

SUBJECT: Determinations of paternity in suits affecting the parent-child relationship.

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 6 ayes — Dutton, Goodman, Davis, Dunnam, J. Moreno, Strama

0 nays

3 absent — Castro, Nixon, Thompson

WITNESSES: For — Roy Getting, Texas Fathers Alliance; Robert Green, Texas Fatherhood Alliance and Lone Star Fatherhood Initiative; Dongchu Sun; Courtney Valdez; Reynaldo Valdez

Against — None

BACKGROUND: A paternity suit may be brought by the child, the child's mother, a relative of the child's mother if the mother is deceased, the alleged father, or an authorized government entity. The alleged father is usually the respondent, and the purpose of the suit is virtually always to obtain a support order.

The problem of paternity fraud and error has grown in the past several years. Under current law, however, there are no legal means available for a presumed father, a man married to the woman at the time of the birth of the child, to stay an order for child support or to require a court to hear the presumed father's case that scientific evidence shows he is not the biological father of the child for which support is ordered. Thus, a court could potentially continue to order a person proven to not be the biological father to continue to pay child support because there is no procedure for him to motion the court to invalidate a prior child support order.

DIGEST: CSHB 437 would provide statutory authority for an alleged father to file a motion to vacate an order of paternity and child support if scientific evidence from a genetic test established non-paternity.

Under the bill, a court could render an order for child support only if the court found that the results of genetic testing of the parties determined that the man named in the suit was rebuttably identified as the father of the child. The child, the child's mother, and the alleged father in a suit for

child support could be ordered to submit to a genetic test. All parties, not including a governmental entity, would bear the cost of an ordered genetic test. The court could render an order adjudicating the alleged father to be the father of the child and requiring him to pay child support if he refused to submit to a court-ordered genetic test. Likewise, if a mother refused to submit to a court-ordered genetic test, the court could render an order suspending the legal obligation of the alleged father in a child support order until the mother submitted to the testing.

CSHB 437 would give a person identified in a court order as the father of the child or the mother of the child standing to petition to vacate an order determining parentage of the father or an order for child support to be paid by the alleged father. However, if a person alleged to be the father in a child support order failed to submit to a court-ordered genetic test, the court could dismiss the person's motion to vacate with prejudice. There would be no time limitations by which such a motion to vacate could be filed.

The court could vacate an order determining the alleged father's parentage of the child or obligation to pay child support if the court found that the alleged father was:

- not the child's adoptive parent;
- did not consent to assisted reproduction by his wife; and
- based on genetic testing, was not rebuttably identified as the father of the child.

A motion to vacate could not be rendered by a court if the court found that the petitioner knew at any time that the person identified in the parentage order was not the biological parent and the person:

- consented to his name being entered as the child's biological father on the child's birth certificate;
- was determined to be the child's father in a proceeding to determine parentage; or
- filed an acknowledgment of paternity.

The bill would allow a court to issue an order reducing any child support arrearages amounts to zero if the court vacated a child support order. If an order were not vacated based on findings, the moving party would be

ordered to pay the costs of the action and each opposing party's reasonable attorney's fees.

If a court vacated a parentage or support order for a person also entitled to possession of or access to the child who was the subject of the vacated order, the bill would give the court the authority to apply a best interest of the child standard to determine whether the possession order should be terminated, modified, or continued.

The bill also would amend the Family Code by allowing an alleged father to challenge an acknowledgment or denial of paternity on the basis of fraud, duress, or material mistake of fact before the child's 18th birthday. Additionally, a child's 18th birthday would be the time limit for a presumed father, the mother, or another individual to bring a suit to adjudicate the parentage of a child having a presumed father.

This bill would expire on September 1, 2007.

This bill would take effect on September 1, 2005, and would apply only to a suit affecting the parent-child relationship filed on or after the effective date.

NOTES:

The substitute modified the original bill by providing that all parties, not including a governmental entity, would bear the cost of a court-ordered genetic test. It also removed language that would have provided that a court could not grant a motion to vacate an order if the court found that the person requesting the motion knew that he was not the child's biological parent and acknowledged paternity of the child in writing, or otherwise admitted the he was, or acknowledged himself as, the biological father of the child.