

BILL ANALYSIS

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S.B. 502
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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.

This bill authorizes a signatory to rescind an acknowledgment of paternity by filing a completed rescission with the bureau, on a form promulgated by the bureau, and sets out the requirements of such rescission, including that the rescission must be commenced before the earlier of the 60th day after the effective date of the acknowledgment or the date a proceeding relating to the child is initiated. The bill provides that there is no fee for such a filing. Upon receipt of such rescission, the bureau is required to void the acknowledgment of paternity and amend the child's birth record. The signatory seeking rescission must send a copy of the rescission form to any party affected by a rescission, including the Title IV-D agency, and any affected party may contest the rescission by filing a proceeding to adjudicate the parentage of the child. The bill restricts the procedures for rescission to an acknowledgment of paternity, while providing for a challenge to either an acknowledgment or a denial of paternity. Finally the legislation authorizes the commencement of a proceeding to adjudicate parentage of a child having a presumed father, if the court determines that the father and mother of the child did not live together or engage in sexual intercourse with each other during the probable time of conception or that the presumed father was precluded from commencing a parentage action before the time limitation set out in the statute because of the mistaken belief that he was the child's biological father based on misrepresentations that led him to that conclusion.

As proposed, S.B. 502 amends current law relating to determinations of paternity and creating 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, as follows:

(a) Requires that an acknowledgment of paternity be in a record, be signed, or otherwise authenticated, under penalty of perjury by the mother and the man seeking to establish paternity and state certain information, including that the signatories understand that the acknowledgment is the equivalent of a judicial adjudication of the paternity of the child and that a challenge to the acknowledgment is permitted only under limited circumstances. Deletes existing text barring a challenge to the acknowledgment after four years.

SECTION 2. Amends Section 160.305(b), Family Code, as follows:

(b) Provides that, except as provided by Section 160.308, rather than Sections 160.307 and 160.308, a valid denial of paternity filed with the bureau of vital statistics in conjunction with a valid acknowledgement of paternity is the equivalent of an adjudication of the nonpaternity of the presumed father and discharges the presumed father from all rights and duties of a parent.

SECTION 3. Amends Section 160.306, Family Code, as follows:

Sec. 160.306. **FILING FEE NOT REQUIRED.** Prohibits the bureau of vital statistics from charging a fee for filing:

- (1) an acknowledgment of paternity;
- (2) a denial of paternity; or
- (3) a rescission of an acknowledgment of paternity.

Makes nonsubstantive changes.

SECTION 4. 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 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, rather than the acknowledgment or denial, as provided by Section 160.304 (Rules for Acknowledgment and Denial of Paternity); or
- (2) the date an administrative or judicial proceeding relating to the child to which the signatory is a party is initiated including a proceeding that establishes child support, 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, including a proceeding that establishes child support.

(b) Requires a signatory seeking to rescind an acknowledgment 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, an administrative or judicial proceeding has not been held affecting the child identified in the acknowledgment 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 the other signatory of the acknowledgment of paternity and the signatory of any related denial of paternity; and
- (3) if the acknowledgment of paternity to be rescinded is filed in connection with a Title IV-D case, 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 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 Parenthood) to adjudicate the parentage of the child.

SECTION 5. Amends the heading to Section 160.308, Family Code, to read as follows:

Sec. 160.308. CHALLENGE OF ACKNOWLEDGEMENT OR DENIAL OF PATERNITY.

SECTION 6. Amends Section 160.308, Family Code, by amending Subsections (a) and (c) and adding Subsection (a-1), as follows:

(a) Authorizes a signatory of an acknowledgment of paternity, rather than an acknowledgment of paternity or denial of paternity, after the period for rescission under Section 160.307 has expired, to commence a proceeding to challenge the acknowledgment only, rather than acknowledgment or denial only, on the basis of fraud, duress, or material mistake of fact. Authorizes, rather than requires, that the proceeding be commenced at any time before the issuance of an administrative or judicial order affecting the child identified in the acknowledgment, including an order relating to support of the child, rather than before the fourth anniversary of the date the acknowledgment or denial being 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.

(a-1) Authorizes a signatory of a denial of paternity to commence a proceeding to challenge the denial only on the basis of fraud, duress, or material mistake of fact. Authorizes the proceeding to commence at any time before the issuance of an administrative or judicial order affecting the child identified in the denial, including an order relating to support of the child.

(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 administrative or judicial 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 7. 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 8. 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:

- (1) acknowledgment of paternity;
- (2) denial of paternity; and
- (3) rescission of an acknowledgment of paternity.

Makes nonsubstantive changes.

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

SECTION 9. Amends Section 160.313, Family Code, as follows:

Sec. 160.313. RELEASE OF INFORMATION. Authorizes the bureau of vital statistics to release information relating to the acknowledgment or denial of paternity or rescission of the acknowledgment of paternity to a signatory of the acknowledgment, denial, or rescission and to the courts and Title IV-D agency of this or another state. Makes conforming and nonsubstantive changes.

SECTION 10. 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 11. 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 12. Amends Section 160.608(f), Family Code, as follows:

(f) Provides 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 13. Amends Section 160.609(a), Family Code, as follows:

(a) Authorizes a signatory to the acknowledgment or denial of paternity, if the child has an acknowledged father, to commence a proceeding 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 14. (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 15. Effective date: September 1, 2011.