

SENATE BILL NO. 322

BY SENATOR QUINN

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~~ **advise** 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
18 acknowledgment may revoke the act, without cause, before the earlier of the
19 following:

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

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

25 (b) Thereafter, the acknowledgment of paternity may be voided only upon
26 proof, by clear and convincing evidence, that such act was induced by fraud, duress,
27 material mistake of fact, or error, or that the ~~person~~ **alleged father** who executed the

1 authentic act of acknowledgment is not the biological father.

2 * * *

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

10 * * *

11 §399.1. Dismissal of final order following judgment of paternity; time periods;
12 procedure; effects

13 A. Notwithstanding any other provision of law, a judgment establishing
14 paternity may be set aside or vacated by the adjudicated father of a child, the child,
15 the mother of the child, or the legal representative of any of these persons ~~if genetic~~
16 ~~testing conducted in accordance with the provisions of R.S. 9:397.2 and 397.3~~
17 ~~indicates that the adjudicated father of a child is not the biological father of the child.~~
18 The proceeding shall be instituted by ordinary process in a court of competent
19 jurisdiction and service shall be made upon the office of family support, support
20 enforcement services of the Department of Social Services, if services are being
21 provided by the department. **The burden of proof shall be upon the party seeking**
22 **to set aside or vacate the judgment of paternity.** The proceeding shall be brought
23 within ~~one of the following time periods:~~

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

29 ~~(2) In the case of any adjudicated father who is the biological father as a~~
30 ~~result of a default judgment as of the effective date of this Section, within a two-year~~

1 ~~period commencing with the enactment of this Section.~~

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

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

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

17 **E. Except for good cause shown, the court shall not suspend, during the**
18 **pendency of this proceeding, any legal obligations including a support obligation**
19 **of the adjudicated father.**

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

22 ~~(1)(2)~~ A judgment dismissing an established order of support does not affect
23 any child support payment or arrearages paid, due, or owing prior to the date the
24 action to set aside or vacate the judgment of paternity was filed.

25 ~~(2)(3)~~ The judgment dismissing an established order of support shall be
26 served upon the office of family support, support enforcement services of the
27 Department of Social Services, if services are being provided by the department.

28 ~~(3)(4)~~ Neither the state of Louisiana, its officers, employees, agents,
29 contractors, nor the office of family support, support enforcement services of the
30 Department of Social Services shall be liable in any case to compensate any person

1 for child support paid or for any other costs as a result of the judgment setting aside
2 or vacating the judgment of paternity or support entered in accordance with this
3 Section.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____