

**ACT No. 309**

2016 Regular Session

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 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.

20 Revision Comments - 2016

21 This revision alters the time periods within which a presumed father must  
22 bring an action for disavowal. Rather than the husband's actual or constructive  
23 knowledge of the birth of the child marking the commencement of the period, this  
24 revision changes the law to provide for commencement on the later of the birth of  
25 the child, or the husband's actual or constructive knowledge that he may not be the  
26 child's biological father. This change better addresses cases in which a husband has

1           been deceived by the child's mother. See, e.g., *State v. Drew*, 70 So.3d 1011 (La.  
2           App. 2d Cir. 2011); C.C. Art. 198. Knowledge of the mother's adultery, for instance,  
3           may provide the requisite knowledge for commencement of the period under the first  
4           Paragraph of this Article.

5   \*           \*           \*

6           Art. 191. Contestation and establishment of paternity by mother

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

11   \*           \*           \*

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

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

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

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

23   Revision Comment - 2016

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

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

32           Art. 196. Formal acknowledgment; presumption

33                        A man may, by authentic act ~~or by signing the birth certificate~~, acknowledge  
34           a child not filiated to another man. The acknowledgment creates a presumption that

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

5 Revision Comment - 2016

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

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

14 \* \* \*

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

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

18 \* \* \*

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

25 (2) The ~~mover~~ petitioner shall institute the annulment proceeding by  
26 ordinary process, ~~within a two-year period commencing with the execution of the~~  
27 ~~authentic act of acknowledgment of paternity~~, in a court of competent jurisdiction  
28 upon notice to the other party who executed the notarial act of acknowledgment and  
29 other necessary parties including the office of children and family services, child  
30 support enforcement section of the Department of Children and Family Services.

31 (3) If the court finds based upon the evidence presented at the hearing that  
32 there is substantial likelihood that fraud, duress, material mistake of fact or error  
33 existed in the execution of the act or that the person who executed the authentic act

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

5 ~~(3)~~(4) The test results certified under oath by an authorized representative  
 6 of an accredited laboratory shall be filed with the court and shall be admissible on  
 7 the issue of paternity pursuant to R.S. 9:397.3. If the test results show a statistical  
 8 probability of ninety-nine point nine percent or greater, a rebuttable presumption of  
 9 paternity shall be established. If the acknowledged father is found to be excluded by  
 10 the tests, an action seeking support or an established order of support shall be  
 11 dismissed and the acknowledgment of paternity shall be ~~revoked~~ annulled. A  
 12 judgment dismissing an established order of support does not affect any child support  
 13 payment or arrearages paid, due or owing prior to the date the ~~revocation-action~~  
 14 annulment was filed.

15 ~~(4)~~(5) The burden of proof in this proceeding shall be upon the party seeking  
 16 to revoke the authentic act of acknowledgment. The testimony of the petitioner shall  
 17 be corroborated by other evidence.

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

22 (2) Neither the state of Louisiana, its officers, employees, agents,  
 23 contractors, nor the office of children and family services, child support enforcement  
 24 section of the Department of Children and Family Services shall be liable to  
 25 compensate any person for child support paid or any other costs as a result of the  
 26 revocation of any authentic act of acknowledgment or the ~~revocation~~ annulment of  
 27 any judgment of paternity or support in accordance with this Section.

28 D.

29 \* \* \*

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

5 E.

6 \* \* \*

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

18 Revision Comment - 2016

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

27 \* \* \*

28 §408. Filiation and paternity proceeding; parties

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

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

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

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

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