

# ACT No. 21

2018 Regular Session

HOUSE BILL NO. 147

BY REPRESENTATIVE DWIGHT

(On Recommendation of the Louisiana State Law Institute)

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 DNA  
7 testing; to provide for the creation 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.

\* \* \*

§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.

\* \* \*

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

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

5                   (1) A declaration in authentic form by the husband or former husband  
6           presumed to be the father of the child that he is not the father of the child.

7                   (2) A declaration in authentic form by the biological father that he is the  
8           father of the child and that a certified report of blood or tissue sampling indicates by  
9           a ninety-nine and nine-tenths percentage point threshold probability that he is the  
10           biological father of the child.

11                   (3) A declaration in authentic form by the mother, husband or former  
12           husband presumed to be the father of the child, and the biological father of the child  
13           that each understands the form and has executed it voluntarily, and that each has  
14           received written notice of the consequences of executing the form.

15   \*       \*       \*

16           §46.4. Change of paternal filiation; disavowal of paternity ~~or three-party~~  
17           acknowledgment

18                   A. If the surname of the child, the name of the father of the child, or other  
19           information pertaining to the father as it was entered on the birth certificate was that  
20           of the man who was presumed to be the father of the child under Civil Code Article  
21           185, 186, or 195, and if the man or his successor, ~~after the birth certificate was~~  
22           ~~prepared~~, obtains a final and definitive judgment disavowing paternity of the child  
23           or the parties execute the three-party acknowledgment provided in Civil Code Article  
24           190.1, the state registrar, upon receipt of a certified copy of that judgment ~~or of the~~  
25           three-party acknowledgment and certified report of blood or tissue sampling which  
26           indicates by a ninety-nine and nine-tenths percentage point threshold probability that  
27           the biological father is the father of the child, shall amend the birth certificate as  
28           follows:

1 (1) Strikethroughs: Strike through the surname of the child, the name of the  
 2 father of the child, and all other information pertaining to him, in particular, his age,  
 3 race, ethnicity, residence, birthplace, and social security number.

4 (2) Additions:

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

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

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

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

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

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

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

28 \* \* \*

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

30 Art. 190.1. Three-party acknowledgment; alternative to disavowal; time 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 husband or former husband presumed to be the father of the child, the  
5                   mother, and the biological father of the child may execute a three-party  
6                   acknowledgment in authentic form declaring that the husband or former husband is  
7                   not the father of the child and that the biological father is the father of the child.  
8                   When a three-party acknowledgment is executed, the husband or former husband is  
9                   not presumed to be the father of the child. The biological father who has  
10                   acknowledged the child by three-party acknowledgment is presumed to be the father  
11                   of the child.

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

15   Revision Comments - 2018  
16   For the method of changing the child's birth certificate, see R.S. 40:34.5.1  
17   and 34.5.2.

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

19                   Section 4. This Act shall become effective upon signature by the governor or, if not  
20                   signed by the governor, upon expiration of the time for bills to become law without signature  
21                   by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
22                   vetoed by the governor and subsequently approved by the legislature, this Act shall become  
23                   effective on the day following such approval.

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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: \_\_\_\_\_