

By: Dutton

H.B. No. 932

A BILL TO BE ENTITLED

1 AN ACT

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

1        (b) Except as provided by Subsection (e), a court may not  
2 render in a suit affecting the parent-child relationship a child  
3 support order, an order finding paternity, or an order for  
4 possession of or access to a child unless the court finds that the  
5 man named as the father in the suit:

6            (1) is, based on court-ordered genetic testing that  
7 complies with Section 160.503, rebuttably identified as the father  
8 of the child in accordance with Section 160.505(a);

9            (2) is an adoptive parent of the child;

10           (3) was served with notice of the suit, including the  
11 notice required by Section 102.008(b)(11), and failed to answer the  
12 suit;

13           (4) was ordered by the court to submit to genetic  
14 testing under Chapter 160 and failed to comply with the court's  
15 order;

16           (5) is the presumed father of the child and the man  
17 does not deny paternity as an affirmative defense; or

18           (6) has filed an affidavit acknowledging paternity.

19        (c) If the court makes a finding under Subsection (b), the  
20 court may render an order declaring the man to be the biological  
21 father of the child. The man may not challenge the adjudication of  
22 paternity based on a finding under Subsections (b)(1) through (5)  
23 in a subsequent proceeding under Subchapter J, Chapter 160, unless:

24           (1) the court entered a default judgment against the  
25 man; and

26           (2) the man was served notice of the suit by  
27 publication.

1       (d) Payment of the costs of genetic testing under this  
2 section is governed by Chapter 160.

3       (e) The court may render a temporary order for child support  
4 to be paid by a presumed father pending the outcome of a genetic  
5 test to determine paternity.

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

8               SUBCHAPTER J. PROCEEDINGS TO VACATE COURT ORDER

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

13               (1) states that the person identified in the order as  
14 the father of the child is the father of the child identified in the  
15 motion; or

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

18       (b) The petition to vacate a court order must be accompanied  
19 by:

20               (1) an affidavit stating:

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

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

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

26       (c) The court may not grant a petition to vacate a court  
27 order under this section if the person identified in the court order

1 as the father of the child:

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

3 (2) consented to assisted reproduction by his wife  
4 under Subchapter H;

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

7 (4) filed the petition under this section after the  
8 180th day after the date the person received the results of a  
9 genetic test described by Section 160.802(b)(3).

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

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

21 (1) was the presumed father of the child or was induced  
22 by representations made by the child's mother to believe that the  
23 person was the child's father;

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

26 (3) took a genetic test after the date the court order  
27 sought to be vacated was rendered that establishes that the person

1 is not rebuttably identified as the father of the child in  
2 accordance with Section 160.505.

3 (c) Genetic testing under this section is governed by  
4 Subchapter F.

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

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

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

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

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

1 person was the child's father;

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

4 (3) based on genetic testing, is not rebuttably  
5 identified as the father of the child in accordance with Section  
6 160.505;

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

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

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

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

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

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

20 (3) filed an acknowledgment of paternity with the  
21 bureau of vital statistics.

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

23 (a) If the court vacates a parentage or child support order in a  
24 proceeding under this subchapter and the person identified in the  
25 court order as the father of the child is also entitled under an  
26 order to the possession of or access to the child who is the subject  
27 of the vacated order, the court shall determine whether the

1 possession order should be terminated, modified, or continued based  
2 on the best interest of the child.

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

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

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

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

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

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

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

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

25 (f) If a person possessing the qualifications of Subsection  
26 (e)(1) is not available in the county in which the court presides,  
27 the court may appoint a person the court believes is qualified to



1 conduct the counseling under Subsection (e).

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

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

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

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

22 (b) If all parties agree to the child's parentage, the  
23 agency may file an agreed child support review order as provided by  
24 this chapter. The agreed order must include a statement signed by  
25 the parties entitled to genetic testing in the case that the parties  
26 have waived their rights to request genetic testing.

27 SECTION 5. (a) Section 233.028, Family Code, as amended by

1 this Act, applies only to an administrative proceeding under  
2 Chapter 233, Family Code, for the determination of parentage  
3 commenced on or after the effective date of this Act.

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

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

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

25 SECTION 6. This Act takes effect September 1, 2009.