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HOUSE BILL NO. 2259

Offered January 11, 2023

Prefiled January 11, 2023

A BILL to amend and reenact §§ 20-49.10, 20-162, 32.1-257, and 32.1-261 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, 20-162, 32.1-257, and 32.1-261 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.

§ 20-49.10. Relief from legal determination of paternity; scientifically reliable genetic test.

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. 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, such individual may submit the results of such a test to the State Registrar of Vital Records and request the issuance of a new birth record and certificate. The court shall appoint a guardian ad litem to represent the interest of the child. The petitioner individual named as a father 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 subsequently order any other appropriate relief upon receipt of a new birth certificate without such individual's name listed as father and a petition for 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 such test was performed.

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.

B. 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.

C. If an individual's paternity is set aside pursuant to this section, any child support order currently in effect shall immediately be terminated upon receipt of a new birth certificate, and any subsequent petitions for child support against such individual shall be dismissed, unless such individual subsequently adopts such child.

§ 20-162. Contracts not approved by the court; requirements.

A. In the case of any surrogacy agreement for which prior court approval has not been obtained pursuant to § 20-160, the provisions of this section and §§ 20-156 through 20-159 and §§ 20-163 through 20-165 shall apply. Any provision in a surrogacy contract that attempts to reduce the rights or responsibilities of the intended parent, the surrogate, or her spouse, if any, or the rights of any resulting child shall be reformed to include the requirements set forth in this chapter. A provision in the contract providing for compensation to be paid to the surrogate is void and unenforceable. Such surrogacy contracts shall be enforceable and shall be construed only as follows:

1. The surrogate, her spouse, if any, and the intended parent shall be parties to any such surrogacy contract.

2. The contract shall be in writing, signed by all the parties, and acknowledged before an officer or other person authorized by law to take acknowledgments.

3. Upon expiration of three days following birth of any resulting child, the surrogate may relinquish her parental rights to the intended parent, if at least one intended parent is the genetic parent of the child, or the embryo was subject to the legal or contractual custody of such intended parent, by signing a surrogate consent and report form naming the intended parent as the parent of the child. The surrogate

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59 consent and report form shall be developed, furnished, and distributed by the State Registrar of Vital
60 Records. The surrogate consent and report form shall be signed and acknowledged before an officer or
61 other person authorized by law to take acknowledgments. The surrogate consent and report form, a copy
62 of the contract, and a statement from the physician who performed the assisted conception stating either
63 the genetic relationships between the child, the surrogate, and at least one intended parent, or proof of
64 the legal or contractual custody of the embryo, shall be filed with the State Registrar within 180 days
65 after the birth. The statement from the physician shall be signed and acknowledged before an officer or
66 other person authorized by law to take acknowledgments. There shall be a rebuttable presumption that
67 the statement from the physician accurately states the genetic relationships among the child, the
68 surrogate, and the intended parent. Where a physician's statement is not available and at least one
69 intended parent is a genetic parent, DNA testing establishing the genetic relationships between the child,
70 the surrogate, and the intended parent may be substituted for the physician's statement.

71 4. Upon the filing of the surrogate consent and report form and the required attachments, including
72 the physician's statement, DNA testing establishing the genetic relationships between the child, the
73 surrogate, and the intended parent, or proof of the legal or contractual custody of the embryo, within
74 180 days of the birth, a new birth certificate shall be established by the State Registrar for the child
75 naming the intended parent as the parent of the child as provided in § 32.1-261.

76 B. Any contract governed by the provisions of this section shall include or, in the event such
77 provisions are not explicitly covered in the contract or are included but are inconsistent with this section,
78 shall be deemed to include the following provisions:

79 1. The intended parent shall be the parent of any resulting child when the surrogate relinquishes her
80 parental rights as provided in subdivision A 3 and a new birth certificate is established as provided in
81 subdivision A 4 of this section and *subdivision A 5 of § 32.1-261*, unless parentage is instead established
82 through Chapter 3.1 (§ 20-49.1 et seq.);

83 2. Incorporation of this chapter and a statement by each of the parties that they have read and
84 understood the contract, they know and understand their rights and responsibilities under Virginia law,
85 and the contract was entered into knowingly and voluntarily; and

86 3. A guarantee by the intended parent for payment of reasonable medical and ancillary costs either in
87 the form of insurance, cash, escrow, bonds, or other arrangements satisfactory to the parties, including
88 allocation of responsibility for such costs in the event of termination of the pregnancy, termination of
89 the contract, or breach of the contract by any party.

90 C. Under any contract that does not include an allocation of responsibility for reasonable medical and
91 ancillary costs in the event of termination of the pregnancy, termination of the contract, or breach of the
92 contract by any party, the following provisions shall control:

93 1. If the intended parent and the surrogate and her spouse, if any, and if such spouse is a party to
94 the contract, consent in writing to termination of the contract, the intended parent is responsible for all
95 reasonable medical and ancillary costs for a period of six weeks following the termination.

96 2. If the surrogate is a genetic parent and voluntarily terminates the contract during the pregnancy,
97 without consent of the intended parent, the intended parent shall be responsible for one-half of the
98 reasonable medical and ancillary costs incurred prior to the termination.

99 3. If, after the birth of any resulting child, the surrogate is also a genetic parent and fails to
100 relinquish parental rights to the intended parent pursuant to the contract, the intended parent shall be
101 responsible for one-half of the reasonable medical and ancillary costs incurred prior to the birth.

102 **§ 32.1-257. Filing birth certificates; from whom required; signatures of parents.**

103 A. A certificate of birth for each live birth that occurs in the Commonwealth shall be filed with the
104 State Registrar within seven days after such birth. The certificate of birth shall be registered by the State
105 Registrar if it has been completed and filed in accordance with this section.

106 B. When a birth occurs in an institution or en route thereto, the person in charge of such institution
107 or an authorized designee shall obtain the personal data, and prepare the certificate either on forms
108 furnished by the State Registrar or by an electronic process as approved by the Board. Such person or
109 designee shall, if submitting a form, secure the signatures required by the certificate. The physician or
110 other person in attendance shall provide the medical information required by the certificate within five
111 days after the birth. The person in charge of the institution or an authorized designee shall certify to the
112 authenticity of the birth registration either by affixing his signature to the certificate or by an electronic
113 process approved by the Board, and shall file the certificate of birth with the State Registrar within
114 seven days after such birth.

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

118 1. The physician in attendance at or immediately after the birth, or in the absence of such physician,

119 2. Any other person in attendance at or immediately after the birth, or in the absence of such a
120 person,

3. The mother, the other parent, or, in the absence of the other parent 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 10 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. In any case in which a final determination of the paternity of a child has been made by a court of competent jurisdiction pursuant to § 20-49.8, from which no appeal has been taken and for which the time allowed to perfect an appeal has expired, the name of the father and the surname of the child shall be entered on the certificate of birth in accordance with the finding and order of the court.

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 other parent.

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 spouse as the other parent 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 that 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 Constitution of the United States.

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. If the father is not named on the certificate of birth, no other information concerning the father shall be entered on the certificate.

E. Prior to the entry of an alleged father on the certificate of birth, such alleged father shall be informed of the option to request the administering of scientifically reliable genetic tests, including blood tests, to determine paternity. When a birth occurs in an institution or en route thereto, such alleged father shall be informed of such option by the person in charge of such institution or an authorized designee. When a birth occurs outside an institution, such alleged father shall be informed of such option by a health care provider in attendance at or immediately after the birth. If the alleged father chooses to exercise such option, the administering of any such test shall occur as soon as practicable by the institution if the institution has the ability to administer such a test. Only if the institution does not have such an ability may a third-party testing facility be used.

An alleged father shall not be entered onto a birth certificate unless (i) a scientifically reliable genetic test determines that such alleged father is the father of the child, (ii) an alleged father indicates in writing that he has waived his option to request the administering of such test and otherwise would be legally presumed to be the father of the child, or (iii) an alleged father legally adopts the child.

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

§ 32.1-261. New certificate of birth established on proof of adoption, legitimation or determination of paternity, or change of sex.

A. The State Registrar shall establish a new certificate of birth for a person born in the Commonwealth upon receipt of the following:

1. An adoption report as provided in § 32.1-262, a report of adoption prepared and filed in accordance with the laws of another state or foreign country, or a certified copy of the decree of adoption together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth; except that a new certificate of birth shall not be established if so requested by the court decreeing the adoption, the adoptive parents, or the adopted person if 18 years of age or older.

2. A request that a new certificate be established and such evidence as may be required by regulation

182 of the Board proving that such person has been legitimated or that a court of the Commonwealth has,
183 by final order, determined the paternity of such person. The request shall state that no appeal has been
184 taken from the final order and that the time allowed to perfect an appeal has expired.

185 3. A request that a new certificate be established based upon the submission of a scientifically
186 reliable genetic test performed in accordance with Chapter 3.1 (§ 20-49.1 et seq.) of Title 20 that
187 establishes the exclusion of the individual named as a father in the original birth certificate.

188 4. An order entered pursuant to subsection D of § 20-160. The order shall contain sufficient
189 information to identify the original certificate of birth and to establish a new certificate of birth in the
190 names of the intended parents.

191 4. 5. A surrogate consent and report form as authorized by § 20-162. The report shall contain
192 sufficient information to identify the original certificate of birth and to establish a new certificate of
193 birth in the names of the intended parents.

194 5. 6. Upon request of a person and in accordance with requirements of the Board, the State Registrar
195 shall issue a new certificate of birth to show a change of sex of the person and, if a certified copy of a
196 court order changing the person's name is submitted, to show a new name. Requirements related to
197 obtaining a new certificate of birth to show a change of sex shall include a requirement that the person
198 requesting the new certificate of birth submit a form furnished by the State Registrar and completed by
199 a health care provider from whom the person has received treatment stating that the person has
200 undergone clinically appropriate treatment for gender transition. Requirements related to obtaining a new
201 certificate of birth to show a change of sex shall not include any requirement for evidence or
202 documentation of any medical procedure.

203 6. 7. Nothing in this section shall deprive the circuit court of equitable jurisdiction to adjudicate,
204 upon application of a person, that the sex of such person residing within the territorial jurisdiction of the
205 circuit court has been changed. In such an action, the person may petition for the application of the
206 standard of the person's jurisdiction of birth; otherwise, the requirements of this section shall apply.

207 B. When a new certificate of birth is established pursuant to subsection A, the actual place and date
208 of birth shall be shown. It shall be substituted for the original certificate of birth. Thereafter, the original
209 certificate and the evidence of adoption, paternity or legitimation shall be sealed and filed and not be
210 subject to inspection except upon order of a court of the Commonwealth or in accordance with
211 § 32.1-252. However, upon receipt of notice of a decision or order granting an adult adopted person
212 access to identifying information regarding his birth parents from the Commissioner of Social Services
213 or a circuit court, and proof of identification and payment, the State Registrar shall mail an adult
214 adopted person a copy of the original certificate of birth.

215 C. Upon receipt of a report of an amended decree of adoption, the certificate of birth shall be
216 amended as provided by regulation.

217 D. Upon receipt of notice or decree of annulment of adoption, the original certificate of birth shall be
218 restored to its place in the files and the new certificate and evidence shall not be subject to inspection
219 except upon order of a court of the Commonwealth or in accordance with § 32.1-252.

220 E. The State Registrar shall, upon request, establish and register a Virginia certificate of birth for a
221 person born in a foreign country (i) upon receipt of a report of adoption for an adoption finalized
222 pursuant to the laws of the foreign country as provided in subsection B of § 63.2-1200.1, or (ii) upon
223 receipt of a report or final order of adoption entered in a court of the Commonwealth as provided in
224 § 32.1-262; however, a Virginia certificate of birth shall not be established or registered if so requested
225 by the court decreeing the adoption, the adoptive parents or the adopted person if 18 years of age or
226 older. If a circuit court of the Commonwealth corrects or establishes a date of birth for a person born in
227 a foreign country during the adoption proceedings or upon a petition to amend a certificate of foreign
228 birth, the State Registrar shall issue a certificate showing the date of birth established by the court. After
229 registration of the birth certificate in the new name of the adopted person, the State Registrar shall seal
230 and file the report of adoption which shall not be subject to inspection except upon order of a court of
231 the Commonwealth or in accordance with § 32.1-252. The birth certificate shall (i) show the true or
232 probable foreign country of birth and (ii) state that the certificate is not evidence of United States
233 citizenship for the child for whom it is issued or for the adoptive parents. However, for any adopted
234 person who has attained United States citizenship, the State Registrar shall, upon request and receipt of
235 evidence demonstrating such citizenship, establish and register a new certificate of birth that does not
236 contain the statement required by clause (ii).

237 F. If no certificate of birth is on file for the person for whom a new certificate is to be established
238 under this section, a delayed certificate of birth shall be filed with the State Registrar as provided in §
239 32.1-259 or 32.1-260 before a new certificate of birth is established, except that when the date and place
240 of birth and parentage have been established in the adoption proceedings, a delayed certificate shall not
241 be required.

242 G. When a new certificate of birth is established pursuant to subdivision A 1, the State Registrar
243 shall issue along with the new certificate of birth a document, furnished by the Department of Social

244 Services pursuant to § 63.2-1220, listing all post-adoption services available to adoptive families.
245 **2. That the provisions of this act shall apply to birth certificates issued and child support orders**
246 **entered prior to, on, and after July 1, 2023.**
247 **3. That the provisions of this act may result in a net increase in periods of imprisonment or**
248 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**
249 **necessary appropriation cannot be determined for periods of imprisonment in state adult**
250 **correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2022, Special Session I,**
251 **requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of**
252 **\$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
253 **appropriation cannot be determined for periods of commitment to the custody of the Department**
254 **of Juvenile Justice.**

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