

BILL ANALYSIS

Senate Research Center

H.B. 209
By: Goodman (Averitt)
Jurisprudence
5/19/2005
Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Chapter 160, Family Code, is Texas' version of the Uniform Parentage Act (UPA) which was promulgated by the National Conference of Commissioners on Uniform State Laws in 2000 and amended in 2002. The UPA incorporates among its provisions certain mandates of federal law affecting state statutes for the establishment of paternity. [Receipt of federal funds for a state's child support enforcement program and public assistance programs are contingent on state enactment of, inter alia, laws for paternity establishment under 42 U.S.C. 666(a)(5).]

These federal mandates include requirements for the use of voluntary acknowledgment of paternity that constitutes "a legal finding of paternity," unless rescinded by a signatory within the earlier of the 60th day after the acknowledgment's effective date or the date of the first hearing in a proceeding to adjudicate an issue relating to the child, including the setting of a child support obligation.

After the expiration of this federal, statutory time period for rescission, the acknowledgment may be challenged by a signatory only on the basis of fraud, duress, or material mistake of fact. While the federal statute sets time limits for the rescission of an acknowledgment, it is silent with regard to time limits for the commencement of a challenge to the acknowledgment after the expiration of the period for rescission. Section 160.308, Family Code, provides that a proceeding to challenge an acknowledgment (or denial) of paternity must commence before the fourth anniversary of the date the acknowledgment (or denial) is filed with the bureau of vital statistics.

Both the UPA and the Texas version of the UPA under Chapter 160, Family Code, provide for the signing of a voluntary acknowledgment of paternity by a minor. Concerns, however, have been expressed in various forums about protecting the interests of minors who are signatories to acknowledgments of paternity. These concerns have to do with situations in which, for example, in the excitement of the birth of a child or because of accepted assertions of the mother, a minor might sign an acknowledgment of paternity of a child who is, in fact, not his genetic offspring. There is also concern that the minor signatory might not have fully understood the legal consequences of signing an acknowledgment, including the duty of child support

H.B. 209 tolls the four-year time period under Section 160.308, Family Code, for commencing a proceeding to challenge an acknowledgment (or denial) of paternity when a signatory was a minor at the time the acknowledgment (or denial) of paternity was executed. Under this bill, the four-year period for a challenge by a minor signatory would begin on the earlier of the date the signatory reaches the signatory's 18th birthday or the signatory's disabilities of minority are removed by court order, marriage, or other operation of law.

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 Sections 160.308(a) and (c), Family Code, as follows:

- (a) Requires the [paternity] proceedings to be commenced before the fourth anniversary of the date the acknowledgement or denial is filed with the bureau of vital statistics

unless the signatory was a minor on the date the signatory executed the acknowledgement or denial. Requires the proceedings, if the signatory was a minor on the date the signatory executed the acknowledgement or denial, to be commenced before the earlier of the fourth anniversary of a certain date.

(c) Prohibits a collateral attack on an acknowledgment of paternity signed under this chapter may not be maintained after the fourth anniversary of the date the acknowledgment of paternity is filed with the bureau of vital statistics unless the signatory was a minor on the date the signatory executed the acknowledgment. Provides that if the signatory was a minor on the date the signatory executed the acknowledgment, a collateral attack on the acknowledgment of paternity may not be maintained after the earlier of the fourth anniversary of the date of a certain date, notwithstanding any other provision of this chapter

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2005.