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## HOUSE BILL NO. 490

Offered January 19, 1998

*A BILL to amend and reenact § 64.1-5.1 of the Code of Virginia, as it is currently effective and as it may become effective, relating to descent and distribution; children.*

Patrons—Howell, Clement, McClure and Murphy

Referred to Committee for Courts of Justice

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

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

§ 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.

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. 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.

5. Unless otherwise specifically provided in the order, an order terminating residual parental rights under § 16.1-283 shall have no effect on the status of the child as a child of the parent for purposes of (i) the laws of descent and distribution as set out in this chapter or (ii) determining rights in and to property pursuant to any deed, will, trust or other instruments, whether testamentary or inter vivos. Unless otherwise specifically provided in the order, an order terminating residual parental rights under § 16.1-283 shall have no effect on the status of the parent as the parent of the child in determining such rights of the ancestors of such parent or descendants of such ancestors, other than the person whose parental rights were terminated, for the purposes of (i) the laws of descent and distribution as set out in this chapter or (ii) determining rights in and to property pursuant to any deed, will, trust or other instruments, whether testamentary or inter vivos. An order terminating the residual parental rights of a parent under § 16.1-283 shall terminate the status of the parent as the parent of the child as respects such rights of the parent for purposes of (i) the laws of descent and distribution as set out in Chapter 1 (§ 64.1-01 et seq.) of Title 64.1 and (ii) determining rights in and to property pursuant to any deed, will, trust or other instruments, whether testamentary or inter vivos.

§ 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:

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60 adoption of a child by the spouse of a biological parent has no effect on the relationship between the  
61 child and either biological parent.

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

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

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

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

73 4. No claim of succession based upon the relationship between a child born out of wedlock and a  
74 parent of such child shall be recognized in the settlement of any decedent's estate unless an affidavit by  
75 such child or by someone acting for such child alleging such parenthood has been filed within one year  
76 of the date of the death of such parent in the clerk's office of the circuit court of the jurisdiction  
77 wherein the property affected by such claim is located and an action seeking adjudication of parenthood  
78 is filed in an appropriate family court within said time. However, such one-year period shall run  
79 notwithstanding the minority of such child. The limitation period of the preceding sentence shall not  
80 apply in those cases where the relationship between the child born out of wedlock and the parent in  
81 question is (i) established by a birth record prepared upon information given by or at the request of such  
82 parent; or (ii) by admission by such parent of parenthood before any court or in writing under oath; or  
83 (iii) by a previously concluded proceeding to determine parentage pursuant to the provisions of former  
84 § 20-61.1 or Chapter 3.1 (§ 20-49.1 et seq.) of Title 20.

85 5. *Unless otherwise specifically provided in the order, an order terminating residual parental rights*  
86 *under § 16.1-283 shall have no effect on the status of the child as a child of the parent for purposes of*  
87 *(i) the laws of descent and distribution as set out in this chapter or (ii) determining rights in and to*  
88 *property pursuant to any deed, will, trust or other instruments, whether testamentary or inter vivos.*  
89 *Unless otherwise specifically provided in the order, an order terminating residual parental rights under*  
90 *§ 16.1-283 shall have no effect on the status of the parent as the parent of the child in determining such*  
91 *rights of the ancestors of such parent or descendants of such ancestors, other than the person whose*  
92 *parental rights were terminated, for the purposes of (i) the laws of descent and distribution as set out in*  
93 *this chapter or (ii) determining rights in and to property pursuant to any deed, will, trust or other*  
94 *instruments, whether testamentary or inter vivos. An order terminating the residual parental rights of a*  
95 *parent under § 16.1-283 shall terminate the status of the parent as the parent of the child as respects*  
96 *such rights of the parent for purposes of (i) the laws of descent and distribution as set out in Chapter 1*  
97 *(§ 64.1-01 et seq.) of Title 64.1 and (ii) determining rights in and to property pursuant to any deed,*  
98 *will, trust or other instruments, whether testamentary or inter vivos.*