

2016 Regular Session

HOUSE BILL NO. 388

BY REPRESENTATIVE JEFFERSON

(On Recommendation of the Louisiana State Law Institute)

CHILDREN: Provides for the filiation of children

1 AN ACT

2 To amend and reenact Civil Code Articles 189, 191, 195, and 196 and R.S. 9:406(B), (C),
3 (D)(2) and (E)(2) and to enact R.S. 9:408 and 409, relative to the filiation of
4 children; to provide for the commencement of the prescriptive period; to provide for
5 the revocation of an act of acknowledgment; to provide for the identification of
6 fathers; to provide for necessary parties; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Civil Code Articles 189, 191, 195, and 196 are hereby amended and
9 reenacted to read as follows:

10 Art. 189. Time limit for disavowal by the husband

11 The action for disavowal of paternity is subject to a liberative prescription of
12 one year. This prescription commences to run from the day of the birth of the child,
13 or the day the husband learns or should have learned of the birth ~~he knew or should~~
14 have known that he may not be the biological father of the child, whichever occurs
15 later.

16 Nevertheless, if the husband lived separate and apart from the mother
17 continuously during the three hundred days immediately preceding the birth of the
18 child, this prescription does not commence to run until the husband is notified in
19 writing that a party in interest has asserted that the husband is the father of the child.

Revision Comments - 2016

This revision alters the time periods within which a presumed father must bring an action for disavowal. Rather than the husband's actual or constructive knowledge of the birth of the child marking the commencement of the period, this revision changes the law to provide for commencement on the later of the birth of the child, or the husband's actual or constructive knowledge that he may not be the child's biological father. This change better addresses cases in which a husband has been deceived by the child's mother. See, e.g., *State v. Drew*, 70 So.3d 1011 (La. App. 2d Cir. 2011); C.C. Art. 198. Knowledge of the mother's adultery, for instance, may provide the requisite knowledge for commencement of the period under the first Paragraph of this Article.

* * *

Art. 191. Contestation and establishment of paternity by mother

The mother of a child may institute an action to establish both that her former husband is not the father of the child and that her present husband is the father. This action may be instituted only if the present husband has acknowledged the child by authentic act ~~or by signing the birth certificate~~.

* * *

Art. 195. Presumption by marriage and acknowledgment; child not filiated to another man; proof; time period

A man who marries the mother of a child not filiated to another man and who, with the concurrence of the mother, acknowledges the child by authentic act ~~or by signing the birth certificate~~ is presumed to be the father of that child.

The husband may disavow paternity of the child as provided in Article 187.
Revocation of the authentic act of acknowledgment alone is not sufficient to rebut the presumption of paternity created by this Article.

The action for disavowal is subject to a peremptive period of one hundred eighty days. This peremptive period commences to run from the day of the marriage or the acknowledgment, whichever occurs later.

Revision Comment - 2016

(a) To rebut the presumption of paternity created by subsequent marriage and formal acknowledgment of the child, a timely disavowal action must be brought. Merely revoking the formal act of acknowledgment in accordance with R.S. 9:406 is not sufficient to rebut the presumption of paternity under this article.

(b) The elimination of signing the birth certificate as a means of accomplishing a formal acknowledgment is intended to have prospective effect only.

1 Formal acknowledgments that were accomplished in this manner prior to the
2 effective date of the 2016 revision will therefore remain effective.

3 Art. 196. Formal acknowledgment; presumption

4 A man may, by authentic act ~~or by signing the birth certificate~~, acknowledge
5 a child not filiated to another man. The acknowledgment creates a presumption that
6 the man who acknowledges the child is the father. The presumption can be invoked
7 only on behalf of the child. Except as otherwise provided in custody, visitation, and
8 child support cases, the acknowledgment does not create a presumption in favor of
9 the man who acknowledges the child.

10 Revision Comment - 2016

11 (a) To rebut the presumption of paternity created by subsequent marriage and
12 formal acknowledgment of the child, a timely disavowal action must be brought.
13 Merely revoking the formal act of acknowledgment in accordance with R.S. 9:406
14 is not sufficient to rebut the presumption of paternity under this Article.

15 (b) The elimination of signing the birth certificate as a means of
16 accomplishing a formal acknowledgment is intended to have prospective effect only.
17 Formal acknowledgments that were accomplished in this manner prior to the
18 effective date of the 2016 revision will therefore remain effective.

19 * * *

20 Section 2. R.S. 9:406(B), (C), (D)(2) and (E)(2) are hereby amended and reenacted

21 and R.S. 9:408 and 409 are hereby enacted to read as follows:

22 §406. Revocation or annulment of authentic act; with and without cause; procedure

23 * * *

24 B.(1) If the notarial act of acknowledgment has not been revoked within
25 sixty days in accordance with the provisions of Subsection A of this Section, a
26 person who executed an authentic act of acknowledgment may petition the court to
27 ~~revoke such~~ annul the acknowledgment only upon proof, by clear and convincing
28 evidence, that such act was induced by fraud, duress, material mistake of fact or
29 error, or that the person is not the biological parent of the child.

30 (2) The ~~mover~~ petitioner shall institute the annulment proceeding by
31 ordinary process, ~~within a two-year period commencing with the execution of the~~
32 ~~authentic act of acknowledgment of paternity~~, in a court of competent jurisdiction
33 upon notice to the other party who executed the notarial act of acknowledgment and

1 other necessary parties including the office of children and family services, child
2 support enforcement section of the Department of Children and Family Services.

3 (3) If the court finds based upon the evidence presented at the hearing that
4 there is substantial likelihood that fraud, duress, material mistake of fact or error
5 existed in the execution of the act or that the person who executed the authentic act
6 of acknowledgment is not the biological father, then, and only then, the court shall
7 order genetic tests pursuant to R.S. 9:396. Nothing herein shall preclude the ~~mover~~
8 petitioner from presenting any other evidence as a substitute for the genetic tests if
9 it is not possible to conduct such tests.

10 ~~(3)~~(4) 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 on
12 the issue of paternity pursuant to R.S. 9:397.3. If the test results show a statistical
13 probability of ninety-nine point nine percent or greater, a rebuttable presumption of
14 paternity shall be established. If the acknowledged father is found to be excluded by
15 the tests, an action seeking support or an established order of support shall be
16 dismissed and the acknowledgment of paternity shall be ~~revoked~~ annulled. A
17 judgment dismissing an established order of support does not affect any child support
18 payment or arrearages paid, due or owing prior to the date the ~~revocation action~~
19 annulment was filed.

20 ~~(4)~~(5) The burden of proof in this proceeding shall be upon the party seeking
21 to revoke the authentic act of acknowledgment. The testimony of the petitioner shall
22 be corroborated by other evidence.

23 C.(1) Except for good cause shown, the court shall not suspend during the
24 pendency of this proceeding any legal obligations, including a support obligation, of
25 the person who petitions the court to revoke or ~~rescind~~ annul the authentic act of
26 acknowledgment under this Section.

27 (2) Neither the state of Louisiana, its officers, employees, agents,
28 contractors, nor the office of children and family services, child support enforcement
29 section of the Department of Children and Family Services shall be liable to

1 compensate any person for child support paid or any other costs as a result of the
2 revocation of any authentic act of acknowledgment or the ~~revocation~~ annulment of
3 any judgment of paternity or support in accordance with this Section.

4 D.

5 * * *

6 (2) However, if the voluntary acknowledgment is ~~revoked~~ annulled by order
7 of the court based upon genetic tests conducted in accordance with Subsection B of
8 this Section which excluded a person as a parent and an order of support has not been
9 established, no further action may be initiated against the excluded person.

10 E.

11 * * *

12 (2) Upon receipt of the form revoking the authentic act of acknowledgment
13 which was executed and filed with the registrar within the sixty-day period or upon
14 receipt of the judgment which shows that the voluntary acknowledgment has been
15 revoked at the hearing which is held no later than the sixtieth day following the
16 execution of the voluntary acknowledgment, or upon receipt of a certified copy of
17 a judgment with a finding shown clearly in the judgment that the authentic act of
18 acknowledgment was ~~revoked~~ annulled due to fraud, duress, material mistake of fact
19 or error that existed in the execution of the act or that the person who executed the
20 authentic act of acknowledgment is not the biological father, the registrar shall make
21 the appropriate amendments to the birth record of the child who was the subject of
22 the order.

23 Revision Comment - 2016

24 The 2016 revision repeals the two-year prescriptive period previously
25 imposed for revocation of authentic acts of acknowledgment. That prescriptive
26 period was illogical where the acknowledgment was executed by a man who was not
27 the biological father of the child. The Louisiana Supreme Court has held the
28 execution of such an acknowledgment to be an absolute nullity absent the requisite
29 biological relationship supporting it. Succession of Robinson, 654 So. 2d 682 (La.
30 1995). To speak of prescription when a father seeks a declaration of absolute nullity
31 is inappropriate, as absolute nullities are imprescriptible by nature. C.C. Art. 2032.

32 * * *

1 §408. Process for identifying father of child born outside of marriage

2 A. If the child is born to a mother who is neither married nor was married
3 within three hundred days prior to the birth of the child and the identity of the father
4 is known to the mother, she shall complete and sign a paternity information form
5 issued by the Vital Records Registry, which form shall include the name and date of
6 birth of the child, the full name of the father, his mailing address, his street address
7 or the location where he can be found, his date of birth, the name of his legal
8 representative if he is a minor, his state and city of birth, his social security number,
9 and his place of employment, if known. Within fifteen days after the date of
10 admission of the mother to a hospital or birthing facility, the hospital or birthing
11 facility shall forward the form to the child support enforcement section, office of
12 children and family services, Department of Children and Family Services, with such
13 information as the mother has provided. If the birth occurred at a location other than
14 a licensed hospital or birthing facility, the form shall be completed at the time the
15 birth is recorded by the Vital Records Registry and submitted to support enforcement
16 services within fifteen days thereafter. If the biological father has not executed an
17 acknowledgment of paternity, the mother shall sign as the informant unless she is
18 medically unable or mentally incompetent in which case her legal representative
19 shall sign.

20 B. The department shall serve notice on the alleged father that he has been
21 named as the father of the child. If the alleged father is a minor, service shall be
22 made upon his legal representative. The notice shall be served by certified mail,
23 return receipt requested. The notice shall include the name of the child and the name
24 of the mother of the child and shall advise the alleged father how the allegation of
25 paternity can be contested. The notice shall also advise the alleged father that he can
26 request that blood tests be conducted and that the alleged father can sign an
27 acknowledgment of paternity.

28 C. Upon receiving the notice, the alleged father shall have ninety days to
29 contest the allegation that he is the father. He shall do so by advising the department

1 in writing that he is not the father. If the alleged father fails to contest the allegation
2 in writing within ninety days, he shall be presumed to be the father of the child, for
3 support purposes only, and the agency or the custodial parent may use this
4 presumption in an action to seek a support order.

5 D. If the alleged father contests paternity at the hearing for support, the court
6 may order blood tests.

7 E. If the results of the blood test indicate by a probability of 99.9% or higher
8 that the alleged father is in fact the father of the child, or if the alleged father fails to
9 appear for the court-ordered blood tests, the court shall rule that he is the father of
10 the child, for purposes of support only, and shall issue an order for support in
11 accordance with state law.

12 F. Nothing in this Section shall be deemed, construed, or interpreted to create
13 any presumption of legal paternity for any purpose other than support as set forth in
14 this Section.

15 G. In the event the alleged father is found not to be the father, all costs of the
16 hearing, medical costs, expert witnesses costs, and costs incurred by the alleged
17 father defending himself shall be paid by the party who made the allegations against
18 the alleged father.

19 §409. Filiation and paternity proceeding; parties

20 The child's mother, the husband of the mother, and the biological father, if
21 known, shall be joined in a filiation or paternity proceeding, except that joinder is not
22 required of a person whose parental rights have been terminated, or who is deceased,
23 or whose joinder is determined otherwise not to be feasible.

24 Section 3. Civil Code Article 196 as amended in this Act shall have prospective
25 application only.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 388 Original

2016 Regular Session

Jefferson

Abstract: Provides for the filiation of children.

Present law (C.C. Art. 189) provides for the time period for disavowal of paternity and provides that prescription runs from the day the husband learns or should have learned of the birth of the child. Proposed law changes the commencement of the prescription from the day the husband learns or should have learned of the birth of the child to the birth of the child or the day the husband knew or should have known that he may not be the biological father of the child, whichever occurs later.

Present law (C.C. Art. 191) provides for the contestation and establishment of paternity by the mother. Proposed law retains present law but deletes the outdated reference to "signing the birth certificate".

Present law (C.C. Art. 195) provides a presumption of paternity when a man marries the mother and the child is not filiated to another man and he acknowledges the child. Present law also provides for the disavowal of paternity of a child who was acknowledged by authentic act. Proposed law retains present law and provides that a revocation of the authentic act of acknowledgment alone is not sufficient to rebut the presumption.

Present law (C.C. Art. 196) provides for the presumption of paternity by formal acknowledgment. Proposed law retains present law but deletes the outdated reference to "signing the birth certificate".

Present law (R.S. 9:406) provides for the revocation of authentic acts of acknowledgment and provides for a two year prescriptive period. Proposed law deletes the two year prescriptive period to bring the law into compliance with Succession of Robinson, 654 So.2d. 682 (La. 1995).

Proposed law also requires the petitioner's testimony to be corroborated by other evidence.

Proposed law (R.S. 9:408) provides for the process of identifying the father of a child born outside of marriage. This provision was moved from existing R.S. 40:34 and slightly modified.

Proposed law (R.S. 9:409) provides for the necessary joinder of parties to a filiation and paternity proceeding. Modified from R.S. 40:34.

Proposed law provides for the prospective application of C.C. Art. 196.

(Amends C.C. Arts. 189, 191, 195, and 196 and R.S. 9:406(B), (C), (D)(2), and (E)(2); Adds R.S. 9:408 and 409)