

By: Dutton

H.B. No. 1133

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of paternity.

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

SECTION 1. Section 160.201(b), Family Code, is amended to read as follows:

(b) The father-child relationship is established between a man and a child by:

(1) an un rebutted presumption of the man's paternity of the child under Section 160.204;

(2) an effective acknowledgment of paternity by the man under Subchapter D[, ~~unless the acknowledgment has been rescinded or successfully challenged~~];

(3) an adjudication of the man's paternity;

(4) the adoption of the child by the man; or

(5) the man's consenting to assisted reproduction by his wife under Subchapter H, which resulted in the birth of the child.

SECTION 2. Section 160.204(a), Family Code, is amended to read as follows:

(a) A man is presumed to be the father of a child if:

(1) he is married to the mother of the child and the child is born during the marriage;

(2) he is married to the mother of the child and the child is born before the 301st day after the date the marriage is

1 terminated by death, annulment, declaration of invalidity, or
2 divorce;

3 (3) he married the mother of the child before the birth
4 of the child in apparent compliance with law, even if the attempted
5 marriage is or could be declared invalid, and the child is born
6 during the invalid marriage or before the 301st day after the date
7 the marriage is terminated by death, annulment, declaration of
8 invalidity, or divorce;

9 (4) he married the mother of the child after the birth
10 of the child in apparent compliance with law, regardless of whether
11 the marriage is or could be declared invalid, he voluntarily
12 asserted his paternity of the child, and:

13 (A) the assertion is:

14 (i) in a record filed with the bureau of
15 vital statistics; or

16 (ii) confirmed by the results of genetic
17 testing [~~and (B) he is voluntarily named as the child's father on~~
18 ~~the child's birth certificate~~]; or

19 (B) [~~(C)~~] he promised in a record to support the
20 child as his own; or

21 (5) during the first two years of the child's life, he
22 continuously resided in the household in which the child resided
23 and he represented to others that the child was his own.

24 SECTION 3. Section 160.301, Family Code, is amended to read
25 as follows:

26 Sec. 160.301. ACKNOWLEDGMENT OF PATERNITY. The mother of a
27 child and a man claiming to be the biological father of the child

1 may sign an acknowledgment of paternity with the intent to
2 establish the man's paternity only after there has been genetic
3 testing with results that are consistent with the man's claim of
4 paternity.

5 SECTION 4. Section 160.302(a), Family Code, is amended to
6 read as follows:

7 (a) An acknowledgment of paternity must:

8 (1) be in a record;

9 (2) be signed, or otherwise authenticated, under
10 penalty of perjury by the mother and the man seeking to establish
11 paternity;

12 (3) state that the child whose paternity is being
13 acknowledged:

14 (A) does not have a presumed father or has a
15 presumed father whose full name is stated; and

16 (B) does not have another acknowledged or
17 adjudicated father;

18 (4) state that ~~[whether]~~ there has been genetic
19 testing and~~[, if so, that]~~ the acknowledging man's claim of
20 paternity is consistent with the results of the testing; and

21 (5) state that the signatories understand that the
22 acknowledgment is the equivalent of a judicial adjudication of the
23 paternity of the child ~~[and that a challenge to the acknowledgment~~
24 ~~is permitted only under limited circumstances and is barred after~~
25 ~~four years]~~.

26 SECTION 5. Section 160.303, Family Code, is amended to read
27 as follows:

1 Sec. 160.303. DENIAL OF PATERNITY. A presumed father of a
2 child may sign a denial of his paternity. The denial is valid only
3 if:

4 (1) an acknowledgment of paternity signed or otherwise
5 authenticated by another man is filed under Section 160.305;

6 (2) the denial is in a record and is signed or
7 otherwise authenticated under penalty of perjury; and

8 (3) the presumed father has not previously:

9 (A) acknowledged paternity of the child [~~unless~~
10 ~~the previous acknowledgment has been rescinded under Section~~
11 ~~160.307 or successfully challenged under Section 160.308~~]; or

12 (B) been adjudicated to be the father of the
13 child.

14 SECTION 6. Sections 160.304(b) and (c), Family Code, are
15 amended to read as follows:

16 (b) An acknowledgment of paternity [~~or a denial of~~
17 ~~paternity~~] may not be signed unless the man's claim of paternity is
18 confirmed by the results of genetic testing [~~before the birth of the~~
19 ~~child~~].

20 (c) Subject to Subsection (a), a [~~an acknowledgment of~~
21 ~~paternity or~~] denial of paternity may be signed before the birth of
22 the child and takes effect on the date of the [~~birth of the child or~~
23 ~~the~~] filing of the document with the bureau of vital statistics [~~and~~
24 ~~whichever occurs later~~].

25 SECTION 7. Sections 160.305 and 160.310, Family Code, are
26 amended to read as follows:

27 Sec. 160.305. EFFECT OF ACKNOWLEDGMENT OR DENIAL OF

1 PATERNITY. (a) A [~~Except as provided by Sections 160.307 and~~
2 ~~160.308, a~~] valid acknowledgment of paternity filed with the bureau
3 of vital statistics is the equivalent of an adjudication of the
4 paternity of a child and confers on the acknowledged father all
5 rights and duties of a parent.

6 (b) A [~~Except as provided by Sections 160.307 and 160.308,~~
7 ~~a~~] valid denial of paternity filed with the bureau of vital
8 statistics in conjunction with a valid acknowledgment of paternity
9 is the equivalent of an adjudication of the nonpaternity of the
10 presumed father and discharges the presumed father from all rights
11 and duties of a parent.

12 Sec. 160.310. RATIFICATION BARRED. A court or
13 administrative agency conducting a judicial or administrative
14 proceeding may not ratify an [~~unchallenged~~] acknowledgment of
15 paternity.

16 SECTION 8. Section 160.312(a), Family Code, is amended to
17 read as follows:

18 (a) To facilitate compliance with this subchapter, the
19 bureau of vital statistics shall prescribe forms for the
20 acknowledgment of paternity and the denial of paternity. The form
21 for the acknowledgment of paternity must require the man seeking to
22 establish paternity to state that the man's claim of paternity is
23 consistent with the results of genetic testing.

24 SECTION 9. Section 160.609, Family Code, is amended to read
25 as follows:

26 Sec. 160.609. TIME LIMITATION: CHILD HAVING [ACKNOWLEDGED
27 ~~OR~~] ADJUDICATED FATHER. [~~(a) If a child has an acknowledged~~

1 ~~father, a signatory to the acknowledgment or denial of paternity~~
2 ~~may commence a proceeding seeking to rescind the acknowledgment or~~
3 ~~denial or to challenge the paternity of the child only within the~~
4 ~~time allowed under Section 160.307 or 160.308.~~

5 ~~[(b)]~~ If a child has an ~~[acknowledged father or an]~~
6 adjudicated father, an individual, other than the child, who is not
7 a ~~[signatory to the acknowledgment or a]~~ party to the adjudication
8 and who seeks an adjudication of paternity of the child must
9 commence a proceeding not later than the fourth anniversary of the
10 effective date of the ~~[acknowledgment or]~~ adjudication.

11 SECTION 10. Section 160.634, Family Code, is amended to
12 read as follows:

13 Sec. 160.634. ORDER ON DEFAULT. The court shall issue an
14 order adjudicating the paternity of a man who:

15 (1) after having been personally served with ~~[service~~
16 ~~of]~~ process, is in default; and

17 (2) is found by the court to be the father of a child.

18 SECTION 11. Section 160.637, Family Code, is amended by
19 amending Subsection (b) and adding Subsection (f) to read as
20 follows:

21 (b) A child is not bound by a determination of parentage
22 under this chapter unless:

23 (1) the determination was based on an ~~[unrescinded]~~
24 acknowledgment of paternity and the acknowledgment is consistent
25 with the results of genetic testing;

26 (2) the adjudication of parentage was based on a
27 finding consistent with the results of genetic testing and the

1 consistency is declared in the determination or is otherwise shown;
2 or

3 (3) the child was a party or was represented in the
4 proceeding determining parentage by an attorney ad litem.

5 (f) An adjudication of parentage is not binding on a person
6 who was not personally served with process in the suit adjudicating
7 parentage unless the person personally appeared in the suit.

8 SECTION 12. Sections 160.307, 160.308, 160.309, and
9 160.608(f), Family Code, are repealed.

10 SECTION 13. (a) Except as provided by Subsection (b) of
11 this section, the changes in law made by this Act apply only to an
12 acknowledgment or denial of paternity filed on or after the
13 effective date of this Act. An acknowledgment or denial of
14 paternity filed before the effective date of this Act is governed by
15 the law in effect on the date the acknowledgment or denial of
16 paternity was filed, and the former law is continued in effect for
17 that purpose.

18 (b) The changes in law made by this Act to Sections 160.634
19 and 160.637, Family Code, apply only to a proceeding to adjudicate
20 the parentage of a child filed on or after the effective date of
21 this Act. A proceeding filed before the effective date of this Act
22 is governed by the law in effect on the date the proceeding was
23 filed, and the former law is continued in effect for that purpose.

24 SECTION 14. This Act takes effect September 1, 2009.