

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 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

1 of the mother, the surname of the biological father, or a combination of the surname  
2 of the biological father and the maiden name or surname of the mother.

3 §34.5.2. Form and notice for three-party acknowledgment of paternity

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

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

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

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

17 \* \* \*

18 §46.4. Change of paternal filiation; disavowal of paternity or three-party  
19 acknowledgment

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

1 the biological father is the father of the child, shall amend the birth certificate as  
2 follows:

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

6 (2) Additions:

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

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

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

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

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

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



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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)]

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HB 147 Reengrossed

2018 Regular Session

Dwight

**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 the mother, presumed father, and biological father execute a three-party acknowledgment regarding the paternity of the child and a DNA test confirms the paternity of a third party. Proposed law further provides that the person acknowledging that he is the biological father of the child is presumed to be the father if confirmed by a DNA test and the parties execute a three-party acknowledgment of paternity.

Proposed law provides a ten-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 three-party acknowledgment and a DNA test confirms the paternity of the biological father.

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 the parties have executed a three-party acknowledgment.

Proposed law (R.S. 40:34.5.1) provides that the husband or former husband presumed to be the father of a child, the mother, and the biological father may execute a three-party 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.

Effective upon signature of governor or lapse of time for gubernatorial action.

(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)

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Add an effective date.
2. Require a DNA test confirming the biological father's paternity.