

# VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

## CHAPTER 815

*An Act to amend and reenact §§ 63.2-903, 63.2-1200, 63.2-1221, 63.2-1222 and 63.2-1817 of the Code of Virginia, relating to child-placing agencies outside the Commonwealth.*

[S 62]

Approved April 14, 2004

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 63.2-903, 63.2-1200, 63.2-1221, 63.2-1222 and 63.2-1817 of the Code of Virginia are amended and reenacted as follows:**

§ 63.2-903. Entrustment agreements; adoption.

A. Whenever a local board accepts custody of a child pursuant to an entrustment agreement entered into under the authority of § 63.2-900, or a licensed child-placing agency accepts custody of a child pursuant to an entrustment agreement entered into under the authority of § 63.2-1817, in the city or county juvenile and domestic relations district court a petition for approval of the entrustment agreement (i) shall be filed within a reasonable period of time, not to exceed ~~eighty-nine~~ 89 days after the execution of an entrustment agreement for less than ~~ninety~~ 90 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~~ 30 days after the execution of an entrustment agreement for ~~ninety~~ 90 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.

B. For purposes of §§ 63.2-900, 63.2-1817 and this section, a parent who is less than ~~eighteen~~ 18 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 parent had attained the age of ~~eighteen~~ 18 years. *An entrustment agreement for the termination of all parental rights and responsibilities shall be executed in writing and notarized.* 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 father is not reasonably ascertainable, or if such father is given notice of the entrustment by registered or certified mail to his last known address and fails to object to the entrustment within ~~twenty-one~~ 21 days of mailing of such notice. An affidavit of the mother that the identity of the 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 father is reasonably ascertainable. For purposes of determining whether the identity of the 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 mother and the father.

C. An entrustment agreement for the termination of 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 such 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.

D. A child may be placed for adoption by a licensed child-placing agency or a local board, in accordance with the provisions of § 63.2-1221.

§ 63.2-1200. Who may place children for adoption; requirement for agencies outside the Commonwealth.

A child may be placed for adoption by:

1. A licensed child-placing agency;
2. A local board;
3. The child's parent or legal guardian if the placement is a parental placement; and
4. Any agency outside the Commonwealth that is licensed or otherwise duly authorized to place children for adoption by virtue of the laws under which it operates; *however, when any such agency outside the Commonwealth, or its agent, executes an entrustment agreement in the Commonwealth with a birth parent for the termination of all parental rights and responsibilities with respect to a child, the requirements of §§ 63.2-1221 through 63.2-1224 shall apply. Any entrustment agreement that fails to comply with such requirements shall be void.*

§ 63.2-1221. Placement of children for adoption by agency or local board.

A licensed child-placing agency or local board may place for adoption, and is empowered to consent to the adoption of, any child who is properly committed or entrusted to its care, in accordance with the

provisions of §§ 63.2-900, 63.2-903, 63.2-1817 or this section, when the order of commitment or the entrustment agreement between the birth parent(s) and the agency or board provides for the termination of all parental rights and responsibilities with respect to the child for the purpose of placing and consenting to the adoption of such child.

The entrustment agreement shall divest the birth parent(s) of all legal rights and obligations with respect to the child, and the child shall be free from all legal obligations of obedience and maintenance with respect to them, provided that such rights and obligations may be restored to the birth parent(s) and the child by circuit court order prior to the entry of a final order of adoption upon proof of fraud or duress. *An entrustment agreement for the termination of all parental rights and responsibilities shall be executed in writing and notarized.*

§ 63.2-1222. Execution of entrustment agreement by birth parent(s); exceptions; notice and objection to entrustment; copy required to be furnished; requirement for agencies outside the Commonwealth.

For the purposes of this section, a birth parent who is less than ~~eighteen~~ 18 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~~ 18 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 fails to object to the entrustment within ~~twenty-one~~ 21 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 § 63.2-1223. 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.

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

*When any agency outside the Commonwealth, or its agent, that is licensed or otherwise duly authorized to place children for adoption by virtue of the laws under which it operates executes an entrustment agreement in the Commonwealth with a birth parent for the termination of all parental rights and responsibilities with respect to the child, the requirements of §§ 63.2-1221 through 63.2-1224 shall apply. Any entrustment agreement that fails to comply with such requirements shall be void.*

§ 63.2-1817. Acceptance and control over children by licensed child-placing agency, children's residential facility or independent foster home.

A licensed child-placing agency, children's residential facility or independent foster home 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, facility or home 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 entrustment agreement for the termination of parental rights and responsibilities with respect to such child shall be executed in writing and notarized.*

An agency that is licensed as a child-placing agency by the Department 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 where the local department 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 children's residential facility 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~~ 24 hours of the child's arrival or by the end of the next business day after the child's arrival.