

Regular Session, 2010

SENATE BILL NO. 322

BY SENATOR QUINN

CHILDREN. Provides requirements relative to an acknowledgment of paternity. (8/15/10)

1 AN ACT

2 To amend and reenact R.S. 9:392(A)(introductory paragraph), (7)(a) and (b), and (B) and
3 399.1, relative to paternity; to provide for acknowledgments of paternity; to provide
4 terminology to include both parents; to provide for the inclusion of certain
5 information; to provide for the dismissal of a paternity judgment; to provide for the
6 burden of proof; to provide exceptions; to provide for genetic testings; to provide for
7 the filing of tests results; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 9:392(A)(introductory paragraph), (7)(a) and (b), and (B) and
10 399.1 are hereby amended and reenacted to read as follows:

11 §392. Acknowledgment; requirements; content

12 A. Prior to the execution of an acknowledgment of paternity, the notary shall
13 ~~provide~~ **apprise** in writing; and orally, ~~or by~~ **which may include** directing them to
14 video or audio presentations, the ~~party or parties~~ **mother and alleged father** making
15 the acknowledgment of the following:

16 * * *

17 (7)(a) ~~A party~~ **An alleged father** who executed an authentic act of

1 acknowledgment may revoke the act, without cause, before the earlier of the
2 following:

3 (i) Sixty days after the signing of the act, in a judicial hearing for the limited
4 purpose of revoking the acknowledgment.

5 (ii) A judicial hearing relating to the child, including a child support
6 proceeding, wherein the ~~affiant to~~ **alleged father who executed** the authentic act of
7 acknowledgment is a party to the proceeding.

8 (b) Thereafter, the acknowledgment of paternity may be voided only upon
9 proof, by clear and convincing evidence, that such act was induced by fraud, duress,
10 material mistake of fact, or error, or that the ~~person~~ **alleged father** who executed the
11 authentic act of acknowledgment is not the biological father.

12 * * *

13 B. In addition to the general requirements of the Civil Code, an
14 acknowledgment of a child born outside of marriage shall include the social security
15 numbers of the father and mother, and, in accordance with the provisions of 42
16 U.S.C. 652(a)(7) **and 42 U.S.C. 666(a)(5)(D)**, shall include all minimum
17 requirements specified by the secretary of the United States Department of Health
18 and Human Services. Failure to recite a party's social security number as required
19 herein shall not affect the validity of the declaration.

20 * * *

21 §399.1. Dismissal of final order following judgment of paternity; time periods;
22 procedure; effects

23 A. Notwithstanding any other provision of law, a judgment establishing
24 paternity may be set aside or vacated by the adjudicated father of a child, the child,
25 the mother of the child, or the legal representative of any of these persons ~~if genetic~~
26 ~~testing conducted in accordance with the provisions of R.S. 9:397.2 and 397.3~~
27 ~~indicates that the adjudicated father of a child is not the biological father of the child.~~
28 The proceeding shall be instituted by ordinary process in a court of competent
29 jurisdiction and service shall be made upon the office of family support, support

1 enforcement services of the Department of Social Services, if services are being
2 provided by the department. **The burden of proof shall be upon the party seeking**
3 **to set aside or vacate the judgment of paternity.** The proceeding shall be brought
4 within one of the following time periods:

5 (1) ~~Within~~ a two-year period commencing with the date on which the
6 adjudicated father knew or should have known of a judgment that established him
7 as the father of the child or commencing with the date the adjudicated father knew
8 or should have known of the existence of an action to adjudicate the issue of
9 paternity, whichever is first, ~~except as provided in Paragraph (2) of this Subsection.~~

10 (2) ~~In the case of any adjudicated father who is the biological father as a~~
11 ~~result of a default judgment as of the effective date of this Section, within a two-year~~
12 ~~period commencing with the enactment of this Section.~~

13 B. Subsection A of this Section does not apply if the child is presumed to be
14 a child of a marriage **between the mother and the legal father.**

15 C. ~~If an order of support is dismissed on the basis of non-paternity of the~~
16 ~~adjudicated father, the court shall nullify the judgment of paternity.~~ **If the court**
17 **finds there is a substantial likelihood that the adjudicated father is not the**
18 **biological father, it shall order genetic tests pursuant to R.S. 9:396. Nothing**
19 **herein shall preclude the introduction of other evidence if it is not possible to**
20 **conduct genetic testing.**

21 **D. The test results certified under oath by an authorized representative**
22 **of an accredited laboratory shall be filed with the court and shall be admissible**
23 **on the issue of paternity in accordance with R.S. 9:397.3. If the test results show**
24 **a statistical probability of paternity of ninety-nine point nine percent or greater,**
25 **a rebuttable presumption of paternity shall be established. If the adjudicated**
26 **father is found to be excluded by the tests, the court shall nullify the judgment**
27 **of paternity.**

28 **E. Except for good cause shown, the court shall not suspend, during the**
29 **pendency of this proceeding, any legal obligations including a support obligation**

1 **of the adjudicated father.**

2 **~~D.F.(1)~~ If a judgment of paternity is set aside, vacated, or dismissed, the**
 3 **court shall dismiss any obligation of child support.**

4 ~~(1)~~**(2)** A judgment dismissing an established order of support does not affect
 5 any child support payment or arrearages paid, due, or owing prior to the date the
 6 action to set aside or vacate the judgment of paternity was filed.

7 ~~(2)~~**(3)** The judgment dismissing an established order of support shall be
 8 served upon the office of family support, support enforcement services of the
 9 Department of Social Services, if services are being provided by the department.

10 ~~(3)~~**(4)** Neither the state of Louisiana, its officers, employees, agents,
 11 contractors, nor the office of family support, support enforcement services of the
 12 Department of Social Services shall be liable in any case to compensate any person
 13 for child support paid or for any other costs as a result of the judgment setting aside
 14 or vacating the judgment of paternity or support entered in accordance with this
 15 Section.

The original instrument was prepared by Jerry G. Jones. The following
 digest, which does not constitute a part of the legislative instrument, was
 prepared by Michelle Broussard-Johnson.

DIGEST

Quinn (SB 322)

Present law uses the terms "party or parties" and "affiant."

Proposed law changes the terms to "mother and alleged father" and "alleged father."

Present law required only the alleged father who executed the acknowledgment to be a party to this action.

Proposed law changes present law to make it consistent with federal law which requires both the mother and father to sign the acknowledgment.

Present law provides that a judgment establishing paternity may be set aside or vacated if genetic testing indicated that the adjudicated father is not the biological father.

Proposed law provides that if the court finds there is a substantial likelihood that the adjudicated father is not the biological father, it shall order genetic testing and if the results show a 99.9% statistical probability of paternity, a rebuttable presumption of paternity shall be established.

Proposed law provides that the burden of proof shall be upon the party seeking to set aside or vacate the judgment and proceedings shall be brought within two years from judgment

or initiation of action.

Proposed law provides that the court shall not suspend any legal obligations during the pendency of this proceeding, except for good cause shown.

Proposed law provides that if the judgment of paternity is set aside, vacated, or dismissed, the court shall dismiss any obligation of child support.

Present law provides that present law does not apply to a child presumed to be a child of a marriage.

Proposed law provides that present law does not apply to a child presumed to be a child of a marriage between the mother and the legal father.

Effective August 15, 2010.

(Amends R.S. 9:392(A)(intro. para.), (7)(a) and (b), and (B) and 399.1(A)(intro. para.), (B), (C), and (D); adds R.S. 9:399.1(E) and (F))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill.

1. Changed from not applying to a child presumed to be a child of a marriage between the mother and the adjudicated father to not applying to a child presumed to be a child of a marriage between the mother and the legal father.

Senate Floor Amendments to engrossed bill.

1. Clarifies the two year prescriptive period that exist in which the adjudicated father knew or should have known of a judgment establishing paternity.
2. Technical amendments with clarifying language.