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SENATE BILL NO. 628

Offered January 18, 2002

A BILL to amend and reenact §§ 63.1-204, 63.1-219.10, 63.1-219.29 and 63.1-219.40 of the Code of Virginia, relating to parental consent for adoption.

Patrons—Saslaw and Howell

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.1-204, 63.1-219.10, 63.1-219.29 and 63.1-219.40 of the Code of Virginia are amended and reenacted as follows:

§ 63.1-204. Acceptance and control over children.

A. A licensed child-welfare agency shall have the right to accept, for any purpose not contrary to the limitations contained in its license, such children as may be entrusted or committed to it by the parents, guardians, relatives or other persons having legal custody thereof, or committed by any court of competent jurisdiction. The agency shall, within the terms of its license and the agreement or order by which such child is entrusted or committed to its care, have custody and control of every child so entrusted or committed and accepted, until he is lawfully discharged, has been adopted, or has attained his majority.

An agency which is licensed as a child-placing agency by the Department of Social Services and certified as a proprietary school for students with disabilities by the Department of Education shall not be required to take custody of any child placed in its special education program but shall enter into a placement agreement with the parents or guardian of the child concerning the respective responsibilities of the agency and the parents or guardian for the care and control of the child. Such an agency shall conform with all other legal requirements of licensed child-placing agencies including the provisions of §§ 16.1-281 and 16.1-282.

A licensed private child-placing agency may accept placement of a child through an agreement with a local department of social services where the local department of social services retains legal custody of the child or where the parents or legal guardian of the child retain legal custody but have entered into a placement agreement with the local department or the public agency designated by the community policy and management team.

Whenever a licensed child-placing agency accepts legal custody of a child, the agency shall comply with §§ 16.1-281 and 16.1-282.

A child-caring institution licensed as a temporary emergency shelter may accept a child for placement provided that verbal agreement for placement is obtained from the parents, guardians, relatives or other persons having legal custody thereof, within eight hours of the child's arrival at the facility and provided that a written placement agreement is completed and signed by the legal guardian and the facility representative within twenty-four hours of the child's arrival or by the end of the next business day after the child's arrival.

B. Whenever a licensed child-welfare agency accepts custody of a child pursuant to an entrustment agreement entered into under the authority of this section, a petition for approval of the entrustment agreement by the child-welfare agency, except a child-caring institution when the child is placed there by a parent or parents: (i) shall be filed in the juvenile and domestic relations district court of the city or county within a reasonable period of time, not to exceed eighty-nine days after the execution of an entrustment agreement for less than ninety days, if the child is not returned to his home within that period; (ii) shall be filed within a reasonable period of time, not to exceed thirty days after the execution of an entrustment agreement for ninety days or longer or for an unspecified period of time, if such entrustment agreement does not provide for the termination of all parental rights and responsibilities with respect to the child; and (iii) may be filed in the case of a permanent entrustment agreement which provides for the termination of all parental rights and responsibilities with respect to the child.

C. A child may be placed for adoption by a licensed child-placing agency or a local board of social services, in accordance with the provisions of § 63.1-219.28.

For the purposes of this section, a parent who is less than eighteen years of age shall be deemed fully competent and shall have legal capacity to execute a valid entrustment agreement, including an agreement which provides for the termination of all parental rights and responsibilities, and shall be as fully bound thereby as if such parent had attained the age of eighteen years. An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the father of a child born out of wedlock if the identity of the

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59 father is not reasonably ascertainable, or if such father is given notice of the entrustment by registered
60 or certified mail to his last known address and such father fails to object to the entrustment within
61 twenty-one days of the mailing of such notice. An affidavit of the mother that the identity of the father
62 is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other
63 evidence which would refute such an affidavit. The absence of such an affidavit shall not be deemed
64 evidence that the identity of the father is reasonably ascertainable. For purposes of determining whether
65 the identity of the father is reasonably ascertainable, the standard of what is reasonable under the
66 circumstances shall control, taking into account the relative interests of the child, the mother and the
67 father.

68 An entrustment agreement for the termination of all parental rights and responsibilities with respect
69 to the child shall be valid notwithstanding that it is not signed by the birth father of a child when such
70 father has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63 or subsection B of
71 § 18.2-366, and the child was conceived as a result of such violation, *or § 18.2-57 or § 18.2-57.2, if the*
72 *violation was committed against the birth mother while pregnant with the child.*

73 § 63.1-219.10. Parental, or agency, consent required; exceptions.

74 A. No petition for adoption shall be granted, except as hereinafter provided in this section, unless
75 written consent to the proposed adoption is filed with the petition. Such consent shall be signed and
76 acknowledged before an officer authorized by law to take acknowledgments. The consent of a birth
77 parent for the adoption of his child placed directly by the birth parent shall be executed as provided in
78 § 63.1-219.40, and the circuit court may accept a certified copy of an order entered pursuant to
79 § 63.1-219.40 in satisfaction of all requirements of this section, provided the order clearly evidences
80 compliance with the applicable notice and consent requirements of § 63.1-219.40.

81 B. A birth parent who has not reached the age of eighteen shall have legal capacity to give consent
82 to adoption and shall be as fully bound thereby as if the birth parent had attained the age of eighteen
83 years.

84 C. Consent shall be executed:

85 1. By the parents or surviving parent of a child born in wedlock. A child born to a married birth
86 mother shall be presumed to be the child of her husband and his consent shall be required. This
87 presumption may be rebutted by sufficient evidence, satisfactory to the circuit court, which would
88 establish by a preponderance of the evidence the paternity of another man, or the impossibility or
89 improbability of cohabitation of the birth mother and her husband for a period of at least 300 days
90 preceding the birth of the child, in such case his consent shall not be required. If the parents are
91 divorced and the residual parental rights and responsibilities as defined in § 16.1-228 of one parent have
92 been terminated by terms of the divorce, or other order of a court having jurisdiction, the petition may
93 be granted without the consent of such parent; or

94 2. By the parents or surviving parent of a child born to parents who were not married to each other
95 at the time of the child's conception or birth. The consent of the birth father of a child born to parents
96 who were not married to each other at the time of the child's conception or birth shall not be required
97 (i) if the identity of the birth father is not reasonably ascertainable or (ii) if the identity of such birth
98 father is ascertainable and his whereabouts are known, such birth father is given notice of the adoption
99 proceeding, including the date and location of the hearing, by registered or certified mail to his last
100 known address, and such birth father fails to object to the adoption proceeding within twenty-one days
101 of the mailing of such notice. Such objection shall be in writing, signed by the objecting party or
102 counsel of record for the objecting party and shall be filed with the clerk of the court in which the
103 petition was filed during the business day of the court, within the time period specified in this section.
104 Failure of the objecting party to appear at the consent hearing, either in person or by counsel, shall
105 constitute a waiver of such objection; or

106 3. By the child-placing agency or the local board of social services having custody of the child, with
107 right to place him for adoption, through court commitment or parental agreement as provided in
108 §§ 63.1-56, 63.1-204 or § 63.1-219.28; or an agency outside the Commonwealth that is licensed or
109 otherwise duly authorized to place children for adoption by virtue of the laws under which it operates;
110 and

111 4. By the child if he is fourteen years of age or older, unless the court finds that the best interests of
112 the child will be served by not requiring such consent.

113 D. No consent shall be required of the birth father of a child when the birth father is convicted of a
114 violation of subsection A of § 18.2-61, § 18.2-63 or subsection B of § 18.2-366, and the child was
115 conceived as a result of such violation, *or § 18.2-57 or § 18.2-57.2, if the violation was committed*
116 *against the birth mother while pregnant with the child.*

117 E. When a child has been placed by the birth parent(s) with the prospective adoptive parent(s) who is
118 the child's grandparent, adult brother or sister, adult uncle or aunt, or adult great uncle or great aunt, the
119 court may accept the written and signed consent of the birth parent(s) that has been acknowledged by an
120 officer authorized by law to take such acknowledgments.

§ 63.1-219.29. Execution of entrustment agreement by birth parent(s); exceptions; notice and objection to entrustment; copy required to be furnished.

For the purposes of this section, a birth parent who is less than eighteen years of age shall be deemed fully competent and shall have legal capacity to execute a valid entrustment agreement, including an agreement that provides for the termination of all parental rights and responsibilities, and shall be as fully bound thereby as if such birth parent had attained the age of eighteen years.

An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the birth father of a child born out of wedlock if the identity of the birth father is not reasonably ascertainable, or if such birth father is given notice of the entrustment by registered or certified mail to his last known address and such birth father fails to object to the entrustment within twenty-one days of the mailing of such notice. Such objection shall be in writing, signed by the objecting party or counsel of record for the objecting party and shall be filed with the agency that mailed the notice of entrustment within the time period specified in § 63.1-219.30. An affidavit of the birth mother that the identity of the birth father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence that would refute such an affidavit. The absence of such an affidavit shall not be deemed evidence that the identity of the birth father is reasonably ascertainable. For purposes of determining whether the identity of the birth father is reasonably ascertainable, the standard of what is reasonable under the circumstances shall control, taking into account the relative interests of the child, the birth mother and the birth father.

An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the birth father of a child when the birth father has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63 or subsection B of § 18.2-366, and the child was conceived as a result of such violation, *or § 18.2-57 or § 18.2-57.2, if the violation was committed against the birth mother while pregnant with the child.*

A copy of the entrustment agreement shall be furnished to all parties signing such agreement.

§ 63.1-219.40. Consent to be executed in juvenile court; exceptions.

When the juvenile and domestic relations district court is satisfied that all requirements of § 63.1-219.39 have been met with respect to at least one birth parent and the adoptive child is at least ten days old, that birth parent or both birth parents, as the case may be, shall execute consent to the proposed adoption in compliance with the provisions of § 63.1-219.10 while before the juvenile and domestic relations district court in person and in the presence of the prospective adoptive parents. The juvenile and domestic relations district court shall accept the consent of the birth parent(s) and transfer custody of the child to the prospective adoptive parents, pending notification to any nonconsenting birth parent, as described hereinafter.

1. a. The execution of consent before the juvenile and domestic relations district court shall not be required of a birth father who is not married to the mother of the child at the time of the child's conception or birth if (i) the birth father consents under oath and in writing to the adoption; (ii) the birth mother swears under oath and in writing that the identity of the birth father is not reasonably ascertainable; (iii) the identity of the birth father is ascertainable and his whereabouts are known, he is given notice of the proceedings by registered or certified mail to his last known address and he fails to object to the proceeding within twenty-one days of the mailing of such notice. Such objection shall be in writing, signed by the objecting party or counsel of record for the objecting party and shall be filed with the clerk of the court in which the petition was filed during the business day of the court, within the time period specified in this section. Failure of the objecting party to appear at the consent hearing, either in person or by counsel, shall constitute a waiver of such objection; or (iv) the putative birth father named by the birth mother denies under oath and in writing paternity of the child. An affidavit of the birth mother that the identity of the birth father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court that would refute such an affidavit. The absence of such an affidavit shall not be deemed evidence that the identity of the birth father is reasonably ascertainable. For purposes of determining whether the identity of the birth father is reasonably ascertainable, the standard of what is reasonable under the circumstances shall control, taking into account the relative interests of the child, the birth mother and the birth father.

b. The juvenile and domestic relations district court may accept the written consent of the birth father who is not married to the birth mother of the child at the time of the child's conception or birth, provided that the identifying information required in § 63.1-219.39 is filed in writing with the juvenile and domestic relations district court of jurisdiction. Such consent shall be executed after the birth of the child, shall advise the birth father of his opportunity for legal representation, and shall be presented to the juvenile and domestic relations district court for acceptance. The consent may waive further notice of the adoption proceedings and shall contain the name, address and telephone number of the birth father's legal counsel or an acknowledgment that he was informed of his opportunity to be represented by legal counsel and declined such representation.

c. In the event that the birth mother's consent is not executed in the juvenile and domestic relations district court, the consent of the birth father who is not married to the birth mother of the child shall be executed in the juvenile and domestic relations district court.

d. A child born to a married birth mother shall be presumed to be the child of her husband and his consent shall be required. This presumption may be rebutted by sufficient evidence, satisfactory to the juvenile and domestic relations district court, which would establish by a preponderance of the evidence the paternity of another man or the impossibility or improbability of cohabitation of the birth mother and her husband for a period of at least 300 days preceding the birth of the child, in which case the husband's consent shall not be required.

2. A birth parent whose consent is required as set forth in § 63.1-219.10, whose identity is known and who neither consents before the juvenile and domestic relations district court as described above, nor executes a written consent to the adoption or a denial of paternity out of court as provided above, shall be given notice, including the date and location of the hearing, of the proceedings pending before the juvenile and domestic relations district court and be given the opportunity to appear before the juvenile and domestic relations district court. Such hearing may occur subsequent to the proceeding wherein the consenting birth parent appeared but may not be held until twenty-one days after personal service of notice on the nonconsenting birth parent, or if personal service is unobtainable, ten days after the completion of the execution of an order of publication against such birth parent. The juvenile and domestic relations district court may appoint counsel for the birth parent(s). If the juvenile and domestic relations district court finds that consent is withheld contrary to the best interests of the child, as set forth in § 63.1-219.13, or is unobtainable, it may grant the petition without such consent and enter an order waiving the requirement of consent of the nonconsenting birth parent and transferring custody of the child to the prospective adoptive parents, which order shall become effective fifteen days thereafter. If the juvenile and domestic relations district court denies the petition, the juvenile and domestic relations district court shall order that any consent given for the purpose of such placement shall be void and, if necessary, the court shall determine custody of the child as between the birth parents.

3. Except as provided in subdivision 4 of this section, if consent cannot be obtained from at least one birth parent, the juvenile and domestic relations district court shall deny the petition and determine custody of the child pursuant to § 16.1-278.2.

4. If the child was placed by the birth parent(s) with the prospective adoptive parents and if both birth parents have failed, without good cause, to appear at a hearing to execute consent under this section for which they were given proper notice pursuant to § 16.1-264, the juvenile and domestic relations district court may grant the petition without the consent of either birth parent and enter an order waiving consent and transferring custody of the child to the prospective adoptive parents, which order shall become effective fifteen days thereafter. Prior to the entry of such an order, the juvenile and domestic relations district court may appoint legal counsel for the birth parents and shall find by clear and convincing evidence (i) that the birth parents were given proper notice of the hearing(s) to execute consent and of the hearing to proceed without their consent; (ii) that the birth parents failed to show good cause for their failure to appear at such hearing(s); and (iii) that pursuant to § 63.1-219.13, the consent of the birth parents is withheld contrary to the best interests of the child or is unobtainable.

5. If both birth parents are deceased, the juvenile and domestic relations district court, after hearing evidence to that effect, may grant the petition without the filing of any consent.

6. When a child has been placed by the birth parent(s) with prospective adoptive parents who are the child's grandparents, adult brother or sister, adult uncle or aunt or adult great uncle or great aunt, consent does not have to be executed in the juvenile and domestic relations district court in the presence of the prospective adoptive parents. The juvenile and domestic relations district court may accept written consent that has been signed and acknowledged before an officer authorized by law to take acknowledgments. No hearing shall be required for the court's acceptance of such consent.

When such child has resided in the home of the prospective adoptive parent(s) continuously for three or more years, this section shall not apply, and consent shall be executed in accordance with subsection E of § 63.1-219.10.

7. No consent shall be required from the birth father of a child placed pursuant to this section when such father is convicted of a violation of subsection A of § 18.2-61, § 18.2-63 or subsection B of § 18.2-366, and the child was conceived as a result of such violation, *or § 18.2-57 or § 18.2-57.2, if the violation was committed against the birth mother while pregnant with the child*, nor shall the birth father be entitled to notice of any of the proceedings under this section.

8. The juvenile and domestic relations district court shall review each order entered under this section at least annually until such time as the final order of adoption is entered.