a prima facie case that a court
25 order was obtained by fraud or material mistake of fact if the
26 person's affidavit states that the person:

27 (1) was the presumed father of the child or was induced

1 by representations made by the child's mother to believe that the
2 person was the child's father;

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

5 (3) took a genetic test after the date the court order
6 sought to be vacated was rendered that establishes that the person
7 is not rebuttably identified as the father of the child in
8 accordance with Section 160.505.

9 (c) Genetic testing under this section is governed by
10 Subchapter F.

11 (d) If the affidavit filed with the petition does not
12 establish a prima facie case, the court shall, on a motion by the
13 respondent, dismiss the petition.

14 Sec. 160.803. FAILURE TO SUBMIT TO GENETIC TEST. (a) If
15 the person who has been awarded the exclusive right to designate the
16 child's primary residence fails to allow the child to be
17 genetically tested under Section 160.802, the court may suspend the
18 legal obligation of the person identified in the court order as the
19 father of the child to pay child support until the child is
20 genetically tested.

21 (b) If the person identified in the court order as the
22 father of the child fails to submit to a genetic test ordered under
23 Section 160.802, the court shall dismiss the person's petition to
24 vacate with prejudice.

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

1 order was obtained by fraud or material mistake of fact and the
2 person identified in the court order as the father of the child:

3 (1) was the presumed father of the child or was induced
4 by representations made by the child's mother to believe that the
5 person was the child's father;

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

8 (3) based on genetic testing, is not rebuttably
9 identified as the father of the child in accordance with Section
10 160.505;

11 (4) is not the child's adoptive parent;

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

14 (6) did not consent to assisted reproduction by his
15 wife under Subchapter H.

16 (b) The court may not vacate an order under this section if
17 the court finds that at any time the person identified in the court
18 order as the father of the child knew that he was not the child's
19 biological parent and:

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

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

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

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

27 (a) If the court vacates a parentage or child support order in a

1 proceeding under this subchapter and the person identified in the
2 court order as the father of the child is also entitled under an
3 order to the possession of or access to the child who is the subject
4 of the vacated order, the court shall determine whether the
5 possession order should be terminated, modified, or continued based
6 on the best interest of the child.

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

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

17 (d) The elimination of an arrearage under a child support
18 order that is vacated as provided by this subchapter is for purposes
19 of correcting an act induced by fraud, duress, or material mistake
20 of fact and is not a retroactive modification.

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

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

25 (A) has a background in family therapy; and

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

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

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

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

13 SECTION 3. If before implementing any provision of this Act
14 the Title IV-D agency determines that a waiver or authorization
15 from a federal agency is necessary for implementation of the change
16 in law made by this Act, the agency shall request the waiver or
17 authorization and may delay implementing that provision until the
18 waiver or authorization is granted.

19 SECTION 4. This Act takes effect September 1, 2007.