

2018 Regular Session

HOUSE BILL NO. 841

BY REPRESENTATIVE BILLIOT

FAMILY LAW: Provides for the filiation of a child under certain circumstances

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 two-party acknowledgment of paternity; to provide for certain
7 evidence of paternity; to provide for the creation of a form; and to provide for related
8 matters.

9 Be it enacted by the Legislature of Louisiana:

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

13 §34.2. Original birth certificate; required contents; name of child

14 * * *

15 (2) Surname.

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

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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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§34.5.1. Two-party acknowledgment of paternity; notice; effect

Notwithstanding the provisions of R.S. 40:34.2(2)(a) and (c) and 34.5(A), the mother and the biological father of the child may execute a two-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 together with a certified report of blood or tissue sampling which indicates by a ninety-nine and nine-tenths percentage point threshold probability that the biological father is the father of the child, and certified letter showing that at least thirty days have elapsed since the mailing of the letter notifying the husband or former husband presumed to be the father of the child of the intent to change the father's name on the birth certificate, 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.

§34.5.2. Form and notice for two-party acknowledgment of paternity

The Louisiana Department of Health, office of public health, shall develop a form, and a notice of consequences of executing the form, for the purposes of implementing R.S. 40:34.5.1. The form shall include the following:

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

1 (a) If the judgment of disavowal does not trigger the presumption of
2 paternity established in the first sentence of the second paragraph of Civil Code
3 Article 186, the state registrar shall amend the birth certificate as follows: for the
4 surname of the child, enter the maiden name or surname of the mother of the child,
5 at her discretion.

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

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

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

15 (c) If the state registrar receives the two-party acknowledgment and
16 attachments as provided by R.S. 40:34.5.1, the state registrar shall amend the birth
17 certificate as follows:

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

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

25 * * *

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

27 Art. 190.1. Two-party acknowledgment; alternative to disavowal; notice; time
28 period

1 If blood or tissue sampling indicates by a ninety-nine and nine-tenths
2 percentage point threshold probability that the biological father is the father of the
3 child and he is not the husband or former husband presumed to be the father of the
4 child, then the mother and the biological father of the child may execute a two-party
5 acknowledgment in authentic form declaring that the husband or former husband is
6 not the father of the child and that the biological father is the father of the child.

7 When a two-party acknowledgment is executed, the husband or former husband is
8 not presumed to be the father of the child. The biological father who has
9 acknowledged the child by two-party acknowledgment is presumed to be the father
10 of the child.

11 To have effect, this acknowledgment shall be executed no later than five
12 years from the day of the birth of the child but never more than one year from the
13 day of the death of the child. These time periods are preemptive.

14 Section 3. R.S. 40:46.9 is hereby repealed in its entirety.

15 Section 4. It is the intent of the legislature that the provisions of this Act and the
16 provisions of the Act which originated as House Bill 147 of the 2018 Regular Session, if
17 enacted, shall both become effective.

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 841 Original

2018 Regular Session

Billiot

Abstract: Provides for the filiation and birth certificate of a child when the husband is not the biological father of the child.

Present law (C.C. Arts. 185-190) provides that the husband of the mother is presumed to be the father of the child born during the marriage or within 300 days from the date of termination of the marriage and provides for the disavowal of paternity.

Proposed law (C.C. Art. 190.1) retains present law but provides that the husband or former husband of the mother is not presumed to be the father of the child if blood or tissue sampling indicates by a 99.9% threshold probability that the biological father is the father of the child and the parties execute a two-party acknowledgment regarding the paternity of the child. Proposed law further provides that the person acknowledging that he is the biological father of the child is presumed to be the father.

Proposed law provides a five-year preemptive period from the day of the birth of the child and a one-year preemptive period from the day of the death of the child for the execution of this acknowledgment.

Present law (R.S. 40:34.2) provides for the contents of the birth certificate of a child.

Proposed law retains present law but provides an exception for the surname of a child born to a married mother if the parties have executed a two-party acknowledgment.

Present law (R.S. 40:34.5) provides for the name of the father on the birth certificate of a child.

Proposed law retains present law but provides an exception for the information pertaining to the father of a child born to a married mother if blood or tissue sampling indicates by a 99.9% threshold probability that the biological father is the father of the child and the parties have executed a two-party acknowledgment.

Proposed law (R.S. 40:34.5.1) provides that the mother and the biological father may execute and submit a two-party acknowledgment of paternity together with blood and tissue test results and a copy of a certified letter providing 30 days notice of the intent to change the birth certificate. 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 two-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 and submission of a two-party acknowledgment together with blood and tissue test results and a copy of a certified letter providing 30 days notice of the intent to change the birth certificate. 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)