

## **BILL ANALYSIS**

C.S.S.B. 502  
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Judiciary & Civil Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

In most cases, the rescission of an acknowledgment or denial of paternity requires a judicial proceeding. After the period for rescission has passed, a proceeding to challenge the acknowledgment or denial of paternity may only be based on fraud, duress, or material mistake of fact and must be initiated before the fourth anniversary of the date of the filing of the acknowledgment with the bureau of vital statistics, unless the signatory was a minor at the time the acknowledgment was executed.

C.S.S.B. 502 seeks to allow a signatory to rescind an acknowledgment or denial of paternity by filing a completed rescission form with the bureau of vital statistics within a certain time and to provide for a person to challenge an acknowledgment or denial of paternity or adjudicate parentage of a child who has a presumed father by commencing certain proceedings.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.S.B. 502 amends the Family Code to remove language authorizing a signatory in an acknowledgment or denial of paternity to rescind the acknowledgment by commencing a proceeding to rescind and makes conforming changes to provisions of law relating to procedures for a rescission or challenge to an acknowledgment or denial of paternity, the authority to deny a motion for genetic testing in such proceedings, and the time limitation for commencing certain proceedings relating to the paternity of a child with an acknowledged father. The bill requires a signatory seeking to rescind an acknowledgment or denial of paternity to file with the bureau of vital statistics a completed rescission, on a form prescribed by the bureau, in which the signatory declares under penalty of perjury that as of the date the rescission is filed, a proceeding has not been held affecting the child identified in the acknowledgment or denial of paternity, including a proceeding to establish child support; a copy of the completed rescission was sent by certified or registered mail, return receipt requested, to, if the rescission is of an acknowledgment of paternity, the other signatory of the acknowledgment of paternity, or, if the rescission is of a denial of paternity, the signatories of the related acknowledgment of paternity; and, if a signatory to the acknowledgment or denial of paternity is receiving services from the attorney general, a copy of the completed rescission was sent by certified or registered mail to the attorney general.

C.S.S.B. 502 requires the bureau of vital statistics, on receipt of a completed rescission, to void the acknowledgment or denial of paternity affected by the rescission and amend the birth record of the child, if appropriate. The bill authorizes any party affected by the rescission, including the attorney general, to contest the rescission by bringing a proceeding to adjudicate the parentage of the child. The bill specifies that the date by which a signatory is authorized to rescind an acknowledgment or denial of paternity is the earlier of the 60th day after the effective date of the acknowledgment or denial; or the date a proceeding to which the signatory is a party is initiated,

rather than the date of the first hearing in a proceeding to which the signatory is a party, before a court to adjudicate an issue relating to the child. The bill prohibits the bureau of vital statistics from charging a fee for filing a rescission of an acknowledgment or denial of paternity. The bill requires the bureau of vital statistics to prescribe a form for the rescission of an acknowledgment or denial of paternity and specifies that a valid rescission is not affected by a later modification of the prescribed form.

C.S.S.B. 502 authorizes a proceeding for a challenge of an acknowledgment or denial of paternity to be commenced at any time before and prohibits a collateral attack on an acknowledgment of paternity from being maintained after 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 requiring the proceeding to commence before and prohibiting a collateral attack from being maintained after the fourth anniversary of the date the acknowledgment or denial is filed with the bureau of vital statistics and makes a conforming change to provisions of law relating to the execution of an acknowledgment of paternity. The bill removes provisions providing for a time limit by which a proceeding to challenge an acknowledgment or denial of paternity is to be commenced and for maintaining a collateral attack on an acknowledgment of paternity based on the signatory being a minor on the date the signatory executed the acknowledgment or denial.

C.S.S.B. 502 makes it a third degree felony offense for a person to alter, destroy, conceal, fabricate, or falsify 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, and makes an order excluding a man as the biological father of a child based on genetic evidence shown to be altered, fabricated, or falsified void and unenforceable.

C.S.S.B. 502 authorizes a proceeding seeking to adjudicate the parentage of a child having a presumed father, rather than a proceeding to disprove the father-child relationship between a child and the child's presumed father, to be maintained at any time if the court makes certain specified determinations. The bill includes among such determinations, as an alternative to a determination that 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, a determination that the presumed father was precluded from commencing a proceeding to adjudicate the parentage of the child before the expiration of the time prescribed by law because of the mistaken belief that he was the child's biological father based on misrepresentations that led him to that conclusion. The bill removes language authorizing such a proceeding when the court determines that the presumed father never represented to others that the child was his own in addition to the determination relating to cohabitation and intercourse. The bill makes conforming and nonsubstantive changes.

#### **EFFECTIVE DATE**

September 1, 2011.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.S.B. 502 differs from the original, in a bill provision removing language authorizing a signatory in an acknowledgment or denial of paternity to rescind the acknowledgment by commencing a proceeding to rescind, by retaining language making that provision applicable to a denial of paternity, whereas the original removes such language. The substitute differs from the original by specifying that a date by which a signatory is authorized to rescind an acknowledgment or denial of paternity is the date a proceeding to which the signatory is a party is initiated, whereas the original specifies that the date is the date an administrative or judicial proceeding relating to the child to which the signatory is a party is initiated.

C.S.S.B. 502 differs from the original, in a bill provision requiring a signatory seeking to rescind

an acknowledgment or denial of paternity to file certain information with the bureau of vital statistics, by including in that information a declaration of the signatory that a copy of the completed rescission was sent to the signatories of the related acknowledgment of paternity, if the rescission is of a denial of paternity, whereas the original contains no such inclusion.

C.S.S.B. 502 omits a provision included in the original making conforming changes to a provision of law relating to the effect of acknowledgment or denial of paternity.

C.S.S.B. 502 differs from the original by authorizing a proceeding for a challenge of an acknowledgment or denial of paternity to be commenced at any time before and prohibits a collateral attack on an acknowledgment of paternity from being maintained after the issuance of an order affecting the child identified in the acknowledgment or denial, whereas the original authorizes such a proceeding to be commenced at any time before and prohibits such a collateral attack from being maintained after the issuance of an administrative or judicial order affecting the child identified in the acknowledgment.

C.S.S.B. 502 omits a provision included in the original establishing the conditions under which a signatory of a denial of paternity is authorized to commence a proceeding to challenge a denial. The substitute omits a provision included in the original making conforming changes to a provision of law relating to the release of information and authorizing the bureau of vital statistics to release information relating to a rescission of an acknowledgment of paternity to certain parties. The substitute differs from the original in conforming and nonsubstantive ways.