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H.745

Introduced by Representative LaLonde of South Burlington

Referred to Committee on

Date:

Subject: Parentage proceedings

Statement of purpose of bill as introduced: This bill proposes to make a number of amendments to the Vermont Parentage Act related to voluntary acknowledgment of parentage, adjudicating competing claims of parentage, consent to assisted reproduction, and parentage orders.

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

1 whose parentage has not been adjudicated. The term includes an alleged
2 genetic father and alleged genetic mother. The term does not include:

3 (A) a presumed parent;

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

6 (C) a donor.

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

9 (A) intrauterine, intracervical, or vaginal insemination;

10 (B) donation of gametes;

11 (C) donation of embryos;

12 (D) in vitro fertilization and transfer of embryos; and

13 (E) intracytoplasmic sperm injection.

14 (5) “Birth” includes stillbirth.

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

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

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

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

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

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

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

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

14 (12) “Gestational carrier” means an adult person who is not an intended
15 parent and who enters into a gestational carrier agreement to bear a child
16 conceived using the gametes of other persons and not the gestational carrier’s
17 own, except that a person who carries a child for a family member using the
18 gestational carrier’s own gametes and who fulfills the requirements of chapter
19 8 of this title is a gestational carrier.

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

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

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

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

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

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

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

20 (20) “Sexual assault” includes sexual assault as provided in 13 V.S.A.
21 § 3252(a), (b), (d), and (e); aggravated sexual assault as provided in 13 V.S.A.

1 § 3253; aggravated sexual assault of a child as provided in 13 V.S.A. § 3253a;
2 lewd and lascivious conduct with a child as provided in 13 V.S.A. § 2602; and
3 similar offenses in other jurisdictions.

4 (21) “Sexual exploitation” includes sexual exploitation of an inmate as
5 provided in 13 V.S.A. § 3257, sexual exploitation of a minor as provided in 13
6 V.S.A. § 3258, sexual abuse of a vulnerable adult as provided in 13 V.S.A. §
7 1379, and similar offenses in other jurisdictions.

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

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

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

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

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

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

19 § 104. PARENTAGE PROCEEDING

20 (a) Proceeding authorized. A proceeding to adjudicate the parentage of a
21 child shall be maintained in accordance with this title and with the Vermont

1 Rules for Family Proceedings, except that proceedings for birth orders under
2 sections 708 and 804 of this title shall be maintained in accordance with the
3 Vermont Rules of Probate Procedure.

4 (b) Actions brought by the Office of Child Support. If the complaint is
5 brought by the Office of Child Support, the complaint shall be accompanied by
6 an affidavit of the parent whose rights have been assigned. In cases where the
7 assignor is not a genetic parent or is a genetic parent who refuses to provide an
8 affidavit, the affidavit may be submitted by the Office of Child Support, but
9 the affidavit alone shall not support a default judgment on the issue of
10 ~~parentage~~ the alleged genetic parent.

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

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

17 ~~(e) Disclosure of Social Security numbers. A person who is a party to a~~
18 ~~parentage action shall disclose that person's Social Security number to the~~
19 ~~court. The Social Security number of a person subject to a parentage~~
20 ~~adjudication shall be placed in the court records relating to the adjudication.~~

1 ~~The court shall disclose a person's Social Security number to the Office of~~
2 ~~Child Support.~~ [Repealed.]

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

4 § 206. ADJUDICATING COMPETING CLAIMS OF PARENTAGE

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

10 (1) the age of the child;

11 (2) the length of time during which each person assumed the role of
12 parent of the child;

13 (3) the nature of the relationship between the child and each person;

14 (4) the harm to the child if the relationship between the child and each
15 person is not recognized;

16 (5) the basis for each person's claim to parentage of the child; and

17 (6) other equitable factors arising from the disruption of the relationship
18 between the child and each person or the likelihood of other harm to the child.

19 (b) Preservation of parent-child relationship. Consistent with the
20 establishment of parentage under this chapter, a court may determine that a
21 child has more than two parents if the court finds that it is in the best interests

1 of the child to do so. A finding of best interests of the child under this
2 subsection does not require a finding of unfitness of any parent or person
3 seeking an adjudication of parentage. A determination of best interests may
4 include consideration of evidence of prebirth intent to parent the child.

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

6 § 402. CHALLENGE TO PRESUMED PARENT

7 (a) Except as provided in subsection (b) of this section, a proceeding to
8 challenge the parentage of a person whose parentage is presumed under section
9 401 of this title shall be commenced within two years after the birth of the
10 child.

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

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

19 (2) An alleged genetic parent who did not know of the potential genetic
20 parentage of a child and who could not reasonably have known on account of
21 material misrepresentation or concealment may commence a proceeding under

1 this section within two years after discovering the potential genetic parentage.

2 If the person is adjudicated to be the genetic parent of the child, the court shall
3 not disestablish a presumed parent.

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

5 (c) The following rules apply in a proceeding to adjudicate a presumed
6 parent's parentage of a child if the person who gave birth is the only other
7 person with a claim to parentage of the child:

8 (1) If no party to the proceeding challenges the presumed parent's
9 parentage of the child, the court shall adjudicate the presumed parent to be a
10 parent of the child.

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

15 (3) If the presumed parent is not identified under subsection 604(a) of
16 this title as a genetic parent of the child and the presumed parent or another
17 party challenges the presumed parent's parentage of the child, the court shall
18 adjudicate the parentage of the child in the best interests of the child, based on
19 the factors listed in subsections 206(a) and (b) of this title. Challenges
20 regarding the parentage of a child born through assisted reproduction must be
21 resolved under chapter 7 of this title.

1 (d) Subject to the limitations set forth in this section and in section 401
2 of this title, if in a proceeding to adjudicate a presumed parent's parentage of a
3 child another person in addition to the person who gave birth to the child
4 asserts a claim to parentage of the child, the court shall adjudicate parentage
5 pursuant to subsections 206(a) and (b) of this title.

6 (e) Regarding a presumption under subdivision 401(a)(4) of this title,
7 another parent of the child may challenge a presumption of parentage if that
8 parent openly held out the child as the presumptive parent's child due to
9 duress, coercion, or threat of harm. Evidence of duress, coercion, or threat of
10 harm may include whether within the prior ~~ten~~ 10 years, the person presumed
11 to be a parent pursuant to subdivision 401(a)(4) of this title has been convicted
12 of domestic assault, sexual assault, or sexual exploitation of the child or
13 another parent of the child; 2 was subject to a final abuse protection order
14 pursuant to 15 V.S.A. chapter 21 because the person was found to have
15 committed abuse against the child or another parent of the child; 2 or was
16 substantiated for abuse against the child or another parent of the child pursuant
17 to 33 V.S.A. chapter 49 or 33 V.S.A. chapter 69.

18 Sec. 5. 15C V.S.A. § 501 is amended to read:

19 § 501. STANDARD; ADJUDICATION

20 (a)(1) In a proceeding to adjudicate the parentage of a person who claims to
21 be a de facto parent of the child, if there is only one other person who is a

1 parent or has a claim to parentage of the child, the court shall adjudicate the
2 person who claims to be a de facto parent to be a parent of the child if the
3 person demonstrates by clear and convincing evidence that:

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

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

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

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

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

12 (F) the person and another parent of the child fostered or supported
13 the bonded and dependent relationship required under subdivision (E) of this
14 subdivision (1); and

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

17 (2) A parent of the child may use evidence of duress, coercion, or threat
18 of harm to contest an allegation that the parent fostered or supported a bonded
19 and dependent relationship as provided in subdivision (1)(F) of this subsection.
20 Such evidence may include whether within the prior ~~ten~~ 10 years, the person
21 seeking to be adjudicated a de facto parent has been convicted of domestic

1 assault, sexual assault, or sexual exploitation of the child or another parent of
2 the child, was subject to a final abuse protection order pursuant to 15 V.S.A.
3 chapter 21 because the person was found to have committed abuse against the
4 child or another parent of the child, or was substantiated for abuse against the
5 child or another parent of the child pursuant to 33 V.S.A. chapter 49 or
6 33 V.S.A. chapter 69.

7 (b) In a proceeding to adjudicate the parentage of a person who claims to
8 be a de facto parent of the child, if there is more than one other person who is a
9 parent or has a claim to parentage of the child and the court determines that the
10 requirements of subsection (a) of this section are met by clear and convincing
11 evidence, the court shall adjudicate parentage under ~~section 206~~ subsection
12 206(b) of this title, subject to other applicable limitations in this title.

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

15 Sec. 6. 15C V.S.A. § 704 is amended to read:

16 § 704. CONSENT TO ASSISTED REPRODUCTION

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

1 (1) in a record, signed before, on, or after the birth of the child by the
2 person who gave birth to the child and by a person who intends to be a parent
3 of the child; or

4 (2) ~~Consent pursuant to subdivision (1) of this subsection, executed via~~
5 ~~a form made available by the Department of Health, shall be accepted and~~
6 ~~relied upon for purposes of issuing a birth record~~ in an oral agreement entered
7 into before conception that the person who gave birth to the child and the
8 person who intends to be a parent of the child intend that they will be parents
9 of the child.

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

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

15 (2) the person resided with the child after birth and undertook to develop
16 a parental relationship with the child.

17 Sec. 7. 15C V.S.A. § 705(a) is amended to read:

18 (a) Except as otherwise provided in subsection (b) of this section, a spouse
19 may commence a proceeding to challenge ~~his or her~~ the spouse's parentage of
20 a child born by assisted reproduction during the marriage within two years
21 after the birth of the child if the court finds that the spouse did not consent to

1 the assisted reproduction before, on, or after the birth of the child or that the
2 spouse withdrew consent pursuant to section 706 of this title.

3 Sec. 8. 15C V.S.A. § 706 is amended to read:

4 § 706. EFFECT OF DISSOLUTION OF MARRIAGE OR WITHDRAWAL
5 OF CONSENT

6 (a)(1) If a marriage is dissolved before transfer or implantation of gametes
7 or embryos, the former spouse is not a parent of the resulting child unless the
8 former spouse consented in a signed record with notice to the other spouse and
9 the person giving birth that, if assisted reproduction were to occur after a
10 divorce, the former spouse would be a parent of the child.

11 (2) A person who has petitioned for divorce, or a person who been
12 served with a complaint for divorce, may proceed with assisted reproduction
13 pursuant to this subsection, provided at least 60 days have elapsed since
14 service of the complaint. In such case, the spouse shall not be a parent of any
15 child born as a result of the assisted reproduction unless both parties consent in
16 writing to be parents of that child after commencement of the divorce action.
17 A married person proceeding with assisted reproduction pursuant to this
18 section shall not utilize gametes of the person's spouse unless the spouse
19 consents in writing to the use of the spouse's gametes for assisted reproduction
20 by the married person after filing of the divorce petition.

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

6 Sec. 9. 15C V.S.A. § 708 is amended to read:

7 § 708. BIRTH AND PARENTAGE ORDERS

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

13 (1) declaring that the intended parent or parents are the parent or parents
14 of the resulting child and ordering that parental rights and responsibilities vest
15 exclusively in the intended parent or parents immediately upon the birth of the
16 child;

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

19 (3) designating the contents of the birth certificate and directing the
20 Department of Health to designate the intended parent or parents as the parent
21 or parents of the child; or

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

2 (b) A proceeding under this section may be commenced before or after the
3 birth of the child. If the court determines a person is a parent of the child
4 either because the person gave birth to the child or the person is a consenting
5 intended parent, the court shall adjudicate the person to be a parent of the
6 child.

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

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

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

14 (f) An uncontested petition for a judgment of parentage pursuant to this
15 section shall be resolved by the court within 30 days after filing.

16 Sec. 10. 15C V.S.A. § 801 is amended to read:

17 § 801. ELIGIBILITY TO ENTER GESTATIONAL CARRIER

18 AGREEMENT

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

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

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

3 (3) have had independent legal representation of the person's own
4 choosing and paid for by the intended parent or parents regarding the terms of
5 the gestational carrier agreement and have been advised of the potential legal
6 consequences of the gestational carrier agreement; and

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

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

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

14 (2) have completed a ~~medical evaluation and~~ mental health consultation;
15 and

16 (3) have retained independent legal representation regarding the terms of
17 the gestational carrier agreement and have been advised of the potential legal
18 consequences of the gestational carrier agreement.

1 Sec. 11. 15C V.S.A. § 803 is amended to read:

2 § 803. PARENTAGE; PARENTAL RIGHTS AND RESPONSIBILITIES

3 (a)(1) If a gestational carrier agreement satisfies the requirements of this
4 chapter, the intended parent or parents are the parent or parents of the resulting
5 child immediately upon the birth of the child, and the resulting child is
6 considered the child of the intended parent or parents immediately upon the
7 birth of the child. Neither the gestational carrier nor the gestational carrier's
8 spouse, if any, is the parent of the resulting child.

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

13 (3) Notwithstanding subdivisions (1) and (2) of this subsection, if
14 genetic testing indicates a genetic relationship between the gestational carrier
15 who is not a known family member and the child, parentage shall be
16 determined by the Family Division of the Superior Court pursuant to chapters
17 1 through 6 of this title.

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

20 (c) If due to a laboratory error, the resulting child is not genetically related
21 to either the intended parent or parents or any donor who donated to the

1 intended parent or parents, the intended parent or parents are considered the
2 parent or parents of the child unless otherwise determined by the court.

3 Sec. 12. EFFECTIVE DATE

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