

1-1 By: Dutton (Senate Sponsor - Harris) H.B. No. 782
1-2 (In the Senate - Received from the House April 27, 2007;
1-3 May 1, 2007, read first time and referred to Committee on
1-4 Jurisprudence; May 18, 2007, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 4, Nays 0;
1-6 May 18, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 782 By: Harris

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to genetic testing in the determination of parentage and
1-11 to a proceeding to vacate an order of paternity or child support.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 102.008, Family Code, is amended by
1-14 amending Subsection (b) and adding Subsection (c) to read as
1-15 follows:

1-16 (b) The petition must include:

1-17 (1) a statement that the court in which the petition is
1-18 filed has continuing, exclusive jurisdiction or that no court has
1-19 continuing jurisdiction of the suit;

1-20 (2) the name and date of birth of the child, except
1-21 that if adoption of a child is requested, the name of the child may
1-22 be omitted;

1-23 (3) the full name of the petitioner and the
1-24 petitioner's relationship to the child or the fact that no
1-25 relationship exists;

1-26 (4) the names of the parents, except in a suit in which
1-27 adoption is requested;

1-28 (5) the name of the managing conservator, if any, or
1-29 the child's custodian, if any, appointed by order of a court of
1-30 another state or country;

1-31 (6) the names of the guardians of the person and estate
1-32 of the child, if any;

1-33 (7) the names of possessory conservators or other
1-34 persons, if any, having possession of or access to the child under
1-35 an order of the court;

1-36 (8) the name of an alleged father of the child or a
1-37 statement that the identity of the father of the child is unknown;

1-38 (9) a full description and statement of value of all
1-39 property owned or possessed by the child;

1-40 (10) a statement describing what action the court is
1-41 requested to take concerning the child and the statutory grounds on
1-42 which the request is made; ~~and~~

1-43 (11) notice to an alleged or presumed father of the
1-44 child, if any, of the right to request paternity testing; and

1-45 (12) any other information required by this title.

1-46 (c) The notice described by Subsection (b)(11) must include
1-47 the following statement printed in boldfaced type, in capital
1-48 letters, or underlined:

1-49 "YOU HAVE THE RIGHT TO REQUEST GENETIC TESTING TO DETERMINE
1-50 THE PARENTAGE OF THE CHILD NAMED IN THIS SUIT. YOUR REQUEST FOR
1-51 GENETIC TESTING MUST BE IN WRITING AND FILED WITH THE CLERK OF THE
1-52 COURT IN WHICH THIS SUIT IS FILED. ANY ALLEGED OR PRESUMED FATHER
1-53 WHO DOES NOT REQUEST GENETIC TESTING SHALL BE BARRED FROM BRINGING
1-54 AN ACTION TO VACATE A CHILD SUPPORT ORDER OR A PARENTAGE ORDER."

1-55 SECTION 2. Chapter 105, Family Code, is amended by adding a
1-56 new Section 105.0035 to read as follows:

1-57 Sec. 105.0035. PATERNITY TESTING. (a) Except as provided
1-58 in this section, a court may not render an order in a suit unless the
1-59 court finds that:

1-60 (1) based on court-ordered genetic testing which
1-61 complies with Section 160.503, the man alleged to be the father of
1-62 the child made the subject of the suit is rebuttably identified as
1-63 the father of the child in accordance with Section 160.505(a);

2-1 (2) the party ordered to pay child support is an
 2-2 adoptive parent of the child;

2-3 (3) if the man is married to the mother of the child,
 2-4 the man:

2-5 (A) filed an affidavit acknowledging that he has
 2-6 received the notice required by Section 102.008 (b) (11) and does
 2-7 not dispute the presumption provided by Section 160.204;

2-8 (B) is duly served with notice of the suit, including
 2-9 the notice required by Section 102.008 (b) (11), and fails to answer
 2-10 and wholly makes default; or

2-11 (C) is ordered by the court to submit to genetic testing
 2-12 under Chapter 160 and fails to comply with the court's order; or

2-13 (4) if the man is not married to the mother of the
 2-14 child, the man:

2-15 (A) filed an affidavit acknowledging that he has
 2-16 received the notice required by Section 102.008(b)(11) and
 2-17 acknowledges that he is the biological father of the child as
 2-18 required by Section 160.302;

2-19 (B) is duly served with notice of the suit, including
 2-20 the notice required by 102.008(b)(11), and fails to answer and
 2-21 wholly makes default; or

2-22 (C) is ordered by the court to submit to genetic
 2-23 testing under Chapter 160 and fails to comply with the court's
 2-24 order.

2-25 (b) If a man fails to file an affidavit required by
 2-26 Subsection (a)(3)(A) or (a)(4)(A), or fails to submit to genetic
 2-27 testing ordered by the court, the court may render an order
 2-28 declaring the man to be the biological father of the child.

2-29 (c) A man who files an affidavit pursuant to Subsection
 2-30 (a)(3)(A) or (a)(4)(A), or fails to submit to genetic testing
 2-31 ordered by the court, may not challenge the adjudication of
 2-32 paternity in any subsequent proceeding under Subchapter J, Chapter
 2-33 160.

2-34 (d) Payment of the cost of genetic testing under this
 2-35 section shall be governed by Chapter 160.

2-36 (e) Nothing in this section affects the power of a court to
 2-37 order temporary child support to be paid by a presumed father
 2-38 pending the outcome of a determination of whether the presumed
 2-39 father is the parent of the child.

2-40 SECTION 3. Chapter 160, Family Code, is amended by adding
 2-41 Subchapter J to read as follows:

2-42 SUBCHAPTER J. PROCEEDINGS TO VACATE COURT ORDER

2-43 Sec. 160.801. SUIT TO VACATE COURT ORDER. (a) A person
 2-44 identified in a court order as the father of a child may file a
 2-45 petition not later than the child's 18th birthday requesting the
 2-46 court to vacate a court order that:

2-47 (1) states that the person identified in the order as
 2-48 the father of the child is the father of the child identified in the
 2-49 motion; or

2-50 (2) requires the person identified in the order as the
 2-51 father of the child to pay child support for the child.

2-52 (b) The petition to vacate a court order must be accompanied
 2-53 by:

2-54 (1) an affidavit stating:

2-55 (A) facts that show the court order was obtained
 2-56 by fraud or material mistake of fact; or

2-57 (B) that the man was duly served with notice of
 2-58 the suit and failed to answer but did not receive the notice
 2-59 required by Section 102.008(b)(11); and

2-60 (2) a certified copy of the court order to be vacated.

2-61 (c) The court may not grant a petition to vacate a court
 2-62 order under this section if the person identified in the court order
 2-63 as the father of the child:

2-64 (1) is the child's adoptive father;

2-65 (2) consented to assisted reproduction by his wife
 2-66 under Subchapter H;

2-67 (3) was an intended father under a gestational
 2-68 agreement confirmed by a court under Subchapter I; or

2-69 (4) filed the petition under this section after the

3-1 180th day after the date the person received the results of a
 3-2 genetic test described by Section 160.802(b)(3).

3-3 Sec. 160.802. GENETIC TESTING. (a) In a proceeding under
 3-4 this subchapter, if the court finds that the affidavit filed with
 3-5 the petition under Section 160.801 establishes a prima facie case
 3-6 that the court order was obtained by fraud or material mistake of
 3-7 fact, the court shall order the child and the person identified in
 3-8 the court order as the father of the child to submit to genetic
 3-9 testing not later than the 30th day after the date the order
 3-10 requiring genetic testing is rendered.

3-11 (b) A person establishes a prima facie case that a court
 3-12 order was obtained by fraud or material mistake of fact if the
 3-13 person's affidavit states that the person:

3-14 (1) was the presumed father of the child or was induced
 3-15 by representations made by the child's mother to believe that the
 3-16 person was the child's father;

3-17 (2) at the time the court order was rendered, did not
 3-18 know that he was not the father of the child; and

3-19 (3) took a genetic test after the date the court order
 3-20 sought to be vacated was rendered that establishes that the person
 3-21 is not rebuttably identified as the father of the child in
 3-22 accordance with Section 160.505.

3-23 (c) Genetic testing under this section is governed by
 3-24 Subchapter F.

3-25 (d) If the affidavit filed with the petition does not
 3-26 establish a prima facie case, the court shall, on a motion by the
 3-27 respondent, dismiss the petition.

3-28 Sec. 160.803. FAILURE TO SUBMIT TO GENETIC TEST. (a) If
 3-29 the person who has been awarded the exclusive right to designate the
 3-30 child's primary residence fails to allow the child to be
 3-31 genetically tested under Section 160.802, the court may suspend the
 3-32 legal obligation of the person identified in the court order as the
 3-33 father of the child to pay child support until the child is
 3-34 genetically tested.

3-35 (b) If the person identified in the court order as the
 3-36 father of the child fails to submit to a genetic test ordered under
 3-37 Section 160.802, the court shall dismiss the person's petition to
 3-38 vacate with prejudice.

3-39 Sec. 160.804. GROUNDS FOR VACATING ORDER. (a) Except as
 3-40 otherwise provided by this section, the court shall vacate an order
 3-41 described by Section 160.801(a) if the court finds:

3-42 (1)(A) that the order was obtained by fraud or material
 3-43 mistake of fact; or,

3-44 (B) if the man was duly served with notice of the
 3-45 suit and failed to answer, that the man did not receive the notice
 3-46 required by Section 102.008(b)(11); and

3-47 (2) that the person identified in the court order as
 3-48 the father of the child:

3-49 (A) was the presumed father of the child or was
 3-50 induced by representations made by the child's mother to believe
 3-51 that the person was the child's father;

3-52 (B) at the time the order was rendered, did not
 3-53 know that he was not the father of the child;

3-54 (C) based on genetic testing, is not rebuttably
 3-55 identified as the father of the child in accordance with Section
 3-56 160.505;

3-57 (D) is not the child's adoptive parent;

3-58 (E) is not the intended father of the child under
 3-59 a gestational agreement confirmed by a court under Subchapter I;
 3-60 and

3-61 (F) did not consent to assisted reproduction by
 3-62 his wife under Subchapter H.

3-63 (b) The court may not vacate an order under this section if
 3-64 the court finds that at any time the person identified in the court
 3-65 order as the father of the child knew that he was not the child's
 3-66 biological parent and:

3-67 (1) consented to his name being entered as the child's
 3-68 biological father on the child's birth certificate;

3-69 (2) was determined to be the child's father in a

4-1 proceeding to determine parentage; or
 4-2 (3) filed an acknowledgment of paternity with the
 4-3 bureau of vital statistics.

4-4 Sec. 160.805. POSSESSION ORDER; CHILD SUPPORT ARREARAGE.

4-5 (a) If the court vacates a parentage or child support order in a
 4-6 proceeding under this subchapter and the person identified in the
 4-7 court order as the father of the child is also entitled under an
 4-8 order to the possession of or access to the child who is the subject
 4-9 of the vacated order, the court shall determine whether the
 4-10 possession order should be terminated, modified, or continued based
 4-11 on the best interest of the child.

4-12 (b) If the court modifies or continues the possession order
 4-13 under Subsection (a), the person identified in the court order as
 4-14 the father of the child shall have the rights and duties provided by
 4-15 Section 153.074 during the period he has possession of the child.

4-16 (c) If the court vacates a child support order under this
 4-17 subchapter and an arrearage exists under that child support order,
 4-18 the court may reduce the amount of the arrearage to zero. If the
 4-19 court eliminates an arrearage under this subsection, the court
 4-20 shall issue an order stating that the child support obligation,
 4-21 including any arrearage, is terminated.

4-22 (d) The elimination of an arrearage under a child support
 4-23 order that is vacated as provided by this subchapter is for purposes
 4-24 of correcting an act induced by fraud, duress, or material mistake
 4-25 of fact and is not a retroactive modification.

4-26 (e) If the court vacates a parentage order in a proceeding
 4-27 under this subchapter, the court may order:

4-28 (1) the child or any party to participate in
 4-29 counseling with a licensed mental health professional who:

4-30 (A) has a background in family therapy; and

4-31 (B) holds a professional license that requires
 4-32 the person to possess at least a master's degree; and

4-33 (2) any party to pay the cost of counseling.

4-34 (f) If a person possessing the qualifications of Subsection
 4-35 (e)(1) is not available in the county in which the court presides,
 4-36 the court may appoint a person the court believes is qualified to
 4-37 conduct the counseling under Subsection (e).

4-38 Sec. 160.806. ATTORNEY'S FEES AND COURT COSTS. If the court
 4-39 vacates a parentage order or a child support order in a proceeding
 4-40 under this subchapter, the court may award reasonable attorney's
 4-41 fees to the petitioner. If the court does not grant the petition to
 4-42 vacate a parentage order or a child support order under this
 4-43 subchapter, the court shall order the petitioner to pay the costs of
 4-44 the action and each opposing party's reasonable attorney's fees.

4-45 SECTION 4. Section 233.028, Family Code, is amended by
 4-46 adding Subsection (a-1) and amending Subsection (b) to read as
 4-47 follows:

4-48 (a-1) The notice described in Subsection (a) and sent to a
 4-49 man alleged to be the father of a child must include the following
 4-50 statement printed on the notice in boldfaced type, in capital
 4-51 letters, or underlined:

4-52 "YOU HAVE THE RIGHT TO REQUEST GENETIC TESTING TO DETERMINE
 4-53 THE PARENTAGE OF A CHILD WHOSE PARENTAGE HAS NOT BEEN ESTABLISHED.
 4-54 THE TITLE IV-D AGENCY WILL PAY FOR THE COSTS OF THE GENETIC TESTING,
 4-55 BUT IF THE RESULTS OF THE TESTING IDENTIFY YOU AS THE BIOLOGICAL
 4-56 FATHER OF THE CHILD, YOU MAY BE REQUIRED TO REIMBURSE THE AGENCY FOR
 4-57 THOSE COSTS."

4-58 (b) If all parties agree to the child's parentage, the
 4-59 agency may file an agreed child support review order as provided by
 4-60 this chapter. The agreed order must include a statement signed by
 4-61 the parties entitled to genetic testing in the case that the parties
 4-62 have waived their rights to request genetic testing.

4-63 SECTION 5. (a) Section 233.028, Family Code, as amended by
 4-64 this Act, applies only to an administrative proceeding under
 4-65 Chapter 233, Family Code, for the determination of parentage
 4-66 commenced on or after the effective date of this Act.

4-67 (b) If before implementing any provision of this Act the
 4-68 Title IV-D agency determines that a waiver or authorization from a
 4-69 federal agency is necessary for implementation of the change in law

5-1 made by this Act, the agency shall request the waiver or
5-2 authorization and may delay implementing that provision until the
5-3 waiver or authorization is granted.

5-4 (c) Except as provided by Subsection (d) of this section,
5-5 Section 105.0035, Family Code, as added by this Act, and the change
5-6 in law made by this Act to Section 102.008, Family Code, apply only
5-7 to a suit affecting the parent-child relationship filed on or after
5-8 the effective date of this Act. A suit affecting the parent-child
5-9 relationship filed before the effective date of this Act is
5-10 governed by the law in effect on the date the suit was filed, and the
5-11 former law is continued in effect for that purpose.

5-12 (d) In a proceeding under Subchapter J, Chapter 160, Family
5-13 Code, as added by this Act, to vacate an order rendered in a suit
5-14 affecting the parent-child relationship filed before the effective
5-15 date of this Act, the court may not vacate the order on the ground
5-16 that the alleged or presumed father did not receive the notice
5-17 required by Section 102.008(b)(11), Family Code, as added by this
5-18 Act.

5-19 SECTION 6. This Act takes effect September 1, 2007.

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