

# VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

## CHAPTER 919

*An Act to amend and reenact §§ 20-164, 32.1-257, 64.1-5.1 as it is currently effective and as it may become effective, and § 64.1-8.1 of the Code of Virginia and to repeal § 64.1-7.1 of the Code of Virginia, relating to determination of parent-child relationships.*

[H 854]

Approved April 20, 1994

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 20-164, 32.1-257, 64.1-5.1 as it is currently effective and as it may become effective, and § 64.1-8.1 of the Code of Virginia are amended and reenacted as follows:**

§ 20-164. Relation of parent and child.

A child whose status as a child is declared or negated by this chapter is the child only of his parent or parents as determined under this chapter, *Title 64.1*, and, when applicable, Chapter 3.1 (§ 20-49.1 et seq.) of this title for all purposes including, but not limited to, (i) intestate succession; (ii) probate law exemptions, allowances, or other protections for children in a parent's estate; and (iii) determining eligibility of the child or its descendants to share in a donative transfer from any person *as an individual* or as a member of a class determined by reference to the relationship. *However, a child born more than ten months after the death of a parent shall not be recognized as such parent's child for the purposes of subdivisions (i), (ii) and (iii) of this section.*

§ 32.1-257. Filing birth certificates; from whom required; signatures of parents.

A. A certificate of birth for each live birth which occurs in this Commonwealth shall be filed with the registrar of the district in which the birth occurs within seven days after such birth and shall be registered by such registrar if it has been completed and filed in accordance with this section.

B. When a birth occurs in an institution or en route thereto, the person in charge of such institution or his designated representative shall obtain the personal data, prepare the certificate, secure the signatures required by the certificate and file it with the registrar. The physician in attendance shall certify to the facts of birth and provide the medical information required by the certificate within five days after the birth.

C. When a birth occurs outside an institution, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

1. The physician in attendance at or immediately after the birth, or in the absence of such physician,
2. Any other person in attendance at or immediately after the birth, or in the absence of such a person,
3. The father, the mother, or, in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred.

C1. When a birth occurs on a moving conveyance within the United States of America and the child is first removed from the conveyance in this Commonwealth, the birth shall be registered in this Commonwealth and the place where the child is first removed from the conveyance shall be considered the place of birth. When a birth occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the child is first removed from the conveyance in this Commonwealth, the birth shall be registered in this Commonwealth although the certificate shall indicate the actual place of birth insofar as can be determined.

D. If the mother of a child is not married to the natural father of the child at the time of birth or was not married to the natural father at any time during the ten months next preceding such birth, the name of the father shall not be entered on the certificate of birth without a sworn acknowledgment of paternity, executed subsequent to the birth of the child, of both the mother and of the person to be named as the father unless a final determination of paternity has been made by a court of the Commonwealth, from which no appeal has been taken and for which the time allowed to perfect an appeal has expired, in which case the name of the father as determined by the court shall be entered.

Children born of marriages prohibited by law, deemed null or void or dissolved by a court shall nevertheless be legitimate and the birth certificate for such children shall contain full information concerning the father.

A child born of a married woman who conceived the child with the written consent of the woman and her husband to (i) performance of reproductive technology and (ii) acceptance of parentage of any resulting child, where the child was conceived by means of artificial insemination, in vitro fertilization or other reproductive technology performed under the supervision of a licensed health care professional, which uses the sperm of a donor who is not her husband or an ovum from a donor other than herself, or both, shall be the legitimate natural child of the woman and her husband. The birth certificate of such child shall contain full information concerning the mother's husband as the father of the child and the gestational mother as the mother of the child. Donors of sperm or ova shall not have any parental rights

or duties for any such child.

*For the purpose of birth registration in the case of a child resulting from assisted conception, pursuant to Chapter 9 (§ 20-156 et seq.) of Title 20, the birth certificate of such child shall contain full information concerning the mother's husband as the father of the child and the gestational mother as the mother of the child. Donors of sperm or ova shall not have any parental rights or duties for any such child.*

In the event any person desires to have the name of the father entered on the certificate of birth based upon the judgment of paternity of a court of another state, such person shall apply to an appropriate court of the Commonwealth for an order reflecting that such court has reviewed such judgment of paternity and has determined that such judgment of paternity was amply supported in evidence and legitimate for the purposes of Article IV, Section 1 of the United States Constitution.

If the order of paternity should be appealed, the registrar shall not enter the name of the alleged father on the certificate of birth during the pendency of such appeal.

E. Either of the parents of the child shall sign the certificate of live birth to attest to the accuracy of the personal data entered thereon, in time to permit the filing within the seven days prescribed above.

§ 64.1-5.1. Meaning of child and related terms.

If, for purposes of this title, a relationship of parent and child must be established to determine succession by, through or from a person:

1. An adopted person is the child of an adopting parent and not of the biological parents, except that adoption of a child by the spouse of a biological parent has no effect on the relationship between the child and either biological parent.

2. *The parentage of a child resulting from assisted conception shall be determined as provided in Chapter 9 (§ 20-156 et seq.) of Title 20.*

3. In cases not covered by subdivision 1 or 2 hereof, a person born out of wedlock is a child of the mother. That person is also a child of the father, if:

a. The biological parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage was prohibited by law, deemed null or void or dissolved by a court; or

b. The paternity is established by clear and convincing evidence as set forth in § 64.1-5.2; provided, however, that the paternity establishment pursuant to this subparagraph b shall be ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his and has not refused to support the child.

~~3.~~ 4. No claim of succession based upon the relationship between a child born out of wedlock and a parent of such child shall be recognized in the settlement of any decedent's estate unless an affidavit by such child or by someone acting for such child alleging such parenthood has been filed within one year of the date of the death of such parent in the clerk's office of the circuit court of the jurisdiction wherein the property affected by such claim is located and an action seeking adjudication of parenthood is filed in an appropriate circuit court within said time; ~~provided~~. However, such one-year period shall run notwithstanding the minority of such child. The limitation period of the preceding sentence shall not apply in those cases where the relationship between the child born out of wedlock and the parent in question is (i) established by a birth record prepared upon information given by or at the request of such parent; or (ii) by admission by such parent of parenthood before any court or in writing under oath; or (iii) by a previously concluded proceeding to determine parentage pursuant to the provisions of former § 20-61.1 or Chapter 3.1 (§ 20-49.1 et seq.) of Title 20.

§ 64.1-5.1. (Delayed effective date) Meaning of child and related terms.

If, for purposes of this title, a relationship of parent and child must be established to determine succession by, through or from a person:

1. An adopted person is the child of an adopting parent and not of the biological parents, except that adoption of a child by the spouse of a biological parent has no effect on the relationship between the child and either biological parent.

2. *The parentage of a child resulting from assisted conception shall be determined as provided in Chapter 9 (§ 20-156 et seq.) of Title 20.*

3. In cases not covered by subdivision 1 or 2 hereof, a person born out of wedlock is a child of the mother. That person is also a child of the father, if:

a. The biological parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage was prohibited by law, deemed null or void or dissolved by a court; or

b. The paternity is established by clear and convincing evidence as set forth in § 64.1-5.2; provided, however, that the paternity establishment pursuant to this subparagraph b shall be ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his and has not refused to support the child.

~~3.~~ 4. No claim of succession based upon the relationship between a child born out of wedlock and a parent of such child shall be recognized in the settlement of any decedent's estate unless an affidavit by such child or by someone acting for such child alleging such parenthood has been filed within one year

of the date of the death of such parent in the clerk's office of the circuit court of the jurisdiction wherein the property affected by such claim is located and an action seeking adjudication of parenthood is filed in an appropriate family court within said time; ~~provided~~. However, such one-year period shall run notwithstanding the minority of such child. The limitation period of the preceding sentence shall not apply in those cases where the relationship between the child born out of wedlock and the parent in question is (i) established by a birth record prepared upon information given by or at the request of such parent; or (ii) by admission by such parent of parenthood before any court or in writing under oath; or (iii) by a previously concluded proceeding to determine parentage pursuant to the provisions of former § 20-61.1 or Chapter 3.1 (§ 20-49.1 et seq.) of Title 20.

§ 64.1-8.1. Afterborn heirs.

Relatives of the decedent conceived before his death but born thereafter, *and children resulting from assisted conception born after decedent's death who are determined to be relatives of the decedent as provided in Chapter 9 (§ 20-156 et seq.) of Title 20*, shall inherit as if they had been born during the lifetime of the decedent.

**2. That § 64.1-7.1 of the Code of Virginia is repealed.**