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H.745

An act relating to the Vermont Parentage Act

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 15C V.S.A. § 102 is amended to read:

§ 102. DEFINITIONS

As used in this title:

(1) “Acknowledged parent” means a person who has established a parent-child relationship under chapter 3 of this title.

(2) “Adjudicated parent” means a person who has been adjudicated by a court of competent jurisdiction to be a parent of a child.

(3) “Alleged genetic parent” means a person who is alleged to be, or alleges that the person is, a genetic parent or possible genetic parent of a child whose parentage has not been adjudicated. The term includes an alleged genetic father and alleged genetic mother. The term does not include:

(A) a presumed parent;

(B) a person whose parental rights have been terminated or declared not to exist; or

(C) a donor.

(4) “Assisted reproduction” means a method of causing pregnancy other than sexual intercourse and includes:

(A) intrauterine, intracervical, or vaginal insemination;

- 1 (B) donation of gametes;
2 (C) donation of embryos;
3 (D) in vitro fertilization and transfer of embryos; and
4 (E) intracytoplasmic sperm injection.

5 (5) “Birth” includes stillbirth.

6 (6) “Child” means a person of any age whose parentage may be
7 determined under this title.

8 (7) “Domestic assault” includes any offense as set forth in 13 V.S.A.
9 chapter 19, subchapter 6 (domestic assault).

10 (8) “Donor” means a person who contributes a gamete or gametes or an
11 embryo or embryos to another person for assisted reproduction or gestation,
12 whether or not for consideration. This term does not include:

13 (A) a person who gives birth to a child conceived by assisted
14 reproduction except as otherwise provided in chapter 8 of this title; or

15 (B) a parent under chapter 7 of this title or an intended parent under
16 chapter 8 of this title.

17 (9) “Embryo” means a cell or group of cells containing a diploid
18 complement of chromosomes or a group of such cells, not including a gamete,
19 that has the potential to develop into a live born human being if transferred into
20 the body of a person under conditions in which gestation may be reasonably
21 expected to occur.

1 (10) “Gamete” means a sperm, ~~an egg, or any part of a sperm~~ or egg.

2 (11) “Genetic population group” means, for purposes of genetic testing,
3 a recognized group that a person identifies as all or part of the person’s
4 ancestry or that is so identified by other information.

5 (12) “Gestational carrier” means an adult person who is not an intended
6 parent and who enters into a gestational carrier agreement to bear a child
7 conceived using the gametes of other persons and not the gestational carrier’s
8 own, except that a person who carries a child for a family member using the
9 gestational carrier’s own gametes and who fulfills the requirements of chapter
10 8 of this title is a gestational carrier.

11 (13) “Gestational carrier agreement” means a contract between an
12 intended parent or parents and a gestational carrier intended to result in a live
13 birth.

14 (14) “Intended parent” means a person, whether married or unmarried,
15 who manifests the intent to be legally bound as a parent of a child resulting
16 from assisted reproduction or a gestational carrier agreement.

17 (15) “Marriage” includes civil union and any legal relationship that
18 provides substantially the same rights, benefits, and responsibilities as
19 marriage and is recognized as valid in the state or jurisdiction in which it was
20 entered.

1 (16) “Parent” means a person who has established parentage that meets
2 the requirements of this title.

3 (17) “Parentage” means the legal relationship between a child and a
4 parent as established under this title.

5 (18) “Presumed parent” means a person who is recognized as the parent
6 of a child under section 401 of this title.

7 (19) “Record” means information that is inscribed on a tangible medium
8 or that is stored in an electronic or other medium and is retrievable in
9 perceivable form.

10 (20) “Sexual assault” includes sexual assault as provided in 13 V.S.A.
11 § 3252(a), (b), (d), and (e); aggravated sexual assault as provided in 13 V.S.A.
12 § 3253; aggravated sexual assault of a child as provided in 13 V.S.A. § 3253a;
13 lewd and lascivious conduct with a child as provided in 13 V.S.A. § 2602; and
14 similar offenses in other jurisdictions.

15 (21) “Sexual exploitation” includes sexual exploitation of an inmate as
16 provided in 13 V.S.A. § 3257, sexual exploitation of a minor as provided in
17 13 V.S.A. § 3258, sexual abuse of a vulnerable adult as provided in 13 V.S.A.
18 § 1379, and similar offenses in other jurisdictions.

19 (22) “Sign” means, with the intent to authenticate or adopt a record, to:

20 (A) execute or adopt a tangible symbol; or

1 (B) attach to or logically associate with the record an electronic
2 symbol, sound, or process.

3 (23) “Signatory” means a person who signs a record and is bound by its
4 terms.

5 (24) “Spouse” includes a partner in a civil union or a partner in a legal
6 relationship that provides substantially the same rights, benefits, and
7 responsibilities as marriage and is recognized as valid in the state or
8 jurisdiction in which it was entered.

9 Sec. 2. 15C V.S.A. § 104 is amended to read:

10 § 104. PARENTAGE PROCEEDING

11 (a) Proceeding authorized. A proceeding to adjudicate the parentage of a
12 child shall be maintained in accordance with this title and with the Vermont
13 Rules for Family Proceedings, except that proceedings for birth orders under
14 sections 708 and 804 of this title shall be maintained in accordance with the
15 Vermont Rules of Probate Procedure.

16 (b) Actions brought by the Office of Child Support. If the complaint is
17 brought by the Office of Child Support, the complaint shall be accompanied by
18 an affidavit of the parent whose rights have been assigned. In cases where the
19 assignor is not a genetic parent or is a genetic parent who refuses to provide an
20 affidavit, the affidavit may be submitted by the Office of Child Support, but

1 the affidavit alone shall not support a default judgment on the issue of
2 parentage.

3 (c) Original actions. Original actions to adjudicate parentage may be
4 commenced in the Family Division of the Superior Court, except that
5 proceedings for birth orders under sections 708 and 804 of this title shall be
6 commenced in the Probate Division of the Superior Court.

7 (d) No right to jury. There shall be no right to a jury trial in an action to
8 determine parentage.

9 (e) Disclosure of Social Security numbers. A person who is a party to a
10 parentage action shall disclose that person's Social Security number, if the
11 person has one, to the court. The Social Security number of a person subject to
12 a parentage adjudication shall be placed in the court records relating to the
13 adjudication. The court shall disclose a person's Social Security number to the
14 Office of Child Support.

15 Sec. 3. 15C V.S.A. § 206 is amended to read:

16 § 206. ADJUDICATING COMPETING CLAIMS OF PARENTAGE

17 (a) Competing claims of parentage. Except as otherwise provided in
18 section 616 of this title, in a proceeding to adjudicate competing claims of
19 parentage or challenges to a child's parentage by two or more persons, the
20 court shall adjudicate parentage in the best interests of the child, based on the
21 following factors:

- 1 (1) the age of the child;
- 2 (2) the length of time during which each person assumed the role of
- 3 parent of the child;
- 4 (3) the nature of the relationship between the child and each person;
- 5 (4) the harm to the child if the relationship between the child and each
- 6 person is not recognized;
- 7 (5) the basis for each person's claim to parentage of the child; and
- 8 (6) other equitable factors arising from the disruption of the relationship
- 9 between the child and each person or the likelihood of other harm to the child.

10 (b) Preservation of parent-child relationship. Consistent with the

11 establishment of parentage under this chapter, a court may determine that a

12 child has more than two parents if the court finds that it is in the best interests

13 of the child to do so. A finding of best interests of the child under this

14 subsection does not require a finding of unfitness of any parent or person

15 seeking an adjudication of parentage. A determination of best interests may

16 include consideration of evidence of prebirth intent to parent the child.

17 Sec. 4. 15C V.S.A. § 402 is amended to read:

18 § 402. CHALLENGE TO PRESUMED PARENT

19 (a) Except as provided in ~~subsection (b)~~ subsections (b)–(d) of this section,

20 a proceeding to challenge the parentage of a person whose parentage is

1 presumed under section 401 of this title shall be commenced within two years
2 after the birth of the child.

3 (b) A proceeding to challenge the parentage of a person whose parentage is
4 presumed under section 401 of this title may be commenced two years or more
5 after the birth of the child in any of the following circumstances:

6 (1) ~~A presumed parent who is not the genetic parent of a child and who~~
7 ~~could not reasonably have known about the birth of the child may commence a~~
8 ~~proceeding under this section within two years after learning of the child's~~
9 ~~birth~~ The presumed parent is not a genetic parent, never resided with the child,
10 and never held out the child as the presumed parent's child.

11 (2) An alleged genetic parent who did not know of the potential genetic
12 parentage of a child and who could not reasonably have known on account of
13 material misrepresentation or concealment may commence a proceeding under
14 this section within two years after discovering the potential genetic parentage.
15 If the person is adjudicated to be the genetic parent of the child, the court shall
16 not disestablish a presumed parent.

17 (3) The child has more than one presumed parent.

18 (c) Subject to the limitations set forth in this section and in section 401 of
19 this title, if in a proceeding to adjudicate a presumed parent's parentage of a
20 child another person in addition to the person who gave birth to the child

1 asserts a claim to parentage of the child, the court shall adjudicate parentage
2 pursuant to subsections 206(a) and (b) of this title.

3 (d) Regarding a presumption under subdivision 401(a)(4) of this title,
4 another parent of the child may challenge a presumption of parentage if that
5 parent openly held out the child as the presumptive parent's child due to
6 duress, coercion, or threat of harm. Evidence of duress, coercion, or threat of
7 harm may include whether within the prior ~~ten~~ 10 years, the person presumed
8 to be a parent pursuant to subdivision 401(a)(4) of this title has been convicted
9 of domestic assault, sexual assault, or sexual exploitation of the child or
10 another parent of the child; was subject to a final abuse protection order
11 pursuant to 15 V.S.A. chapter 21 because the person was found to have
12 committed abuse against the child or another parent of the child; or was
13 substantiated for abuse against the child or another parent of the child pursuant
14 to 33 V.S.A. chapter 49 or 33 V.S.A. chapter 69.

15 Sec. 5. 15C V.S.A. § 402a is added to read:

16 § 402a. ADJUDICATION OF PARENTAGE IF BIRTH PARENT ONLY

17 OTHER PARENT

18 The following rules apply in a proceeding to adjudicate a presumed parent's
19 parentage of a child if the person who gave birth is the only other person with a
20 claim to parentage of the child:

1 (1) If no party to the proceeding challenges the presumed parent’s
2 parentage of the child, the court shall adjudicate the presumed parent to be a
3 parent of the child.

4 (2) If the presumed parent is identified under subsection 604(a) of this
5 title as a genetic parent of the child and that identification is not successfully
6 challenged under said subsection, the court shall adjudicate the presumed
7 parent to be a parent of the child.

8 (3) If the presumed parent is not identified under subsection 604(a) of
9 this title as a genetic parent of the child and the presumed parent or another
10 party challenges the presumed parent’s parentage of the child, the court shall
11 adjudicate the parentage of the child in the best interests of the child, based on
12 the factors listed in subsections 206(a) and (b) of this title. Challenges
13 regarding the parentage of a child born through assisted reproduction must be
14 resolved under chapter 7 of this title.

15 Sec. 6. 15C V.S.A. § 501 is amended to read:

16 § 501. STANDARD; ADJUDICATION

17 (a)(1) In a proceeding to adjudicate the parentage of a person who claims to
18 be a de facto parent of the child, if there is only one other person who is a
19 parent or has a claim to parentage of the child, the court shall adjudicate the
20 person who claims to be a de facto parent to be a parent of the child if the
21 person demonstrates by clear and convincing evidence that:

1 (A) the person resided with the child as a regular member of the
2 child's household for a significant period of time;

3 (B) the person engaged in consistent caretaking of the child;

4 (C) the person undertook full and permanent responsibilities of a
5 parent of the child without expectation of financial compensation;

6 (D) the person held out the child as the person's child;

7 (E) the person established a bonded and dependent relationship with
8 the child that is parental in nature;

9 (F) the person and another parent of the child fostered or supported
10 the bonded and dependent relationship required under subdivision (E) of this
11 subdivision (1); and

12 (G) continuing the relationship between the person and the child is in
13 the best interests of the child.

14 (2) A parent of the child may use evidence of duress, coercion, or threat
15 of harm to contest an allegation that the parent fostered or supported a bonded
16 and dependent relationship as provided in subdivision (1)(F) of this subsection.
17 Such evidence may include whether within the prior ~~ten~~ 10 years, the person
18 seeking to be adjudicated a de facto parent has been convicted of domestic
19 assault, sexual assault, or sexual exploitation of the child or another parent of
20 the child, was subject to a final abuse protection order pursuant to 15 V.S.A.
21 chapter 21 because the person was found to have committed abuse against the

1 child or another parent of the child, or was substantiated for abuse against the
2 child or another parent of the child pursuant to 33 V.S.A. chapter 49 or
3 33 V.S.A. chapter 69.

4 (b) In a proceeding to adjudicate the parentage of a person who claims to
5 be a de facto parent of the child, if there is more than one other person who is a
6 parent or has a claim to parentage of the child and the court determines that the
7 requirements of subsection (a) of this section are met by clear and convincing
8 evidence, the court shall adjudicate parentage under ~~section 206~~ subsection
9 206(b) of this title, subject to other applicable limitations in this title.

10 (c) The adjudication of a person as a de facto parent under this chapter does
11 not disestablish the parentage of any other parent.

12 Sec. 7. 15C V.S.A. § 704 is amended to read:

13 § 704. CONSENT TO ASSISTED REPRODUCTION

14 (a)~~(1)~~ A person who intends to be a parent of a child born through assisted
15 reproduction shall consent ~~to such in a signed record that is executed by each~~
16 ~~intended parent and provides that the signatories consent~~ to the use of assisted
17 reproduction to conceive a child with the intent to parent the child.:

18 (1) in a record, signed before, on, or after the birth of the child by each
19 intended parent; or

20 ~~(2) Consent pursuant to subdivision (1) of this subsection, executed via~~
21 ~~a form made available by the Department of Health, shall be accepted and~~

1 ~~relied upon for purposes of issuing a birth record~~ in an oral agreement entered
2 into before conception by each intended parent.

3 (b) In the absence of a ~~record~~ evidence pursuant to subsection (a) of this
4 section, a court may adjudicate a person as the parent of a child if it finds by a
5 preponderance of the evidence that:

6 ~~(1) prior to conception or birth of the child, the parties entered into an~~
7 ~~agreement that they both intended to be the parents of the child; or~~

8 ~~(2)~~ the person resided with the child after birth and undertook to develop
9 a parental relationship with the child.

10 Sec. 8. 15C V.S.A. § 705(a) is amended to read:

11 (a) Except as otherwise provided in subsection (b) of this section, a spouse
12 may commence a proceeding to challenge ~~his or her~~ the spouse's parentage of
13 a child born by assisted reproduction during the marriage within two years
14 after the birth of the child if the court finds that the spouse did not consent to
15 the assisted reproduction before, on, or after the birth of the child or that the
16 spouse withdrew consent pursuant to section 706 of this title.

17 Sec. 9. 15C V.S.A. § 706 is amended to read:

18 § 706. EFFECT OF DISSOLUTION OF MARRIAGE OR WITHDRAWAL
19 OF CONSENT

20 (a)(1) If a marriage is dissolved before transfer or implantation of gametes
21 or embryos, the former spouse is not a parent of the resulting child unless the

1 former spouse consented in a signed record with notice to the other spouse and
2 the person giving birth that, if assisted reproduction were to occur after a
3 divorce, the former spouse would be a parent of the child.

4 (2) A person who has petitioned for divorce, or a person who has been
5 served with a complaint for divorce, may proceed with assisted reproduction
6 pursuant to this subsection, provided at least 60 days have elapsed since
7 service of the complaint. In such case, the spouse shall not be a parent of any
8 child born as a result of the assisted reproduction unless both parties consent in
9 writing to be parents of that child after commencement of the divorce action.

10 A married person proceeding with assisted reproduction pursuant to this
11 section shall not utilize gametes of the person's spouse unless the spouse
12 consents in writing to the use of the spouse's gametes for assisted reproduction
13 by the married person after filing of the divorce petition.

14 (b) Consent of a person to assisted reproduction pursuant to section 704 of
15 this title may be withdrawn by that person in a signed record with notice to the
16 person giving birth and any other intended parent before transfer or
17 implantation of gametes or embryos. A person who withdraws consent under
18 this subsection is not a parent of the resulting child.

1 Sec. 10. 15C V.S.A. § 708 is amended to read:

2 § 708. BIRTH AND PARENTAGE ORDERS

3 (a) A party consenting to assisted reproduction, a person who is a parent
4 pursuant to sections 702–704 of this title, an intended parent or parents, or the
5 person giving birth may commence a proceeding in the Probate Division of the
6 Superior Court to obtain an order and judgment of parentage doing any of the
7 following:

8 (1) declaring that the intended parent or parents are the parent or parents
9 of the resulting child and ordering that parental rights and responsibilities vest
10 exclusively in the intended parent or parents immediately upon the birth of the
11 child;

12 (2) except as provided in subsection (d) of this section, sealing the
13 record from the public to protect the privacy of the child and the parties;

14 (3) designating the contents of the birth certificate and directing the
15 Department of Health to designate the intended parent or parents as the parent
16 or parents of the child; or

17 (4) for any relief that the court determines necessary and proper.

18 (b) A proceeding under this section may be commenced before or after the
19 birth of the child. If the court determines a person is a parent of the child
20 either because the person gave birth to the child or the person is a consenting

1 intended parent, the court shall adjudicate the person to be a parent of the
2 child.

3 (c) Neither the donor, the State, nor the Department of Health is a
4 necessary party to a proceeding under this section.

5 (d) The Probate Division of the Superior Court shall forward a certified
6 copy of the order issued pursuant to this section to the Department of Health
7 and to the intended parents or their representative.

8 (e) The intended parent or parents and any resulting child shall have access
9 to the court records relating to the proceeding at any time.

10 (f) An uncontested petition for a judgment of parentage pursuant to this
11 section shall be resolved by the court promptly.

12 Sec. 11. 15C V.S.A. § 801 is amended to read:

13 § 801. ELIGIBILITY TO ENTER GESTATIONAL CARRIER

14 AGREEMENT

15 (a) In order to execute an agreement to act as a gestational carrier, a person
16 shall:

17 (1) be at least 21 years of age;

18 (2) have completed a medical evaluation that includes a mental health
19 consultation;

20 (3) have had independent legal representation of the person's own
21 choosing and paid for by the intended parent or parents regarding the terms of

1 the gestational carrier agreement and have been advised of the potential legal
2 consequences of the gestational carrier agreement; and

3 (4) not have contributed gametes that will ultimately result in an embryo
4 that the gestational carrier will attempt to carry to term, unless the gestational
5 carrier is entering into an agreement with a family member.

6 (b) Prior to executing a gestational carrier agreement, a person or persons
7 intending to become a parent or parents, whether genetically related to the
8 child or not, shall:

9 (1) be at least 21 years of age;

10 (2) have completed ~~a medical evaluation and mental health consultation~~
11 psychosocial education and counseling related to the gestational carrier
12 agreement; and

13 (3) have retained independent legal representation regarding the terms of
14 the gestational carrier agreement and have been advised of the potential legal
15 consequences of the gestational carrier agreement.

16 Sec. 12. 15C V.S.A. § 803 is amended to read:

17 § 803. PARENTAGE; PARENTAL RIGHTS AND RESPONSIBILITIES

18 (a)(1) If a gestational carrier agreement satisfies the requirements of this
19 chapter, the intended parent or parents are the parent or parents of the resulting
20 child immediately upon the birth of the child, and the resulting child is
21 considered the child of the intended parent or parents immediately upon the

1 birth of the child. Neither the gestational carrier nor the gestational carrier's
2 spouse, if any, is the parent of the resulting child.

3 (2) A person who is determined to be a parent of the resulting child is
4 obligated to support the child. The breach of the gestational carrier agreement
5 by the intended parent or parents does not relieve the intended parent or
6 parents of the obligation to support the resulting child.

7 (3) Notwithstanding subdivisions (1) and (2) of this subsection, if
8 genetic testing indicates a genetic relationship between the gestational carrier
9 who is not a known family member and the child, parentage shall be
10 determined by the Family Division of the Superior Court pursuant to chapters
11 1 through 6 of this title.

12 (b) Parental rights and responsibilities shall vest exclusively in the intended
13 parent or parents immediately upon the birth of the resulting child.

14 (c) If due to a laboratory error, the resulting child is not genetically related
15 to either the intended parent or parents or any donor who donated to the
16 intended parent or parents, the intended parent or parents are considered the
17 parent or parents of the child unless otherwise determined by the court.

18 Sec. 13. 15C V.S.A. § 804 is amended to read:

19 § 804. BIRTH AND PARENTAGE ORDERS

20 (a) Before or after the birth of a resulting child, a party to a gestational
21 carrier agreement may commence a proceeding in the Probate Division of the

1 Superior Court to obtain an order and judgment of parentage doing any of the
2 following:

3 (1) Declaring that the intended parent or parents are the parent or
4 parents of the resulting child and ordering that parental rights and
5 responsibilities vest exclusively in the intended parent or parents immediately
6 upon the birth of the child.

7 (2) Declaring that the gestational carrier or ~~her~~ the carrier's spouse, if
8 any, are not the parents of the resulting child.

9 (3) Designating the contents of the birth certificate and directing the
10 Department of Health to designate the intended parent or parents as the parent
11 or parents of the child. The Department of Health may charge a reasonable fee
12 for the issuance of a birth certificate.

13 (4) Sealing the record from the public to protect the privacy of the child
14 and the parties.

15 (5) Providing any relief the court determines necessary and proper.

16 (b) Neither the State nor the Department of Health is a necessary party to a
17 proceeding under subsection (a) of this section.

18 (c) The Probate Division of the Superior Court shall forward a certified
19 copy of the order issued pursuant to this section to the Department of Health
20 and to the intended parents or their representative.

1 (d) The intended parent or parents and any resulting child shall have access
2 to their court records at any time.

3 (e) An uncontested petition for a judgment of parentage pursuant to this
4 section shall be resolved by the court promptly.

5 Sec. 14. EFFECTIVE DATE

6 This act shall take effect on July 1, 2024.