

# ASSEMBLY, No. 5396

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MAY 20, 2019

**Sponsored by:**

**Assemblywoman VALERIE VAINIERI HUTTLE**

**District 37 (Bergen)**

**Assemblywoman ANNETTE QUIJANO**

**District 20 (Union)**

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**District 22 (Middlesex, Somerset and Union)**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/7/2019)**

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.

38  
39 2. (New section) As used in this act:

40 "Assisted reproduction" means medical procedures to facilitate  
41 human reproduction that involve human gametes or pre-embryos,  
42 including, but not limited to artificial insemination, in vitro  
43 fertilization, embryo transfers and similar procedures. The term  
44 shall not include the use of assisted reproduction in connection with  
45 a gestational carrier agreement pursuant to the "New Jersey

**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 Gestational Carrier Agreement Act,” P.L.2018, c.18 (C.9:17-60 et  
2 al.).

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

19

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

27 b. Attached to the complaint shall be:

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

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

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

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

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

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

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

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

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

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

11

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

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

25

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

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

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

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

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

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

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

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

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

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

16 (3) A co-parent, may be established by proof of a judgement of  
17 adoption issued by the court pursuant to section 3 of P.L. \_\_\_\_\_,  
18 c. (pending before the Legislature as this bill).

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

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

28 f. In any case in which the parties execute a Certificate of  
29 Parentage or a rebuttable presumption of paternity is created  
30 through genetic testing, the presumption of paternity under section  
31 6 of P.L.1983, c.17 (C.9:17-43) shall not apply;

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

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

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

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

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

1 (2) obtain additional testing if the initial test results are  
2 contested, and upon the request and advance payment for the  
3 additional test by the contestant.  
4 (cf: P.L.2018, c.18, s.11)

5  
6 6. This act shall take effect on the first day of the third month  
7 next following the date of enactment.

8  
9

10 STATEMENT

11

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

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

41 The bill provides that the court, if it determines that the parental  
42 rights of any other individuals have been relinquished, is to issue a  
43 judgement of adoption confirming both current or former partners  
44 in civil union or current or former spouses as the legal parents of  
45 the child, without the need for an appearance by the parties. The bill  
46 further provides, if the court determines that another individual may  
47 have parental rights to the child, the court is to order and conduct a

1 hearing on the matter, providing notice to all parties, before issuing  
2 a judgement of adoption.

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

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