SUBJECT: Expanding provisions for contesting paternity in child-support cases

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 8 ayes —Goodman, A. Reyna, E. Reyna, P. King, Menendez, Morrison, Naishtat, Nixon

0 nays

1 absent — Tillery

WITNESSES: For — None

Against — Jon Baughman

On — Howard Baldwin, Office of the Attorney General; Harry Tindall

BACKGROUND: Family Code, ch. 160 establishes guidelines for the determination of parentage of a child in a suit affecting the parent-child relationship. Sec. 160.206 allows a person to file a suit to voluntarily rescind an acknowledgment of paternity signed after September 1, 1999, within 60 days of the acknowledgment. Sec. 160.207 allows a person to file a suit to contest acknowledged paternity signed after September 1, 1999, within four years of the acknowledgment on the basis of fraud, duress, or material mistake of fact. However, a person may not file a suit to contest acknowledged paternity after a court has rendered an order, including a child support order, based on the acknowledgment.

If a statement of paternity were signed before September 1, 1999, it can only be considered as some evidence toward proving paternity and does not create a legal finding of paternity. No provision exists to revoke or rescind the statement, because the person could request a paternity test when a court action was filed to establish paternity or child support.

DIGEST: CSHB 638 would establish that if evidence from a scientific paternity test indicated a man was not the father of a child, this would constitute a material mistake of fact as grounds for revoking an acknowledgment of paternity.

Under CSHB 638, a man who signed a voluntary statement of paternity before September 1, 1999, and who was ordered to pay child support based on his statement, could file a suit to set aside the order on the basis of fraud, duress, or material mistake of fact. If there was credible evidence, a court would have to order a scientific paternity test, which would be paid for by the plaintiff.

If the court found that the plaintiff could not be the father, the court would be required to set aside the order to pay child support and any other related order regarding the child in question. However, the court would not have to set aside the order if the man had signed the statement *knowing* that he was not the father of the child or if he had subsequently adopted the child. The court would have to order the bureau of vital statistics to amend the child's birth record. The court could not require an obligee to repay child support already paid by plaintiff nor could it award damages to the plaintiff.

A suit under this section would have to be filed before September 1, 2003. This section would expire September 1, 2004.

CSHB 638 would take effect September 1, 2001.

SUPPORTERS SAY:

CSHB 638 is necessary because current law ignores scientific facts and lets the biological father off the hook. According to the American Association of Blood Banks, 28 percent of the paternity tests taken in 1999 excluded the alleged father as the biological father of the child in question. Inmates are allowed access to DNA testing to scientifically determine guilt, so it would be unfair not to allow men who question paternity this same access.

CSHB 638 would not treat a final order as if it never existed, and so there would be no burden on the custodial parent to repay child support the alleged father had already paid for the child in question.

CSHB 638 would allow a person who had signed an acknowledgment of paternity before September 1, 1999, the same grounds to revoke the acknowledgment as one who had signed after that date. This would make the law more consistent for these cases, regardless of the date the man signed the acknowledgment.

CSHB 638 would not make the setting aside of a child support order automatic because the man would have to actively pursue the case, and the court would have to take action to review the paternity case.

CSHB 638 would create an opportunity to establish a legal relationship with the true biological father, if possible.

OPPONENTS SAY:

A four-year limitation to contest acknowledged paternity is sufficient. There must be stability in the life of the child, and if someone had been acting as the acknowledged father for several years, withdrawing that acknowledgment could be disruptive and not in the best interest of the child.

CSHB 638 could set a bad precedent for setting aside final orders. There must be finality in court orders because otherwise people would keep re-litigating the same issues over and over under the guise of challenging the validity of the order itself.

Setting aside a child support order might not be in the best interest of the child if it meant leaving the child without support. In some cases the biological father might not be known, and the child and mother could be left without any support.

NOTES:

The committee substitute would allow only the father to bring a suit under this section and would provide that a scientific paternity test proving that the man was not the father was a material mistake of fact.