

P.L. 2019, CHAPTER 323, *approved January 13, 2020*

Senate, No. 3528

1 **AN ACT** concerning parentage of the partner in civil union or
2 spouse of a natural or legal parent of a child and birth
3 certificates, supplementing Title 9 of the Revised Statutes and
4 amending P.L.1983, c.17.

5
6 **BE IT ENACTED** *by the Senate and General Assembly of the State*
7 *of New Jersey:*

8
9 1. (New section) The Legislature finds and declares that:

10 a. Modern medical advances have made parenthood possible
11 for many couples that would not otherwise be able to have their
12 own child, thanks to the availability of assisted reproduction
13 procedures.

14 b. These procedures have enabled same-sex couples, opposite-
15 sex couples dealing with infertility, and transgender and non-binary
16 individuals, to become parents.

17 c. Societal recognition of the rights of lesbian, gay, bisexual,
18 transgender, and non-binary individuals, in combination with
19 advances in assisted reproduction, has outpaced changes in the law
20 concerning processes for establishing legal parentage.

21 d. A spouse or partner in civil union who may not be
22 genetically related to the child or who may not have gestated the
23 child born to the couple through assisted reproduction is required to
24 go through the lengthy and expensive process of adopting the child
25 in order to confirm legal parentage.

26 e. By streamlining the process by which couples in this
27 situation can legally confirm that both spouses in a marriage or both
28 partners in civil union are parents of the child, this act reflects the
29 current reality of many families in New Jersey, while ensuring that
30 the rights of any other individuals who may have parental rights to
31 the child are addressed.

32 f. In order to ensure that couples who have used assisted
33 reproduction may have a non-genetic parent's rights afforded full
34 faith and credit in all states, as guaranteed by the United States
35 Constitution, this bill establishes a process to obtain a judgement of
36 adoption from the court that optimizes judicial efficiency and use of
37 court personnel.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 2. (New section) As used in this act:

2 “Assisted reproduction” means medical procedures to facilitate
3 human reproduction that involve human gametes or pre-embryos,
4 including, but not limited to artificial insemination, in vitro
5 fertilization, embryo transfers and similar procedures. The term
6 shall not include the use of assisted reproduction in connection with
7 a gestational carrier agreement pursuant to the “New Jersey
8 Gestational Carrier Agreement Act,” P.L.2018, c.18 (C.9:17-60 et
9 al.).

10 “Co-parent” means an individual who is the current or former
11 partner in civil union or the current or former spouse of a natural
12 parent or person treated in State law as a legal parent of a child
13 conceived through the use of assisted reproduction and born during
14 the civil union or marriage, and who may not be a biological parent
15 of that child. The term “co-parent” shall refer to either a natural
16 parent or a person treated in State law as a legal parent of the child,
17 the current or former partner in civil union or the current or former
18 spouse of the natural parent or person treated in State law as a legal
19 parent, or both, provided that both individuals are named on the
20 child’s birth certificate as parents and a court has issued an order of
21 parentage pursuant to the provisions of section 3 of P.L. ,
22 c. (C.) (pending before the Legislature as this bill). “Co-
23 parent” shall not include an intended parent pursuant to the “New
24 Jersey Gestational Carrier Agreement Act,” P.L.2018, c.18 (C.9:17-
25 60 et al.).

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27 3. (New section) a. A natural parent or person treated in State
28 law as a legal parent of the child, and the current or former partner
29 in civil union or the current or former spouse of the natural parent
30 or person treated in State law as a legal parent may jointly file a
31 complaint for a judgement of adoption with the Superior Court,
32 Chancery Division, Family Part of the county of residence of the
33 spouse, civil union partners, or one of the parties to the action.

34 b. Attached to the complaint shall be:

35 (1) proof of a valid civil union or marriage between the natural
36 or legal parent and that person’s partner in civil union or spouse,
37 issued prior to the birth of the child;

38 (2) an original birth certificate issued by the State Registrar of
39 Vital Statistics on which both partners in civil union or spouses are
40 listed as parents of the child; and

41 (3) a written declaration signed by both parties to the action that
42 describes in sufficient detail how the child was conceived and
43 identifies any other involved parties so that the court may determine
44 whether those individuals have parental rights to the child.

45 c. The court shall, if it determines that the parental rights of
46 any other interested individual have been relinquished or
47 terminated, issue a judgement of adoption confirming both parties

1 to the action as the legal parents of the child, without the need for
2 an appearance by the parties.

3 d. The court shall, if it determines that another individual may
4 have existing parental rights to the child, order and conduct a
5 hearing on the matter, providing notice to all parties, before issuing
6 a judgement of adoption.

7 e. No home study or background check shall be required by the
8 court in order to issue a judgement of adoption pursuant to this act.

9 f. The process provided by this section shall not be available to
10 the intended parents of a child born to a gestational carrier pursuant
11 to the provisions of the "New Jersey Gestational Carrier Act,"
12 P.L.2018, c.18 (C.9:17-60 et al.).

13 g. Nothing in this act shall be deemed to summarily extinguish
14 or terminate the parental rights of any individual.

15 h. Nothing in this act shall be deemed to confer parental rights
16 through a birth certificate.

17 i. The Supreme Court may establish court rules as necessary to
18 effectuate the provisions of this act.

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20 4. Section 2 of P.L.1983, c.17 (C.9:17-39) is amended to read
21 as follows:

22 2. As used in **[this act]** P.L.1983, c.17 (C.9:17-38 et seq.),
23 "parent and child relationship" means the legal relationship existing
24 between a child and the child's natural or adoptive parents, between
25 a child and the child's co-parents pursuant to the provisions of P.L.,
26 c. (C.) (pending before the Legislature as this bill), or between
27 the child and the child's intended parents pursuant to a gestational
28 carrier agreement executed in accordance with the provisions of
29 P.L.2018, c.18 (C.9:17-60 et al.), incident to which the law confers
30 or imposes rights, privileges, duties, and obligations. It includes the
31 mother and child relationship and the father and child relationship.
32 (cf: P.L.2018, c.18, s.10)

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34 5. Section 4 of P.L.1983, c.17 (C.9:17-41) is amended to read
35 as follows:

36 4. The parent and child relationship between a child and:

37 a. The natural mother, may be established by:

38 (1) proof of her having given birth to the child unless the child is
39 born in connection with a gestational carrier agreement executed in
40 accordance with the provisions of P.L.2018, c.18 (C.9:17-60 et al.),
41 or

42 (2) under P.L.1983, c.17 (C.9:17-38 et seq.);

43 b. The natural father, may be established by proof that his
44 paternity has been adjudicated under prior law; under the laws
45 governing probate; by giving full faith and credit to a determination
46 of paternity made by any other state or jurisdiction, whether
47 established through voluntary acknowledgment or through judicial
48 or administrative processes; by a Certificate of Parentage as

1 provided in section 7 of P.L.1994, c.164 (C.26:8-28.1) that is
2 executed by the father, including an unemancipated minor, prior to
3 or after the birth of a child, and filed with the appropriate State
4 agency; by a default **【judgment】 judgement** or order of the court; or
5 by an order of the court based on a blood test or genetic test that
6 meets or exceeds the specific threshold probability as set by
7 subsection i. of section 11 of P.L.1983, c.17 (C.9:17-48) creating a
8 rebuttable presumption of paternity.

9 In accordance with 42 U.S.C. s.666(a)(5), a signed voluntary
10 acknowledgment of paternity shall be considered a legal finding of
11 paternity subject to the right of the signatory to rescind the
12 acknowledgment within 60 days of the date of signing, or by the
13 date of establishment of a support order to which the signatory is a
14 party, whichever is earlier.

15 The adjudication of paternity shall only be voided upon a finding
16 that there exists clear and convincing evidence of: fraud, duress or a
17 material mistake of fact, with the burden of proof upon the
18 challenger;

19 c. (1) An adoptive parent, may be established by proof of
20 adoption;

21 (2) An intended parent, may be established by proof of an order
22 of parentage related to a gestational carrier agreement executed in
23 accordance with the provisions of P.L.2018, c.18 (C.9:17-60 et al.);

24 (3) A co-parent, may be established by proof of a judgement of
25 adoption issued by the court pursuant to section 3 of P.L. _____,
26 c. (pending before the Legislature as this bill).

27 d. The natural **【mother or the natural father】 mother's or**
28 natural father's parental rights, may be terminated by an order of a
29 court of competent jurisdiction in granting a **【judgment】 judgement**
30 of adoption or as the result of an action to terminate parental rights;

31 e. The establishment of the parent and child relationship
32 pursuant to subsections a., b., and c. of this section shall be the
33 basis upon which an action for child support may be brought by a
34 party and acted upon by the court without further evidentiary
35 proceedings;

36 f. In any case in which the parties execute a Certificate of
37 Parentage or a rebuttable presumption of paternity is created
38 through genetic testing, the presumption of paternity under section
39 6 of P.L.1983, c.17 (C.9:17-43) shall not apply;

40 g. Pursuant to the provisions of 42 U.S.C. s.666(a)(5), the child
41 and other parties in a contested paternity case shall submit to a
42 genetic test upon the request of one of the parties, unless that person
43 has good cause for refusal, if the request is supported by a sworn
44 statement by the requesting party:

45 (1) alleging paternity and setting forth the facts establishing a
46 reasonable possibility of the requisite sexual contact between the
47 parties; or

1 (2) denying paternity and setting forth the facts establishing a
2 reasonable possibility of the nonexistence of sexual contact between
3 the parties;

4 h. In a contested paternity case in which the State IV-D agency
5 requires or the court orders genetic testing, the State IV-D agency
6 shall:

7 (1) pay the costs of the genetic test and may recoup payment
8 from the alleged father whose paternity is established; and

9 (2) obtain additional testing if the initial test results are
10 contested, and upon the request and advance payment for the
11 additional test by the contestant.

12 (cf: P.L.2018, c.18, s.11)

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14 6. This act shall take effect on the first day of the third month
15 next following the date of enactment.

16 17 18 STATEMENT

19
20 This bill provides a process by which couples, in which one
21 spouse or partner in civil union is either a natural parent or a person
22 treated in State law as a legal parent of a child conceived through
23 the use of assisted reproduction and born during the civil union or
24 marriage, can seek a judgement of adoption from the court, in lieu
25 of pursuing a confirmatory adoption. The judgement of adoption
26 would confirm the parental rights of the other spouse or civil union
27 partner who may not be genetically related to the child, and the bill
28 refers to the parental rights confirmed through this process as those
29 of “co-parent.” The bill defines “assisted reproduction” as medical
30 procedures to facilitate human reproduction that involve human
31 gametes or pre-embryos, including, but not limited to artificial
32 insemination, in vitro fertilization, embryo transfers and similar
33 procedures. The term shall not include the use of assisted
34 reproduction in connection with a gestational carrier agreement
35 pursuant to the “New Jersey Gestational Carrier Agreement Act,”
36 P.L.2018, c.18 (C.9:17-60 et al.).

37 The bill provides that a couple may jointly file a complaint for a
38 judgment of adoption with the Superior Court of the county where
39 they reside or where one of the parties to the action resides. The
40 complaint is to include: proof of a valid civil union or marriage
41 between the individuals issued prior to the birth of the child; an
42 original birth certificate issued by the State Registrar of Vital
43 Statistics on which both individuals are listed as parents of the
44 child; and a written declaration signed by both individuals that
45 describes in sufficient detail how the child was conceived and
46 identifies any other involved parties so that the court may determine
47 whether those individuals may have parental rights to the child. The
48 term “co-parent” would refer to either or both spouses or partners.

1 The bill provides that the court, if it determines that the parental
2 rights of any other individuals have been relinquished, is to issue a
3 judgement of adoption confirming both current or former partners
4 in civil union or current or former spouses as the legal parents of
5 the child, without the need for an appearance by the parties. The bill
6 further provides, if the court determines that another individual may
7 have parental rights to the child, the court is to order and conduct a
8 hearing on the matter, providing notice to all parties, before issuing
9 a judgement of adoption.

10 Per the bill's provisions, no home study or background check
11 may be required by the court in order to issue a judgement of
12 adoption pursuant to this process, and this process would not be
13 available to the intended parents of a child born to a gestational
14 carrier pursuant to the provisions of the "New Jersey Gestational
15 Carrier Act," P.L.2018, c.18 (C.9:17-60 et al).

16 Birth certificates are administrative records and do not confer
17 parentage rights. The U.S. Supreme Court's 2017 decision in Pavan
18 v. Smith, 137 S. Ct. 2075 (2017), held that states cannot treat
19 married same-sex couples differently from opposite-sex couples
20 where the issuance of birth certificates is concerned. Currently, the
21 spouse or partner in civil union who may not be biologically related
22 to a child conceived through assisted reproduction may be named as
23 a parent on the child's birth certificate issued in the State, but is still
24 required to complete an adoption to confirm legal parentage. This
25 bill provides a process through which spouses and partners in civil
26 union can obtain a judgement of adoption that reflects that both
27 spouses or partners in civil union are legal parents of the child.

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32 Establishes process to obtain judgement of adoption for civil
33 union partner or spouse of natural or legal parent of child when that
34 person is named as parent on child's birth certificate.