

1 H.98

2 An act relating to confirmatory adoptions

3 The Senate proposes to the House to amend the bill by striking out all after
4 the enacting clause and inserting in lieu thereof the following:

5 Sec. 1. 15A V.S.A. § 1-114 is added to read:

6 § 1-114. CONFIRMATORY ADOPTION FOR CHILDREN BORN
7 THROUGH ASSISTED REPRODUCTION

8 (a) As used in this section:

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

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

12 (B) donation of gametes;

13 (C) donation of embryos;

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

15 (E) intracytoplasmic sperm injection.

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

19 (A) a person who gives birth to a child conceived by assisted
20 reproduction except as otherwise provided in 15C V.S.A. chapter 8; or

1 (B) a parent under 15C V.S.A. chapter 7 or an intended parent under
2 15C V.S.A. chapter 8.

3 (3) “Marriage” includes civil union and any legal relationship that
4 provides substantially the same rights, benefits, and responsibilities as
5 marriage and is recognized as valid in the state or jurisdiction in which it was
6 entered.

7 (4) “Petitioners” means the persons filing a petition for adoption in
8 accordance with this section.

9 (b) Whenever a child is born as a result of assisted reproduction and the
10 person or persons who did not give birth are a parent pursuant to 15C V.S.A.
11 § 703 or presumed parent pursuant to 15C V.S.A. § 401 and the parents seek to
12 file a petition to confirm parentage through an adoption of the child, the court
13 shall permit the parents to file a petition for adoption in accordance with this
14 section.

15 (c) A complete petition shall comprise the following:

16 (1) the petition for adoption signed by all parents;

17 (2) a copy of the petitioners’ marriage certificate, if petitioners are
18 married;

19 (3) a declaration signed by the parents explaining the circumstances of
20 the child’s birth through assisted reproduction, attesting to their consent to

1 assisted reproduction, and stating that there are no other persons with a claim
2 to parentage of the child under Title 15C; and

3 (4) a certified copy of the child's birth certificate.

4 (d) A complete petition for adoption, as described in subsection (c) of this
5 section, shall serve as the petitioners' written consents to adoption and no
6 additional consent or notice shall be required.

7 (e) If the petitioners conceived through assisted reproduction with donor
8 gametes or donor embryos, the court shall not require notice of the adoption to
9 the donor or consent to the adoption by the donor.

10 (f) Unless otherwise ordered by the court for good cause shown and
11 supported by written findings of the court demonstrating good cause, for
12 purposes of evaluating and granting a petition for adoption pursuant to this
13 section, the court shall not require:

14 (1) an in-person hearing or appearance, although the court may require a
15 remote hearing;

16 (2) an investigation or home study by, a notice to, or the approval of the
17 Department for Children and Families;

18 (3) a criminal-record check;

19 (4) verification that the child is not registered with the federal register
20 for missing children or the central register; or

21 (5) a minimum residency period in the home of the petitioners.

1 (g) The court shall grant the adoption under this section and issue an
2 adoption decree promptly after the filing of a complete petition and upon
3 finding that:

4 (1) for marital parents, the parent who gave birth and the spouse were
5 married at the time of the child's birth and the child was born through assisted
6 reproduction; or

7 (2) for nonmarital parents:

8 (A) the person who gave birth and the nonmarital parent consented to
9 the assisted reproduction; and

10 (B) no other person has a claim to parentage pursuant to Title 15C or
11 that any other person with a claim to parentage of the child who is required to
12 be provided notice of, or who must consent to, the adoption has been notified
13 or provided consent to the adoption.

14 (h) Unless notice has been waived or consent given for the adoption, a copy
15 of the petition and notice of a proceeding under this section shall be served
16 upon any person entitled to notice within 30 days after the petition is filed.
17 The notice shall include the address and telephone number of the court where
18 the petition is pending and a statement that the person served with the notice
19 and petition shall file a written appearance in the proceeding within 20 days
20 after service in order to participate in the proceeding and to receive further
21 notice of the proceeding, including notice of the time and place of any hearing.

1 Service of the notice and petition shall be made in a manner appropriate under
2 the Vermont Rules of Probate Procedure unless the court otherwise directs.
3 Proof of service on each person entitled to receive notice shall be on file with
4 the court before the court acts on the petition.

5 (i) A petition to adopt a child pursuant to this section shall not be denied on
6 the basis that any of the petitioners' parentage is already presumed or legally
7 recognized in Vermont.

8 (j) When parentage is presumed or legally recognized pursuant to
9 15C V.S.A. § 201, the fact that a person did not petition for adoption pursuant
10 to this section shall not be considered as evidence when two or more
11 presumptions conflict, nor in determining the best interests of the child.

12 Sec. 2. 14 V.S.A. § 2622 is amended to read:

13 § 2622. DEFINITIONS

14 As used in this article:

15 (1) "Child" means an individual who is under 18 years of age and who
16 is the subject of a petition for guardianship filed pursuant to section 2623 of
17 this title.

18 (2) "Child in need of guardianship" means:

19 (A) A child who the parties consent is in need of adult care because
20 of any one of the following:

21 (i) The child's custodial parent has a serious or terminal illness.

1 (ii) A custodial parent's physical or mental health prevents the
2 parent from providing proper care and supervision for the child.

3 (iii) The child's home is no longer habitable as the result of a
4 natural disaster.

5 (iv) A custodial parent of the child is incarcerated.

6 (v) A custodial parent of the child is on active military duty.

7 (vi) A custodial parent of the child is unavailable to care for the
8 child because the parent has been subject to an adverse immigration action.

9 (vii) The parties have articulated and agreed to another reason that
10 guardianship is in the best interests of the child.

11 (B) A child who is:

12 (i) abandoned or abused by the child's parent;

13 (ii) without proper parental care, subsistence, education, medical,
14 or other care necessary for the child's well-being; or

15 (iii) without or beyond the control of the child's parent.

16 (3) "Custodial parent" means a parent who, at the time of the
17 commencement of the guardianship proceeding, has the right and
18 responsibility to provide the routine daily care and control of the child. The
19 rights of the custodial parent may be held solely or shared and may be subject
20 to the court-ordered right of the other parent to have contact with the child. If
21 physical parental rights and responsibilities are shared pursuant to court order,

1 both parents shall be considered “custodial parents” for purposes of this
2 subdivision.

3 (4) “Nonconsensual guardianship” means a guardianship with respect to
4 which:

5 (A) a parent is opposed to establishing the guardianship; or

6 (B) a parent seeks to terminate a guardianship that the parent
7 previously agreed to establish.

8 (5) “Noncustodial parent” means a parent who is not a custodial parent
9 at the time of the commencement of the guardianship proceeding.

10 (6) “Parent” means a child’s biological or adoptive parent, including
11 custodial parents; noncustodial parents; parents with legal or physical
12 responsibilities, or both; and parents whose rights have never been adjudicated.

13 (7) “Parent-child contact” means the right of a parent to have visitation
14 with the child by court order.

15 (8) “Standby guardianship” means a consensual guardianship agreement
16 between the custodial parent and their chosen guardian that meets the
17 requirements of section 2626a of this title, in which the custodial parent has
18 been subject to an adverse immigration action that has rendered the parent
19 unavailable to care for their child.

20 (9) “Adverse immigration action” means:

1 (A) arrest or apprehension by any federal law enforcement officer for
2 an alleged violation of federal immigration law;

3 (B) arrest, detention, or custody by the Department of Homeland
4 Security, or a federal, state, or local agency authorized by or acting on behalf
5 of the Department of Homeland Security, for an alleged violation of federal
6 immigration law;

7 (C) departure from the United States under an order of removal,
8 deportation, exclusion, voluntary departure, or expedited removal or a
9 stipulation of voluntary departure;

10 (D) the denial, revocation, or delay of the issuance of a visa or
11 transportation letter by the Department of State;

12 (E) the denial, revocation, or delay of the issuance of a parole
13 document or reentry permit by the Department of Homeland Security; or

14 (F) the denial of admission or entry into the United States by the
15 Department of Homeland Security or other local or state officer acting on
16 behalf of the Department of Homeland Security.

17 Sec. 3. 14 V.S.A. § 2623 is amended to read:

18 § 2623. PETITION FOR GUARDIANSHIP OF MINOR; SERVICE

19 (a) A parent or a person interested in the welfare of a minor may file a
20 petition with the Probate Division of the Superior Court for the appointment of
21 a guardian for a child. The petition shall state:

- 1 (1) the names and addresses of the parents, the child, and the proposed
- 2 guardian;
- 3 (2) the proposed guardian's relationship to the child;
- 4 (3) the names of all members of the proposed guardian's household and
- 5 each person's relationship to the proposed guardian and the child;
- 6 (4) that the child is alleged to be a child in need of guardianship;
- 7 (5) specific reasons with supporting facts why guardianship is sought;
- 8 (6) whether the parties agree that the child is in need of guardianship
- 9 and that the proposed guardian should be appointed as guardian;
- 10 (7) the child's current school and grade level;
- 11 (8) if the proposed guardian intends to change the child's current school,
- 12 the name and location of the proposed new school and the estimated date when
- 13 the child would enroll;
- 14 (9) the places where the child has lived during the last five years, and
- 15 the names and present addresses of the persons with whom the child has lived
- 16 during that period; ~~and~~
- 17 (10) any prior or current court proceedings, child support matters, or
- 18 parent-child contact orders involving the child;
- 19 (11) whether the petition seeks a standby guardianship and the reasons
- 20 for the request, including the adverse immigration action that the custodial
- 21 parent is subject to; and

1 (12) whether the petition is an emergency petition filed pursuant to
2 subdivision 2625(f)(1) of this title.

3 (b)(1) A petition for guardianship of a child under this section shall be
4 served on all parties and interested persons as provided by Rule 4 of the
5 Vermont Rules of Probate Procedure.

6 (2)(A) The Probate Division may waive the notice requirements of
7 subdivision (1) of this subsection (b) with respect to a parent if the court finds
8 that:

9 (i) the identity of the parent is unknown; ~~or~~

10 (ii) the location of the parent is unknown and cannot be
11 determined with reasonable effort; or

12 (iii)(I) the custodial parent is detained as the result of an adverse
13 immigration action; and

14 (II) the guardian and the custodial parent's attorney are unable
15 to contact the custodial parent after making reasonable efforts.

16 (B) After a guardianship for a child is created, the Probate Division
17 shall reopen the proceeding at the request of a parent of the child who did not
18 receive notice of the proceeding as required by this subsection (b).

19 Sec. 4. 14 V.S.A. § 2625 is amended to read:

20 § 2625. HEARING; COUNSEL; GUARDIAN AD LITEM

1 (a) The Probate Division shall schedule a hearing upon the filing of the
2 petition and shall provide notice of the hearing to all parties and interested
3 persons who were provided notice under subdivision 2623(c)(1) of this title.

4 (b) The child shall attend the hearing if ~~he or she~~ the child is 14 years of
5 age or older unless the child's presence is excused by the court for good cause.
6 The child may attend the hearing if ~~he or she~~ the child is less than 14 years of
7 age.

8 (c) The court shall appoint counsel for the child if the child will be called
9 as a witness. In all other cases, the court may appoint counsel for the child.

10 (d)(1) The child may be called as a witness only if the court finds after
11 hearing that:

12 (A) the child's testimony is necessary to assist the court in
13 determining the issue before it;

14 (B) the probative value of the child's testimony outweighs the
15 potential detriment to the child; and

16 (C) the evidence sought is not reasonably available by any other
17 means.

18 (2) The examination of a child called as a witness may be conducted by
19 the court in chambers in the presence of such other persons as the court may
20 specify and shall be recorded.

1 (e) The court may appoint a guardian ad litem for the child on motion of a
2 party or on the court's own motion.

3 (f)(1) The court may grant an emergency guardianship petition filed ex
4 parte by the proposed guardian, or by the custodial parent's attorney in the case
5 of a standby guardianship petition filed pursuant to section 2626a of this title,
6 if the court finds that:

7 (A)(i) both parents are deceased or medically incapacitated; ~~and~~ or
8 (ii) in the case of a standby guardianship petition filed pursuant to
9 section 2626a of this title, the custodial parent has been subject to an adverse
10 immigration action that renders the parent unavailable to care for the child; and

11 (B) the best interests of the child require that a guardian be appointed
12 without delay and before a hearing is held.

13 (2) If the court grants an emergency guardianship petition pursuant to
14 subdivision (1) of this subsection (f), it shall schedule a hearing on the petition
15 as soon as practicable and in no event more than three business days after the
16 petition is filed.

17 Sec. 5. 14 V.S.A. § 2626a is added to read:

18 § 2626a. CONSENSUAL STANDBY GUARDIANSHIP

19 (a)(1) If the petition requests a consensual standby guardianship, the
20 petition shall include or be accompanied by a consent signed by the custodial
21 parent attesting that the custodial parent understands the nature of the standby

1 guardianship and knowingly and voluntarily consents to the standby
2 guardianship.

3 (2) The consent required by this subsection shall be on a form approved
4 by the Court Administrator.

5 (b)(1) The court shall schedule a hearing on the petition within 14 days.
6 The custodial parent shall be permitted to appear at and participate in the
7 hearing remotely.

8 (2) On or before the date of the hearing, the parties shall file an
9 agreement between the proposed guardian and the custodial parents. The
10 agreement shall provide:

11 (A) that the parties are creating a standby guardianship that is
12 effective only if the custodial parent has been subject to an adverse
13 immigration action that renders the custodial parent unavailable to care for the
14 child;

15 (B) the responsibilities of the guardian;

16 (C) the responsibilities of the parents;

17 (D) the expected duration of the guardianship, if known;

18 (E) parent-child contact and parental involvement in decision
19 making; and

20 (F) that the guardianship shall presumptively terminate if the
21 custodial parent is released from custody and reunited with the child.

1 (3) Any party may notify the court that the guardianship is
2 presumptively terminated pursuant to subdivision (2)(F) of this subsection.

3 (c) Vermont Rule of Probate Procedure 43 (relaxed rules of evidence in
4 probate proceedings) shall apply to hearings under this section.

5 (d) The court shall grant the petition if it finds after the hearing by clear
6 and convincing evidence that:

7 (1) the child is a child in need of guardianship as defined in subdivision
8 2622(2)(A) of this title because the parent has been subject to an adverse
9 immigration action that renders the parent unavailable to care for the child;

10 (2) the child's custodial parents knowingly and voluntarily consented to
11 the standby guardianship;

12 (3) the guardian or the custodial parent's attorney made reasonable
13 efforts to notify the parent of the proceeding;

14 (4) the agreement is voluntary;

15 (5) the proposed guardian is suitable; and

16 (6) the guardianship is in the best interests of the child.

17 (e) There shall be a rebuttable presumption that the guardianship is in the
18 best interests of the child if:

19 (1) the custodial parent has been subject to an adverse immigration
20 action and is unavailable to care for their child;

21 (2) all parties consented to the guardianship; and

1 (3) the custodial parent is represented by an attorney.

2 (f) If the court grants the petition, it shall approve the agreement at the
3 hearing and issue an order establishing a guardianship under section 2628 of
4 this title within 45 days after the petition was filed, unless the court extends the
5 time for issuing the order for good cause shown. The order shall be consistent
6 with the terms of the parties' agreement unless the court finds that the
7 agreement was not reached voluntarily or is not in the best interests of the
8 child.

9 Sec. 6. 14 V.S.A. § 2628 is amended to read:

10 § 2628. GUARDIANSHIP ORDER

11 (a) If the court grants a petition for guardianship of a child under
12 subsection 2626(d), 2626a(d), or 2627(d) of this title, the court shall enter an
13 order establishing a guardianship and naming the proposed guardian as the
14 child's guardian.

15 (b) A guardianship order issued under this section shall include provisions
16 addressing the following matters:

17 (1) the powers and duties of the guardian consistent with section 2629 of
18 this title;

19 (2) the expected duration of the guardianship, if known;

20 (3) a family plan on a form approved by the Court Administrator that:

21 (A) in a consensual case is consistent with the parties' agreement; or

1 (B) in a nonconsensual case includes, at a minimum, provisions that
2 address parent-child contact consistent with section 2630 of this title; and
3 (4) the process for reviewing the order consistent with section 2631 of
4 this title.

5 Sec. 7. 14 V.S.A. § 2629 is amended to read:

6 § 2629. POWERS AND DUTIES OF GUARDIAN

7 (a) The court shall specify the powers and duties of the guardian in the
8 guardianship order.

9 (b) The duties of a custodial guardian shall include the duty to:

10 (1) take custody of the child and establish ~~his or her~~ the child's place of
11 residence, provided that a guardian shall not change the residence of the child
12 to a location outside the State of Vermont without prior authorization by the
13 court following notice to the parties and an opportunity for hearing;

14 (2) make decisions related to the child's education;

15 (3) make decisions related to the child's physical and mental health,
16 including consent to medical treatment and medication;

17 (4) make decisions concerning the child's contact with others, provided
18 that the guardian shall comply with all provisions of the guardianship order
19 regarding parent-child contact and contact with siblings;

20 (5) receive funds paid for the support of the child, including child
21 support and government benefits; and

- 1 (6) file an annual status report to the Probate Division, with a copy to
2 each parent at ~~his or her~~ the parent's last known address, including the
3 following information:
- 4 (A) the current address of the child and each parent;
- 5 (B) the child's health care and health needs, including any medical
6 and mental health services the child received;
- 7 (C) the child's educational needs and progress, including the name of
8 the child's school, day care, or other early education program, the child's grade
9 level, and the child's educational achievements;
- 10 (D) contact between the child and ~~his or her~~ the child's parents,
11 including the frequency and duration of the contact and whether it was
12 supervised;
- 13 (E) how the parents have been involved in decision making for the
14 child;
- 15 (F) how the guardian has carried out ~~his or her~~ the guardian's
16 responsibilities and duties, including efforts made to include the child's parents
17 in the child's life;
- 18 (G) the child's strengths, challenges, and any other areas of concern;
19 and
- 20 (H) recommendations with supporting reasons as to whether the
21 guardianship order should be continued, modified, or terminated.

1 (c) In the case of a standby guardianship petition filed pursuant to section
2 2626a of this title, the guardian shall provide status reports to the custodial
3 parent at the parent's last known email address and to the custodial parent's
4 attorney at the attorney's last known address.

5 Sec. 8. 14 V.S.A. § 2632 is amended to read:

6 § 2632. TERMINATION

7 (a) A parent may file a motion to terminate a guardianship at any time. The
8 motion shall be filed with the Probate Division that issued the guardianship
9 order and served on all parties and interested persons.

10 (b)(1) If the motion to terminate is made with respect to a consensual
11 guardianship established under section 2626 of this title or a standby
12 guardianship established under section 2626a of this title, the court shall grant
13 the motion and terminate the guardianship unless the guardian files a motion to
14 continue the guardianship within 30 days after the motion to terminate is
15 served. In the case of a standby guardianship established under section 2626a
16 of this title, the court may, for good cause shown, accept filings that do not
17 meet the format and signing requirements for the motion under Vermont Rules
18 of Probate Procedure 10 and 11.

19 (2) If the guardian files a motion to continue the guardianship, the
20 matter shall be set for hearing and treated as a nonconsensual guardianship
21 proceeding under section 2627 of this title. The parent shall not be required to

1 show a change in circumstances, and the court shall not grant the motion to
2 continue the guardianship unless the guardian establishes by clear and
3 convincing evidence that the minor is a child in need of guardianship under
4 subdivision 2622(2)(B) of this title. In the case of a standby guardianship
5 established under section 2626 of this title, the custodial parent shall be
6 permitted to appear at and participate in the hearing remotely.

7 (3) If the court grants the motion to continue, it shall issue an order
8 establishing a guardianship under section 2628 of this title.

9 (c)(1) If the motion to terminate the guardianship is made with respect to a
10 nonconsensual guardianship established under section 2627 or subdivision
11 2632(b)(3) of this title, the court shall dismiss the motion unless the parent
12 establishes that a change in circumstances has occurred since the previous
13 guardianship order was issued.

14 (2) If the court finds that a change in circumstances has occurred since
15 the previous guardianship order was issued, the court shall grant the motion to
16 terminate the guardianship unless the guardian establishes by clear and
17 convincing evidence that the minor is a child in need of guardianship under
18 subdivision 2622(2)(B) of this title.

19 Sec. 9. EFFECTIVE DATES

20 (a) Sec. 1 shall take effect on July 1, 2025.

21 (b) Secs. 2–8 and this section shall take effect on passage.