# **ACT No. 309**

HOUSE BILL NO. 388

## BY REPRESENTATIVES JEFFERSON AND HUNTER

(On Recommendation of the Louisiana State Law Institute)

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, relative to the filiation of children; to		
4	provide for the commencement of the prescriptive period; to provide for the		
5	revocation of an act of acknowledgment; to provide for necessary parties; and to		
6	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 knew or should		
14	have known that he may not be the biological father of the child, whichever occurs		
15	<u>later</u> .		
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.		
20	Revision Comments - 2016		
21 22 23 24 25 26	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		

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CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

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.

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

## Art. 196. Formal acknowledgment; presumption

A man may, by authentic act <del>or by signing the birth certificate</del>, acknowledge a child not filiated to another man. The acknowledgment creates a presumption that

the man who acknowledges the child is the father. The presumption can be invoked only on behalf of the child. Except as otherwise provided in custody, visitation, and child support cases, the acknowledgment does not create a presumption in favor of the man who acknowledges the child.

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

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Section 2. R.S. 9:406(B), (C), (D)(2), and (E)(2) are hereby amended and reenacted and R.S. 9:408 is hereby enacted to read as follows:

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

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- B.(1) If the notarial act of acknowledgment has not been revoked within sixty days in accordance with the provisions of Subsection A of this Section, a person who executed an authentic act of acknowledgment may petition the court to revoke such annul the acknowledgment only upon proof, by clear and convincing evidence, that such act was induced by fraud, duress, material mistake of fact or error, or that the person is not the biological parent of the child.
- (2) The mover petitioner shall institute the <u>annulment</u> proceeding by ordinary process, within a two-year period commencing with the execution of the authentic act of acknowledgment of paternity, in a court of competent jurisdiction upon notice to the other party who executed the notarial act of acknowledgment and other necessary parties including the office of children and family services, child support enforcement section of the Department of Children and Family Services.
- (3) If the court finds based upon the evidence presented at the hearing that there is substantial likelihood that fraud, duress, material mistake of fact or error existed in the execution of the act or that the person who executed the authentic act

of acknowledgment is not the biological father, then, and only then, the court shall order genetic tests pursuant to R.S. 9:396. Nothing herein shall preclude the mover petitioner from presenting any other evidence as a substitute for the genetic tests if it is not possible to conduct such tests.

(3)(4) The test results certified under oath by an authorized representative of an accredited laboratory shall be filed with the court and shall be admissible on the issue of paternity pursuant to R.S. 9:397.3. If the test results show a statistical probability of ninety-nine point nine percent or greater, a rebuttable presumption of paternity shall be established. If the acknowledged father is found to be excluded by the tests, an action seeking support or an established order of support shall be dismissed and the acknowledgment of paternity shall be revoked annulled. A judgment dismissing an established order of support does not affect any child support payment or arrearages paid, due or owing prior to the date the revocation action annulment was filed.

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

- C.(1) Except for good cause shown, the court shall not suspend during the pendency of this proceeding any legal obligations, including a support obligation, of the person who petitions the court to revoke or rescind annul the authentic act of acknowledgment under this Section.
- (2) Neither the state of Louisiana, its officers, employees, agents, contractors, nor the office of children and family services, child support enforcement section of the Department of Children and Family Services shall be liable to compensate any person for child support paid or any other costs as a result of the revocation of any authentic act of acknowledgment or the revocation annulment of any judgment of paternity or support in accordance with this Section.

D.

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

E.

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

#### Revision Comment - 2016

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

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## §408. Filiation and paternity proceeding; parties

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

1	Section 3.	Civil Code Article 196 as amended in this Act shall have prospective
2	application only.	
		SPEAKER OF THE HOUSE OF REPRESENTATIVES
		PRESIDENT OF THE SENATE
		GOVERNOR OF THE STATE OF LOUISIANA

**ENROLLED** 

HB NO. 388

APPROVED: \_\_\_\_\_