

CHAPTER 323

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

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.9:17-69 Findings, declarations relative to establishing legal parentage.

1. The Legislature finds and declares that:

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

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

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

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

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

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

C.9:17-70 Definitions relative to establishing legal parentage.

2. As used in this act:

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

“Co-parent” means an individual who is the current or former partner in civil union or the current or former spouse of a natural parent or person treated in State law as a legal parent of a child conceived through the use of assisted reproduction and born during the civil union or marriage, and who may not be a biological parent of that child. The term “co-parent” shall refer to either a natural parent or a person treated in State law as a legal parent of the child, the current or former partner in civil union or the current or former spouse of the natural parent or person treated in State law as a legal parent, or both, provided that both individuals are named on the child's birth certificate as parents and a court has issued an order of parentage pursuant to the provisions of section 3 of P.L.2019, c.323 (C.9:17-71). “Co-parent” shall not include an intended parent pursuant to the “New Jersey Gestational Carrier Agreement Act,” P.L.2018, c.18 (C.9:17-60 et al.).

C.9:17-71 Eligibility to file for adoption.

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

b. Attached to the complaint shall be:

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

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

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

c. The court shall, if it determines that the parental rights of any other interested individual have been relinquished or terminated, issue a judgement of adoption confirming both parties to the action as the legal parents of the child, without the need for an appearance by the parties.

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

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

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

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

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

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

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

C.9:17-39 Parent and child relationship defined.

2. As used in P.L.1983, c.17 (C.9:17-38 et seq.), "parent and child relationship" means the legal relationship existing between a child and the child's natural or adoptive parents, between a child and the child's co-parents pursuant to the provisions of P.L.2019, c.323 (C.9:17-69 et al.), or between the child and the child's intended parents pursuant to a gestational carrier agreement executed in accordance with the provisions of P.L.2018, c.18 (C.9:17-60 et al.), incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

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

C.9:17-41 Parent-child relationship established.

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

a. The natural mother, may be established by:

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

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

b. The natural father, may be established by proof that his paternity has been adjudicated under prior law; under the laws governing probate; by giving full faith and credit to a determination of paternity made by any other state or jurisdiction, whether established through voluntary acknowledgment or through judicial or administrative processes; by a Certificate of Parentage as provided in section 7 of P.L.1994, c.164 (C.26:8-28.1) that is executed by the father, including an unemancipated minor, prior to or after the birth of a child, and filed with the appropriate State agency; by a default judgement or order of the court; or by an order of the court based on a blood test or genetic test that meets or exceeds the specific threshold probability as set by subsection i. of section 11 of P.L.1983, c.17 (C.9:17-48) creating a rebuttable presumption of paternity.

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

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

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

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

(3) A co-parent, may be established by proof of a judgement of adoption issued by the court pursuant to section 3 of P.L.2019, c.323.

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

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

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

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

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

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

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

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

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

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

Approved January 13, 2020.