

BILL ANALYSIS

Senate Research Center

S.B. 502
By: West
Jurisprudence
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, the rescission of an acknowledgment of paternity requires a judicial proceeding. Also, under current law, after the period for rescission has passed, a proceeding to challenge the acknowledgment of paternity may be based only on fraud, duress, or material mistake of fact and must be commenced before the fourth anniversary of the date of the filing of the acknowledgment with the bureau of vital statistics (bureau) or, if the signatory was a minor, the earlier of the fourth anniversary after the signatory's 18th birthday or the removal of the signatory's disabilities of minority by operation of law.

S.B. 502 amends current law relating to determinations of paternity, and creates an offense.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 160.302(a), Family Code, to delete existing text barring a challenge to the acknowledgment of paternity after four years.

SECTION 2. Amends Section 160.306, Family Code, to prohibit the bureau of vital statistics from charging a fee for filing an acknowledgment of paternity, a denial of paternity, or a rescission of an acknowledgment of paternity or denial of paternity. Makes nonsubstantive changes.

SECTION 3. Amends Section 160.307, Family Code, as follows:

Sec. 160.307. New heading: PROCEDURES FOR RESCISSION. (a) Creates this subsection from existing text. Authorizes a signatory to rescind an acknowledgment of paternity or denial of paternity as provided by this section, rather than an acknowledgment of paternity or denial of paternity by commencing a proceeding to rescind, before the earlier of:

(1) the 60th day after the effective date of the acknowledgment or denial, as provided by Section 160.304 (Rules for Acknowledgment and Denial of Paternity); or

(2) the date a proceeding to which the signatory is a party is initiated before a court to adjudicate an issue relating to the child, including a proceeding that establishes child support.

(b) Requires a signatory seeking to rescind an acknowledgment of paternity or denial of paternity to file with the bureau of vital statistics a completed rescission, on the form prescribed under Section 160.312, in which the signatory declares under penalty of perjury that:

(1) as of the date the rescission is filed, a proceeding has not been held affecting the child identified in the acknowledgment of paternity or denial of paternity, including a proceeding to establish child support;

(2) a copy of the completed rescission was sent by certified or registered mail, return receipt requested, to:

(A) if the rescission is of an acknowledgment of paternity, the other signatory of the acknowledgment of paternity and the signatory of any related denial of paternity; or

(B) if the rescission is of a denial of paternity, the signatories of the related acknowledgment of paternity; and

(3) if a signatory to the acknowledgment of paternity or denial of paternity is receiving services from the Title IV-D, agency, a copy of the completed rescission was sent by certified or registered mail to the Title IV-D agency.

(c) Requires the bureau of vital statistics, on receipt of a completed rescission, to void the acknowledgment of paternity or denial of paternity affected by the rescission and amend the birth record of the child, if appropriate.

(d) Authorizes any party affected by the rescission, including the Title IV-D agency, to contest the rescission by bringing a proceeding under Subchapter G (Proceeding to Adjudicate Parentage) to adjudicate the parentage of the child.

SECTION 4. Amends Sections 160.308(a) and (c), Family Code, as follows:

(a) Authorizes, rather than requires, that the proceeding be commenced at any time before the issuance of an order affecting the child identified in the acknowledgment or denial, including an order relating to support of the child, rather than before the fourth anniversary of the date the acknowledgment or denial is filed with the bureau of vital statistics unless the signatory was a minor on the date the signatory executed the acknowledgment or denial. Deletes existing text requiring that the proceeding commence, if the signatory was a minor on the date the signatory executed the denial, before the earlier of the fourth anniversary of the date of the signatory's 18th birthday, or the removal of the signatory's disabilities of minority by a court order, marriage, or by other operation of law.

(c) Prohibits a collateral attack on an acknowledgement of paternity signed under this chapter, notwithstanding any other provision of this chapter, from being maintained after the issuance of an order affecting the child identified in the acknowledgment, including an order relating to support of the child, rather than after the fourth anniversary of the date the acknowledgment is filed with the bureau of vital statistics unless the signatory was a minor on the date the signatory executed the acknowledgment. Deletes existing text prohibiting a collateral attack on the acknowledgment of paternity from being maintained, if the signatory was a minor on the date the signatory executed the acknowledgment, after the earlier of the fourth anniversary of the date of the signatory's 18th birthday, or the removal of the signatory's disabilities of minority by a court order, marriage, or by other operation of law.

SECTION 5. Amends Section 160.309, Family Code, as follows:

Sec. 160.309. New heading: PROCEDURE FOR CHALLENGE. (a) Requires each signatory to an acknowledgment of paternity and any related denial of paternity to be made a party to a proceeding to challenge, rather than to rescind or challenge, the acknowledgment or denial of paternity.

(b)-(e) Makes conforming changes.

SECTION 6. Amends Section 160.312, Family Code, as follows:

Sec. 160.312. New heading: FORMS. (a) Requires the bureau of vital statistics, to facilitate compliance with this subchapter, to prescribe forms for the acknowledgment of paternity, denial of paternity, and rescission of an acknowledgment or denial of paternity. Makes nonsubstantive changes.

(b) Provides that a valid acknowledgment of paternity, denial of paternity, or rescission of an acknowledgment or denial of paternity is not affected by a later modification of the prescribed form. Makes a nonsubstantive change.

SECTION 7. Amends Subchapter F, Chapter 160, Family Code, by adding Section 160.512, as follows:

Sec. 160.152. OFFENSE: FALSIFICATION OF SPECIMEN. (a) Provides that a person commits an offense if the person alters, destroys, conceals, fabricates, or falsifies genetic evidence in a proceeding to adjudicate parentage, including inducing another person to provide a specimen with the intent to affect the outcome of the proceeding.

(b) Provides that an offense under this section is a felony of the third degree.

(c) Provides that an order excluding a man as the biological father of a child based on genetic evidence show to be altered, fabricated, or falsified is void and unenforceable.

SECTION 8. Amends Section 160.607(b), Family Code, as follows:

(b) Authorizes that a proceeding seeking to adjudicate the parentage of a child having a presumed father, rather than a proceeding seeking to disprove the father-child relationship between a child and the child's presumed father, be maintained at any time if the court determines that:

(1) the presumed father and the mother of the child did not live together or engage in sexual intercourse with each other during the probable time of conception; or, rather than and,

(2) the presumed father was precluded from commencing a proceeding to adjudicate the parentage of the child before the expiration of the time prescribed by Subsection (a) (relating to requiring that the proceeding brought by a presumed father or another individual be commenced not later than the fourth anniversary of the date of the birth of the child) because of the mistaken belief that he was the child's biological father based on misrepresentations that led him to that conclusion. Deletes existing text relating to the presumed father never having represented to others that the child was his own.

SECTION 9. Amends Section 160.608(f), Family Code, to provide that this section applies to a proceeding to challenge, rather than to rescind or challenge, an acknowledgment of paternity or a denial of paternity as provided by Section 160.309(d) (relating to requiring a proceeding to challenge an acknowledgment or a denial of paternity to be conducted in the same manner as a proceeding to adjudicate parentage).

SECTION 10. Amends Section 160.609(a), Family Code, to authorize a signatory to the acknowledgment or denial of paternity, if the child has an acknowledged father, to commence a proceeding under this chapter to challenge the paternity of the child, rather than commence a proceeding seeking to rescind the acknowledgment or denial, or to challenge the paternity of the child, only within the time allowed under Section 160.308. Makes a conforming change.

SECTION 11. (a) Makes application of this Act, as it applies only to an acknowledgment or denial of paternity, prospective.

(b) Makes application of this Act, as it applies to a proceeding to adjudicate parentage, prospective.

SECTION 12. Effective date: September 1, 2011.