

By: Dutton

H.B. No. 782

Substitute the following for H.B. No. 782:

By: Eiland

C.S.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. Section 102.008, Family Code, is amended by
6 amending Subsection (b) and adding Subsection (c) to read as
7 follows:

8 (b) The petition must include:

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

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

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

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

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

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

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

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

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

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

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

13 (12) any other information required by this title.

14 (c) The notice described by Subsection (b)(11) must include
15 the following statement printed in boldfaced type, in capital
16 letters, or underlined:

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

23 SECTION 2. Chapter 105, Family Code, is amended by adding
24 Section 105.0035 to read as follows:

25 Sec. 105.0035. PATERNITY TEST REQUIRED. (a) In an original
26 suit affecting the parent-child relationship, the court shall order
27 genetic testing on the request of an alleged or presumed father.

1 (b) An alleged or presumed father who receives notice as
2 provided by Section 102.008(b)(11) and does not request genetic
3 testing before the entry of a final order may not bring an action to
4 vacate a child support order or a parentage order under Section
5 160.801.

6 (c) The parties, other than a governmental entity, shall
7 bear the cost of the genetic test ordered under this section
8 equally.

9 SECTION 3. Chapter 160, Family Code, is amended by adding
10 Subchapter J to read as follows:

11 SUBCHAPTER J. PROCEEDINGS TO VACATE COURT ORDER

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

16 (1) states that the person identified in the order as
17 the father of the child is the father of the child identified in the
18 motion; or

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

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

23 (1) an affidavit stating:

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

26 (B) that the person did not receive the notice
27 required by Section 102.008(b)(11); and

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

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

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

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

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

10 (4) filed the petition under this section after the
11 180th day after the date the person received the results of a
12 genetic test described by Section 160.802(b)(3).

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

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

24 (1) was the presumed father of the child or was induced
25 by representations made by the child's mother to believe that the
26 person was the child's father;

27 (2) at the time the court order was rendered, did not

1 know that he was not the father of the child; and

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

6 (c) Genetic testing under this section is governed by
7 Subchapter F.

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

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

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

22 Sec. 160.804. GROUNDS FOR VACATING ORDER. (a) Except as
23 otherwise provided by this section, the court shall vacate an order
24 described by Section 160.801(a) if the court finds that the court
25 order was obtained by fraud or material mistake of fact, or that the
26 person did not receive the notice required by Section
27 102.008(b)(11), and the person identified in the court order as the

1 father of the child:

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

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

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

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

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

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

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

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

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

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

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

26 (a) If the court vacates a parentage or child support order in a
27 proceeding under this subchapter and the person identified in the

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

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

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

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

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

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

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

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

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

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

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

12 SECTION 4. Section 233.028, Family Code, is amended by
13 adding Subsection (a-1) and amending Subsection (b) to read as
14 follows:

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

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

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

1 the parties entitled to genetic testing in the case that the parties
2 have waived their rights to request genetic testing.

3 SECTION 5. (a) Section 233.028, Family Code, as amended by
4 this Act, applies only to an administrative proceeding under
5 Chapter 233, Family Code, for the determination of parentage
6 commenced on or after the effective date of this Act.

7 (b) If before implementing any provision of this Act the
8 Title IV-D agency determines that a waiver or authorization from a
9 federal agency is necessary for implementation of the change in law
10 made by this Act, the agency shall request the waiver or
11 authorization and may delay implementing that provision until the
12 waiver or authorization is granted.

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

21 (d) In a proceeding under Subchapter J, Chapter 160, Family
22 Code, as added by this Act, to vacate an order rendered in a suit
23 affecting the parent-child relationship filed before the effective
24 date of this Act, the court may not vacate the order on the ground
25 that the alleged or presumed father did not receive the notice
26 required by Section 102.008(b)(11), Family Code, as added by this
27 Act.

1 SECTION 6. This Act takes effect September 1, 2007.