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HOUSE BILL NO. 1077

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend and reenact §§ 20-49.10 and 32.1-257 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-208.1, relating to paternity; genetic tests to determine parentage; relief from paternity; certain actions; penalty.

Patrons—Cordoza and Clark

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-49.10 and 32.1-257 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-208.1 as follows:

§ 18.2-208.1. Fraudulent statements; paternity determinations; penalty.

Any person who knowingly gives any false information or makes any false statements for the purpose of determining paternity is guilty of a Class 6 felony, and the punishment shall include a mandatory minimum term of confinement of one year.

§ 20-49.10. Relief from legal determination of paternity.

A. An individual may file a petition for relief and, except as provided herein, the court may set aside a final judgment, court order, administrative order, obligation to pay child support or any legal determination of paternity if a scientifically reliable genetic test performed in accordance with this chapter establishes the exclusion of the individual named as a father in the legal determination. The court shall appoint a guardian ad litem to represent the interest of the child. The petitioner shall pay the costs of such test. A court that sets aside a determination of paternity in accordance with this section shall order completion of a new birth record and may order any other appropriate relief, including setting aside an obligation to pay child support. No support order may be retroactively modified, but may be modified with respect to any period during which there is a pending petition for relief from a determination of paternity, but only from the date that notice of the petition was served on the nonfiling party.

B. A court shall not grant relief from determination of paternity if the individual named as father (i) acknowledged paternity knowing he was not the father, (ii) adopted the child, or (iii) knew that the child was conceived through artificial insemination.

C. *In addition to any other available relief, an individual relieved of paternity who previously paid support pursuant to a child support order entered in conjunction with the set-aside paternity determination may file an action against the other party for repayment of any such support.*

D. *If an individual's paternity is set aside pursuant to this section, any subsequent petitions for child support against such individual shall be dismissed, unless such individual subsequently adopts such child.*

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

A. A certificate of birth for each live birth that occurs in the Commonwealth shall be filed with the State Registrar within seven days after such birth. The certificate of birth shall be registered by the State 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 an authorized designee shall obtain the personal data, and prepare the certificate either on forms furnished by the State Registrar or by an electronic process as approved by the Board. Such person or designee shall, if submitting a form, secure the signatures required by the certificate. The physician or other person in attendance shall provide the medical information required by the certificate within five days after the birth. The person in charge of the institution or an authorized designee shall certify to the authenticity of the birth registration either by affixing his signature to the certificate or by an electronic process approved by the Board, and shall file the certificate of birth with the State Registrar within seven days after such birth.

C. When a birth occurs outside an institution, the certificate shall be prepared on forms furnished by the State Registrar and filed by one of the following in the indicated order of priority, in accordance with the regulations of the Board:

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 mother, the other parent, or, in the absence of the other parent and the inability of the mother,

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59 the person in charge of the premises where the birth occurred.

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

67 D. If the mother of a child is not married to the natural father of the child at the time of birth or was
68 not married to the natural father at any time during the 10 months next preceding such birth, the name
69 of the father shall not be entered on the certificate of birth without a sworn acknowledgment of
70 paternity, executed subsequent to the birth of the child, of both the mother and of the person to be
71 named as the father. In any case in which a final determination of the paternity of a child has been
72 made by a court of competent jurisdiction pursuant to § 20-49.8, from which no appeal has been taken
73 and for which the time allowed to perfect an appeal has expired, the name of the father and the surname
74 of the child shall be entered on the certificate of birth in accordance with the finding and order of the
75 court.

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

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

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

90 If the order of paternity should be appealed, the registrar shall not enter the name of the alleged
91 father on the certificate of birth during the pendency of such appeal. If the father is not named on the
92 certificate of birth, no other information concerning the father shall be entered on the certificate.

93 *E. Prior to the entry of an alleged father on the certificate of birth, such alleged father shall be*
94 *informed of the option to request the administering of scientifically reliable genetic tests, including*
95 *blood tests, to determine paternity. When a birth occurs in an institution or en route thereto, such*
96 *alleged father shall be informed of such option by the person in charge of such institution or an*
97 *authorized designee. When a birth occurs outside an institution, such alleged father shall be informed of*
98 *such option by the physician in attendance at or immediately after the birth or in the absence of such*
99 *physician any other person in attendance at or immediately after the birth. If the alleged father chooses*
100 *to exercise such option, the administering of any such test shall occur as soon as practicable.*

101 F. Either of the parents of the child shall verify the accuracy of the personal data to be entered on
102 the certificate of birth in time to permit the filing within the seven days prescribed above.

103 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
104 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**
105 **necessary appropriation cannot be determined for periods of imprisonment in state adult**
106 **correctional facilities; therefore, Chapter 552 of the Acts of Assembly of 2021, Special Session I,**
107 **requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of**
108 **\$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
109 **appropriation cannot be determined for periods of commitment to the custody of the Department**
110 **of Juvenile Justice.**