

By: Watson S.B. No. 1624  
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A BILL TO BE ENTITLED  
AN ACT

relating to genetic testing in proceedings to declare heirship; providing a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter III, Texas Probate Code, is amended by adding Sections 53A, 53B, 53C, and 53D to read as follows:

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

(b) Subject to any assessment of costs following the proceeding in accordance with Rule 131, Texas Rules of Civil Procedure, the cost of genetic testing ordered under Subsection (a) of this section must be advanced:

(1) by a party to the proceeding who requests the testing;

(2) as agreed by the parties and approved by the court;

or

(3) as ordered by the court.

(c) Subject to Subsection (d) of this section, the court shall order genetic testing subsequent to the testing conducted under Subsection (a) of this section if:

(1) a party to the proceeding contests the results of the genetic testing ordered under Subsection (a) of this section; and

(2) the party contesting the results requests that additional testing be conducted.

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

(e) 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, the court, on a finding of good cause and that the need for genetic testing outweighs the legitimate interests of the individual to be tested, may order any of the following other individuals to submit a sample of genetic material for the testing under circumstances the court considers just:

(1) a parent, sibling, or child of the individual whose genetic material is not available; or

(2) any other relative of that individual, as necessary to conduct the testing.

(f) On good cause shown, the court may order:

(1) genetic testing of a deceased individual under this section; and

(2) if necessary, removal of the remains of the deceased individual as provided by Section 711.004, Health and Safety Code, for that testing.

(g) An individual commits an offense if the individual intentionally releases an identifiable sample of the genetic

material of another individual that was provided for purposes of genetic testing ordered under this section, the release is for a purpose 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. An offense under this subsection is a Class A misdemeanor.

Sec. 53B. RESULTS OF GENETIC TESTING; ADMISSIBILITY. (a) A report of the results of genetic testing ordered under Section 53A of this chapter:

(1) must comply with the requirements for a report prescribed by Section 160.504, Family Code; and

(2) is admissible in a proceeding to declare heirship under this chapter as evidence of the truth of the facts asserted in the report.

(b) The presumption under Section 160.505, Family Code, applies to the results of genetic testing ordered under this section, and the presumption may be rebutted as provided by that section.

(c) A party to the proceeding who contests the results of genetic testing may call one or more genetic testing experts to testify in person or by telephone, videoconference, deposition, or another method approved by the court. 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) This section applies in a proceeding to declare heirship of a decedent only with respect to an individual who:

(1) petitions the court for a determination of right of inheritance as authorized by Section 42(b) of this code; and

(2) 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, 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) Unless the results of genetic testing of another individual who is an heir of the decedent are admitted as rebuttal evidence, the court shall find that the individual described by Subsection (a) of this section is an heir of the decedent if the results of 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) Unless the results of genetic testing of another individual who is an heir of the decedent are admitted as rebuttal evidence, the court shall 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) If the results of 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:

(1) the court may not dismiss the proceeding to declare heirship; and

(2) the results of the genetic testing and other relevant evidence are admissible in the proceeding.

Sec. 53D. ADDITIONAL ORDERS AUTHORIZED. (a) On the request of an individual determined by the results of genetic testing to be the heir of a decedent and for good cause shown, the court may:

(1) order the name of the individual to be changed; and

(2) if the court orders a name change under Subdivision (1) of this subsection, order the bureau of vital statistics to issue an amended birth record for the individual.

(b) On the request of a party and for good cause shown, the

3-1 court may order that a proceeding under this chapter involving  
3-2 genetic testing be closed to the public. The court shall make a  
3-3 final order in the proceeding available to the public, but records  
3-4 and other evidence relating to the proceeding may be made available  
3-5 to the public only on the consent of the parties to the proceeding  
3-6 or on order of the court for good cause shown.

3-7 SECTION 2. Sections 53A, 53B, 53C, and 53D, Texas Probate  
3-8 Code, as added by this Act, apply to a proceeding to declare  
3-9 heirship that is pending or commenced on or after the effective date  
3-10 of this Act.

3-11 SECTION 3. This Act takes effect September 1, 2007.

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