

BILL ANALYSIS

Senate Research Center
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S.B. 232
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Jurisprudence
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, the rescission of an acknowledgment or denial of paternity requires a judicial proceeding. Also, under current law, after the period for rescission has passed, a proceeding to challenge the acknowledgment or denial 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 or denial 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.

As proposed, S.B. 232 authorizes a signatory to rescind an acknowledgment of paternity or denial of paternity by filing a completed rescission with the bureau and sets out the requirements of such rescission. 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 or denial of paternity and amend the child's birth record. Any party affected by a rescission, including the Title IV-D agency, is authorized to contest the rescission by filing a proceeding within 60 days after the date the rescission was filed with the bureau. S.B. 232 also authorizes a proceeding challenging the acknowledgment or denial on the basis of fraud, duress, or material mistake of fact to be commenced after the deadlines set out in statute if, as of the date the proceeding is commenced, there has been no court order affecting the child.

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 requiring that an acknowledgment of paternity state 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 and is barred after four years.

SECTION 2. Amends Section 160.306, Family Code, as follows:

Sec. 160.306. FILING FEE NOT REQUIRED. Prohibits the bureau of vital statistics (bureau) from charging a fee for filing 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: RESCISSION. (a) Creates this subsection from existing text. Authorizes a signatory to rescind an acknowledgment of paternity or denial of paternity by filing a completed rescission under Subsection (b), accompanied by the signed return receipts from each person required to be notified under Subsection (b)(2), before the earlier of certain dates. Deletes existing text requiring a signatory to rescind an acknowledgment of paternity or denial of paternity by commencing a proceeding to rescind before the earlier of certain dates.

(b) Requires a signatory seeking to rescind an acknowledgment of paternity or denial of paternity to file with the bureau a completed rescission, on the form

prescribed under Section 160.312, in which the signatory declares under penalty of perjury that as of the date the rescission is filed, a court hearing has not been held in a proceeding affecting the child identified in the acknowledgment of paternity 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 certain signatories; and if the acknowledgment of paternity or denial 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, on receipt of a completed rescission, accompanied by the signed return receipts from each person required to be notified under Subsection (b)(2), 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 filing a proceeding not later than the 60th day after the date on which the rescission is filed with the bureau.

SECTION 4. Amends Section 160.308, Family Code, by amending Subsection (a) and adding Subsection (e), as follows:

(a) Requires that the proceeding to challenge the acknowledgment or denial only on the basis of fraud, duress, or material mistake of fact, except as provided by Subsection (e), be commenced before the fourth anniversary of the date the acknowledgment or denial is filed with the bureau unless the signatory was a minor on the date the signatory executed the acknowledgment or denial.

(e) Authorizes that a proceeding authorized by Subsection (a) be commenced after the applicable deadline specified by that subsection if, as of the date the proceeding is commenced, a court has not rendered an order affecting the child identified in the acknowledgment or denial of paternity, including an order relating to support of the child.

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

Sec. 160.309. New heading: **PROCEDURE FOR CONTEST OF RESCISSION OR 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 contest a rescission of, rather than rescind, or challenge the acknowledgment or denial of paternity.

(b) Provides that for purposes of the contest of the rescission of or challenge to an acknowledgment of paternity or denial of paternity, a signatory submits to the personal jurisdiction of the state by signing the acknowledgment or denial. Makes a nonsubstantive change.

(c)-(e) Makes conforming changes.

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

Sec. 160.312. New heading: **FORMS.** (a) Requires the bureau, to facilitate compliance with the subchapter, to prescribe forms for the 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.

SECTION 7. Amends Section 160.313, Family Code, as follows:

Sec. 160.313. RELEASE OF INFORMATION. Authorizes the bureau to release information relating to the acknowledgment or denial of paternity or rescission of the acknowledgment or denial 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.

SECTION 8. Amends Section 160.609(a), Family Code, to make conforming changes.

SECTION 9. Makes application of this Act prospective.

SECTION 10. Effective date: September 1, 2009.