
DIGEST

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Ansardi

HB No.

Abstract: Provides for a comprehensive revision of the Civil Code articles on the filiation of children and parents.

Proposed law provides the following major substantive revisions:

- (1) Defines "maternity" as evidence the child was born of a particular woman, which conforms to the historical understanding of motherhood, yet also recognizes that other special statutes may modify the definition in exceptional circumstances (C.C. Art. 184).
- (2) Explicitly addresses the result when after the resolution of overlapping presumptions of two different husbands' paternity, one of the two husbands is successful in a disavowal action (C.C. Art. 186). The presumption applicable to the other husband of the mother is resurrected. Proposed law assures that the husband to whom the presumption applies has notice and one year to disavow.
- (3) Creates a contestation action that the mother may institute to disprove her former husband's paternity and establish the paternity of her current husband. The contestation action is restricted as follows: (a) must be instituted within 180 days from second marriage and two years from birth of child (C.C. Art. 193); (b) second husband has formally acknowledged the child (C.C. Art. 191).
- (4) Eliminates the current legal category of legitimation by subsequent marriage and provides that the same circumstances create a presumption of paternity (C.C. Art. 195).
- (5) (C.C. Art. 196) Changes present law as to acknowledgment by the parent of a child who is otherwise not filiated to another man by creating a presumption of paternity of the acknowledging parent that can only be invoked in favor of the child. Provides that except in those cases handled by DSS, the acknowledgment does not create a presumption in favor of the man who acknowledges the child. Provides that in those support and visitation cases handled by DSS, the acknowledgment is deemed to be a legal finding of paternity and is sufficient to establish an obligation to support the child and to establish visitation without the necessity of obtaining a judgment of paternity. Proposed law also repeals acknowledgment by signature on a baptismal certificate.
- (6) Recognizes a child's action to establish his paternity, but proposed law does not limit the time period for which he must do so. For succession purposes only, the child shall institute the action within a one-year preemptive period that begins to run from the day of

death of the alleged father (C.C. Art. 197).

- (7) Recognizes the "avowal" action that an alleged father may institute to establish his paternity with the following restrictions: (a) if the child is presumed to be the child of another man, this action shall be instituted within two years of the date of birth of the child, (b) if the mother in bad faith deceived the father regarding paternity, the action shall be instituted within one year from the day the father knew or should have known or within 10 years from the birth of the child. After the child's death, the father's action is subject to a one-year preemptive period. Provides that these time periods shall not apply to DSS in providing services in accordance with 42 USC 666. (C.C. Art. 198).
- (8) Recognizes the possibility that a child who is presumed to be the child of one man may establish his filiation to another man (C.C. Art. 197), which codifies decades-old jurisprudence permitting "dual paternity".

Effective August 15, 2006.

(Amends C.C. Arts. 184-198) (Consolidates Chs. 1, 2, and 3 (C.C. Arts. 178-211) of Title VII of Book 1 of the Civil Code into Chs. 1 and 2, comprising C.C. Arts. 184-198)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

- 1. Adds exception for cases handled by DSS from provision that provides that acknowledgment does not create a presumption in favor of the acknowledging father.
- 2. Provides for the effect of an acknowledgment in support and visitation cases handled by DSS.
- 3. Provides time periods for instituting an action to establish paternity do not apply to DSS in providing services under 42 USC 666.