

2018 Regular Session

HOUSE BILL NO. 147

BY REPRESENTATIVE DWIGHT

(On Recommendation of the Louisiana State Law Institute)

FAMILY LAW: Provides for the filiation of a child

1 AN ACT

2 To amend and reenact R.S. 40:34.2(2)(a)(introductory paragraph), 34.5(A), and 46.4(A), to
3 enact Civil Code Article 190.1 and R.S. 40:34.5.1 and 34.5.2, and to repeal R.S.
4 40:46.9, relative to filiation; to provide for presumptions of paternity; to provide for
5 the acknowledgment of a child; to provide relative to the birth certificate of the child;
6 to provide for a three-party acknowledgment of paternity; to provide for the creation
7 of a form; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 40:34.2(2)(a)(introductory paragraph), 34.5(A), and 46.4(A) are
10 hereby amended and reenacted and R.S. 40:34.5.1 and 34.5.2 are hereby enacted to read as
11 follows:

12 §34.2. Original birth certificate; required contents; name of child

13 * * *

14 (2) Surname.

15 (a) ~~Except~~ Unless otherwise provided by law and except as ~~otherwise~~
16 provided in Subparagraph (c) of this Paragraph, if the child is born to a mother who
17 either is married or was married within three hundred days prior to the birth of the
18 child, the surname of the child shall be recorded in accordance with the following
19 requirements:

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Revision Comments - 2018

The "unless otherwise provided by law" clause in Subparagraph (2)(a) refers to the special rule in R.S. 40:34.5.1, which provides for the possibility of a different surname of the child when the mother, the husband or former husband of the mother, and the biological father of the child execute the three-party acknowledgment under that statute.

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§34.5. Original birth certificate; required contents; name of father

A. If the child is born to a mother who either is married or was married within three hundred days prior to the birth of the child, the full name of the father shall be recorded in the same manner provided for the recordation of the surname of the child in R.S. 40:34.2(2)(a) and (c), unless otherwise provided by law.

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Revision Comments-2018

The "unless otherwise provided by law" clause in Subsection A refers to the special rule in R.S. 40:34.5.1, which provides for the possibility of a different surname of the child when the mother, the husband or former husband of the mother, and the biological father of the child execute the three-party acknowledgment under that statute.

§34.5.1. Three-party acknowledgment of paternity; effect

Notwithstanding the provisions of R.S. 40:34.2(2)(a) and (c) and 34.5(A), the husband or former husband presumed to be the father of the child, the mother, and the biological father of the child may execute a three-party acknowledgment of paternity pursuant to Civil Code Article 190.1 on the form provided by the Louisiana Department of Health. Upon receipt of that form, the state registrar shall:

(1) For the father of the child, record the full name of the biological father.

(2) For the surname of the child, record the maiden name or surname of the mother, at her discretion. However, if the biological father and the mother agree, the state registrar shall record as the surname of the child the maiden name or surname of the mother, the surname of the biological father, or a combination of the surname of the biological father and the maiden name or surname of the mother.

1 Article 186, the state registrar shall amend the birth certificate as follows: for the
2 surname of the child, enter the maiden name or surname of the mother of the child,
3 at her discretion.

4 (b) If the judgment of disavowal ~~action~~ triggers the presumption of paternity
5 established in the first sentence of the second paragraph of Civil Code Article 186,
6 the state registrar shall amend the birth certificate as follows:

7 (i) For the surname of the child, enter either that of the second husband of
8 the mother of the child or, if both he and the mother agree, her maiden name or
9 surname or a combination of his surname and her maiden name or surname.

10 (ii) For the name of the father of the child, his age, race, ethnicity, residence,
11 birthplace, and social security number, enter those of the second husband of the
12 mother.

13 (c) If the state registrar receives the three-party acknowledgment provided
14 in R.S. 40:34.5.1, the state registrar shall amend the birth certificate as follows:

15 (i) For the surname of the child, enter the maiden name or surname of the
16 mother, at her discretion. However, if the biological father and the mother agree, the
17 state registrar shall enter as the surname of the child the maiden name or surname of
18 the mother, the surname of the biological father, or a combination of the surname of
19 the biological father and the maiden name or surname of the mother.

20 (ii) For the name of the father of the child, his race, ethnicity, residence,
21 birthplace, and social security number, enter those of the biological father.

22 * * *

23 Section 2. Civil Code Article 190.1 is hereby enacted to read as follows:

24 Art. 190.1. Three-party acknowledgment; alternative to disavowal; time period

25 The husband or former husband presumed to be the father of the child, the
26 mother, and the biological father of the child may execute a three-party
27 acknowledgment in authentic form declaring that the husband or former husband is
28 not the father of the child and that the biological father is the father of the child.

29 When a three-party acknowledgment is executed, the husband or former husband is

acknowledgment of paternity. Proposed law then directs the state registrar to record the information on the birth certificate of the child.

Proposed law (R.S. 40:34.5.2) requires the La. Dept. of Health to develop a form for the three-party acknowledgment.

Present law (R.S. 46.4) provides for the amendment of a birth certificate of a child when there is a change of paternal filiation.

Proposed law retains present law and further provides for the amendment of a birth certificate upon the execution of a three-party acknowledgment. Proposed law then directs the state registrar to record the information on the birth certificate of the child.

Present law (R.S. 40:46.9) authorizes the amendment of a birth certificate of a child if the husband and the mother lived separate and apart for 180 days prior to conception and did not reconcile and the biological father is someone other than the husband of the mother.

Proposed law repeals present law.

(Amends R.S. 40:34.2(2)(a)(intro. para.), 34.5(A), and 46.4(A); Adds C.C. Art. 190.1 and R.S. 40:34.5.1 and 34.5.2; Repeals R.S. 40:46.9)