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SENATE BILL NO. 962

Offered January 17, 1997

A *BILL to amend and reenact §§ 20-49.1, 20-49.3, 20-49.7, 20-49.9 and 63.1-274.10 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 63.1-250.1:2, relating to establishment of paternity.*

Patrons—Bolling, Hanger and Williams

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-49.1, 20-49.3, 20-49.7, 20-49.9 and 63.1-274.10 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 63.1-250.1:2 as follows:

§ 20-49.1. How parent and child relationship established.

A. The parent and child relationship between a child and a woman may be established prima facie by proof of her having given birth to the child, or as otherwise provided in this chapter.

B. The parent and child relationship between a child and a man may be established by a written statement of the father and mother made under oath acknowledging paternity or subsequent scientifically reliable genetic tests, including blood tests, which affirm at least a ninety-eight percent probability of paternity.

Such ~~statement or blood~~ a genetic test result shall have the same legal effect as a judgment entered pursuant to § 20-49.8. *When sixty days have elapsed from its signing, a voluntary statement acknowledging paternity shall have the same legal effect as a judgment entered pursuant to § 20-49.8 and shall be binding and conclusive unless, in a subsequent judicial proceeding, the person challenging the statement establishes that the statement resulted from fraud, duress or a material mistake of fact. In any subsequent proceeding in which a statement acknowledging paternity is subject to challenge, the legal responsibilities of any person signing it shall not be suspended during the pendency of the proceeding, except for good cause shown.* In the absence of such acknowledgment or if the probability of paternity is less than ninety-eight percent, such relationship may be established as otherwise provided in this chapter. Written acknowledgments of paternity made under oath by the father and mother prior to July 1, 1990, shall have the same legal effect as a judgment entered pursuant to § 20-49.8.

C. The parent and child relationship between a child and an adoptive parent may be established by proof of lawful adoption.

§ 20-49.3. Admission of genetic tests.

A. In the trial of any matter in any court in which the question of parentage arises, the court, upon its own motion or upon motion of either party, may and, in cases in which child support is in issue, shall direct and order that the alleged parents and the child submit to scientifically reliable genetic tests including blood tests. *The motion of a party shall be accompanied by a sworn statement either alleging paternity and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties or denying paternity and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties.*

B. The court shall require the person requesting such genetic test, including a blood test, to pay the cost. However, if such person is indigent, the Commonwealth shall pay for the test. The court may, in its discretion, assess the costs of the test to the party or parties determined to be the parent or parents.

C. The results of a scientifically reliable genetic test, including a blood test, may be admitted in evidence when contained in a written report prepared and sworn to by a duly qualified expert, provided the written results are filed with the clerk of the court hearing the case at least fifteen days prior to the hearing or trial. Verified documentary evidence of the chain of custody of the blood specimens is competent evidence to establish the chain of custody. Any qualified expert performing such test outside the Commonwealth shall consent to service of process through the Secretary of the Commonwealth by filing with the clerk of the court the written results. Upon motion of any party in interest, the court may require the person making the analysis to appear as a witness and be subject to cross-examination, provided that the motion is made at least seven days prior to the hearing or trial. The court may require the person making the motion to pay into court the anticipated costs and fees of the witness or adequate security for such costs and fees.

§ 20-49.7. Civil actions.

An action brought under this chapter is a civil action. The natural parent and the alleged parent are competent to testify. Testimony of a physician concerning the medical circumstances of the pregnancy

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and the condition and characteristics of the child upon birth shall not be privileged. *Documentary evidence of expenses incurred for pregnancy, childbirth and genetic testing shall be admissible as evidence of the facts stated therein, without requiring third-party foundation testimony.*

§ 20-49.9. Hospital paternity establishment programs.

On and after January 1, 1995, each public and private birthing hospital in the Commonwealth shall provide unwed parents the opportunity to legally establish the paternity of a child prior to the child's discharge from the hospital following birth, by means of a voluntary acknowledgment of paternity signed by the mother and the father, under oath.

Birthing hospitals are defined as hospitals with licensed obstetric-care units, hospitals licensed to provide obstetric services, or licensed birthing centers associated with a hospital. Birthing centers are facilities outside hospitals that provide maternity services.

Designated staff members of such hospitals shall provide to both the mother and the alleged father, if he is present at the hospital, (i) written materials regarding paternity establishment, (ii) the forms necessary to voluntarily acknowledge paternity, (iii) a written *and verbal* description of the rights and responsibilities of acknowledging paternity, and (iv) the opportunity, prior to the child's discharge from the hospital, to speak with staff who are trained to provide information and answer questions about paternity establishment. The provision by designated hospital staff members of the information required by this section, consistent with federal regulations, shall not constitute the unauthorized practice of law pursuant to Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1.

Hospitals shall send the original acknowledgment of paternity containing the social security numbers, if available, of both parents, with the information required by § 32.1-257 et seq., to the State Registrar of Vital Records so that the birth certificate issued includes the name of the legal father of the child.

The Department of Social Services shall (i) provide to birthing hospitals all necessary materials and forms, and a written description of the rights and responsibilities related to voluntary acknowledgment of paternity; (ii) provide the necessary training, guidance and written instructions regarding voluntary acknowledgment of paternity; (iii) annually assess each birthing hospital's paternity establishment program; (iv) pay to each hospital an amount determined by regulation of the State Board of Social Services for each acknowledgment of paternity signed under oath by both parents; and (v) determine if a voluntary acknowledgment has been filed with the State Registrar of Vital Records in cases applying for paternity establishment services.

§ 63.1-250.1:2. *Administrative establishment of paternity.*

The Department may establish the parent and child relationship between a child and a man upon request, verified by oath or affirmation, filed by a child, a parent, a person claiming parentage, a person standing in loco parentis to the child or having legal custody of the child, or a representative of the Department of Social Services or the Department of Youth and Family Services. The request may be filed at any time before the child attains the age of eighteen years.

Pursuant to subsection F of § 63.1-250.1, the Department may summons a parent or putative parent to appear in the office of the Division of Child Support Enforcement to provide such information as may be necessary to the proceeding.

Paternity may be established by a written statement of the father and mother made under oath acknowledging paternity or scientifically reliable genetic tests, including blood tests, which affirm at least a ninety-eight percent probability of paternity. The Department may order genetic testing and shall pay the costs of such tests, subject to recoupment from the father, if paternity is established. If a test result is contested, upon request and advance payment by the person contesting the result, the Department shall order additional testing.

Before a voluntary acknowledgment of paternity is accepted by the Department as the basis for establishing paternity, the Department shall provide to both the mother and the putative father a written and verbal description of the rights and responsibilities of acknowledging paternity and the consequences that arise from signed acknowledgment.

A genetic test result affirming at least a ninety-eight percent probability of paternity shall have the same legal effect as a judgment entered pursuant to § 20-49.8. When sixty days have elapsed from its signing, a voluntary statement acknowledging paternity shall have the same legal effect as a judgment entered pursuant to § 20-49.8 and shall be binding and conclusive unless, in a subsequent judicial proceeding, the person challenging the statement establishes that the statement resulted from fraud, duress or a material mistake of fact. In any subsequent proceeding in which a statement acknowledging paternity is subject to challenge, the legal responsibilities of any person signing it shall not be suspended during the pendency of the proceeding, except for good cause shown.

Pursuant to regulations established by the state board, paternity may be established by the Department notwithstanding the putative father's failure to appear, provided that he was personally served with notice of the proceeding pursuant to subdivision 1 of § 8.01-296 and of his opportunity to be heard.

The order of the Department in proceedings pursuant to this section shall be served upon the

putative father in accordance with the provisions of Chapter 8 (§ 8.01-285 et seq.) or Chapter 9 (§ 8.01-328 et seq.) of Title 8.01. The Department shall file a copy of its order determining paternity, including the information required by subsection C of § 20-49.8, with the State Registrar of Vital Records within thirty days after the acknowledgment becomes binding and conclusive or the order otherwise becomes final. Judicial or administrative proceedings shall not be required or permitted to ratify an unchallenged acknowledgment of paternity.

§ 63.1-274.10. Reimbursement of attorney's fees and certain costs.

The Department shall have the authority to assess and recover from the absent responsible parent in proceedings to enforce child support obligations against the absent responsible parent, reasonable attorney's fees. The Department shall also have the authority to assess and recover costs in such cases. However, the Department shall not be entitled to recover attorney's fees or costs in any case in which the absent responsible parent prevails.

The Department shall have the authority to assess and recover the actual costs of ~~blood~~ genetic testing against the absent responsible *either* parent. The ~~blood~~ genetic testing costs shall be set at the rate charged the Department by the provider of ~~blood~~ genetic testing services.

The Department shall have the authority to assess and recover the actual costs of intercept programs from the responsible parent. The intercept programs' costs shall be set at the rate actually charged the Department.

The Department shall have the authority to assess and recover the actual costs of fees for service of process, and seizure and sale pursuant to a levy on a judgment in enforcement actions from the responsible parent.

The fees and costs that may be recovered pursuant to this section may be collected using any mechanism provided by this chapter.