

Regular Session, 2014

HOUSE BILL NO. 271

BY REPRESENTATIVE THIERRY

CHILDREN: Provides relative to paternity

1 AN ACT

2 To amend and reenact Civil Code Article 189 and R.S. 9:406(B)(2), relative to paternity; to
3 provide for prescription in disavowal actions and revocations of authentic acts in
4 instances where the father learns he is not the biological father; and to provide for
5 related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Civil Code Article 189 is hereby amended and reenacted to read as
8 follows:

9 Art. 189. Time limit for disavowal by the husband

10 The action for disavowal of paternity is subject to a liberative prescription of
11 one year. This prescription commences to run from the day the husband learns or
12 should have learned of the birth of the child.

13 Nevertheless, if the husband learns that he is not the biological parent of the
14 child or lived separate and apart from the mother continuously during the three
15 hundred days immediately preceding the birth of the child, this prescription does not
16 commence to run until the husband learns that he is not the biological parent of the
17 child or is notified in writing that a party in interest has asserted that the husband is
18 the father of the child.

19 Section 2. R.S. 9:406(B)(2) is hereby amended and reenacted to read as follows:

1 §406. Revocation of authentic act; with and without cause; procedure

2 * * *

3 B.

4 * * *

5 (2) The mover shall institute the proceeding by ordinary process, within a
6 two-year period commencing with the execution of the authentic act of
7 acknowledgment of paternity or from the day the mover learns that he is not the
8 biological parent of the child, in a court of competent jurisdiction upon notice to the
9 other party who executed the notarial act of acknowledgment and other necessary
10 parties, including the office of children and family services, child support
11 enforcement section of the Department of Children and Family Services. If the court
12 finds based upon the evidence presented at the hearing that there is substantial
13 likelihood that fraud, duress, material mistake of fact or error existed in the execution
14 of the act or that the person who executed the authentic act of acknowledgment is not
15 the biological father, then, and only then, the court shall order genetic tests pursuant
16 to R.S. 9:396. Nothing herein shall preclude the mover from presenting any other
17 evidence as a substitute for the genetic tests if it is not possible to conduct such tests.

18 * * *

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)]

Thierry

HB No. 271

Abstract: Provides an exception to the general provisions of prescription in disavowal of paternity actions and revocations of authentic acts for instances where the father learns he is not the biological father.

Present law (C.C. Art. 189) provides that prescription begins to run in actions for disavowal one year from the day the husband learned or should have learned of the birth of the child. Further provides that prescription does not begin to run against a husband who was living separate and apart from the mother until he is notified that someone has asserted that he is the father.

Proposed law retains present law and provides that prescription does not begin to run until the father learns that he is not the biological father.

Present law provides procedures for revocations for acts of acknowledgment. Authorizes a party to revoke an authentic act within 60 days of execution without cause. Further authorizes a party who has executed an act of acknowledgment to petition the court for revocation within two years of execution of the authentic act for certain causes.

Proposed law retains present law and extends the time period within which a party may petition the court to two years from the day the mover learns he is not the biological father.

(Amends C.C. Art. 189 and R.S. 9:406(B)(2))