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SENATE BILL NO. 108

Offered January 14, 2004

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A BILL to amend and reenact §§ 63.2-1230 and 63.2-1233 of the Code of Virginia, relating to parental placement adoption; how consent executed.

 Patron—Williams

 Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:**1. That §§ 63.2-1230 and 63.2-1233 of the Code of Virginia are amended and reenacted as follows:**

§ 63.2-1230. Placement of children by parent or guardian.

The birth parent or legal guardian of a child may place his child for adoption directly with the adoptive parents of his choice. Consent to the proposed adoption shall be executed upon compliance with the provisions of this chapter before a juvenile and domestic relations district court or, if the birth parent or legal guardian does not reside in Virginia, before a court having jurisdiction over child custody matters in the jurisdiction where the birth parent or legal guardian resides when requested by a juvenile and domestic relations district court of this Commonwealth, pursuant to § 20-146.11. Consent proceedings shall be advanced on the juvenile and domestic relations district court docket so as to be heard by the court within ten days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.

§ 63.2-1233. Consent to be executed in juvenile and domestic relations district court; exceptions.

When the juvenile and domestic relations district court is satisfied that all requirements of § 63.2-1232 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 § 63.2-1202 while before the juvenile and domestic relations district court in person and in the presence of the prospective adoptive parents in writing that has been signed and acknowledged before an officer authorized by law to take acknowledgement in compliance with the provisions of § 63.2-1202. The juvenile and domestic relations district court shall accept the consent of the birth parent(s) at a hearing in the presence of the prospective adoptive parents 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 juvenile and domestic relations district 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 juvenile and domestic relations district 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 § 63.2-1232 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

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SB108

59 father's legal counsel or an acknowledgment that he was informed of his opportunity to be represented
60 by legal counsel and declined such representation.

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

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

70 2. A birth parent whose consent is required as set forth in § 63.2-1202, whose identity is known and
71 who ~~neither consents before the juvenile and domestic relations district court as described above, nor~~
72 ~~executes does not execute~~ a written consent to the adoption or a denial of paternity out of court as
73 provided above, shall be given notice, including the date and location of the hearing, of the proceedings
74 pending before the juvenile and domestic relations district court and be given the opportunity to appear
75 before the juvenile and domestic relations district court. Such hearing may occur subsequent to the
76 proceeding wherein the consenting birth parent ~~appeared~~ *provided written consent* but may not be held
77 until twenty-one days after personal service of notice on the nonconsenting birth parent, or if personal
78 service is unobtainable, ten days after the completion of the execution of an order of publication against
79 such birth parent. The juvenile and domestic relations district court may appoint counsel for the birth
80 parent(s). If the juvenile and domestic relations district court finds that consent is withheld contrary to
81 the best interests of the child, as set forth in § 63.2-1205, or is unobtainable, it may grant the petition
82 without such consent and enter an order waiving the requirement of consent of the nonconsenting birth
83 parent and transferring custody of the child to the prospective adoptive parents, which order shall
84 become effective fifteen days thereafter. If the juvenile and domestic relations district court denies the
85 petition, the juvenile and domestic relations district court shall order that any consent given for the
86 purpose of such placement shall be void and, if necessary, the court shall determine custody of the child
87 as between the birth parents.

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

91 4. If the child was placed by the birth parent(s) with the prospective adoptive parents and if both
92 birth parents have failed, without good cause, to ~~appear at a hearing to~~ execute consent under this
93 section for which they were given proper notice pursuant to § 16.1-264, the juvenile and domestic
94 relations district court may grant the petition without the consent of either birth parent and enter an
95 order waiving consent and transferring custody of the child to the prospective adoptive parents, which
96 order shall become effective fifteen days thereafter. Prior to the entry of such an order, the juvenile and
97 domestic relations district court may appoint legal counsel for the birth parents and shall find by clear
98 and convincing evidence (i) that the birth parents were given proper notice of the hearing(s) to execute
99 consent and of the hearing to proceed without their consent; (ii) that the birth parents failed to show
100 good cause for their failure to ~~appear execute consent~~ at such hearing(s); and (iii) that pursuant to
101 § 63.2-1205, the consent of the birth parents is withheld contrary to the best interests of the child or is
102 unobtainable.

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

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

111 When such child has resided in the home of the prospective adoptive parent(s) continuously for three
112 or more years, this section shall not apply, and consent shall be executed in accordance with subsection
113 E of § 63.2-1202.

114 7. No consent shall be required from the birth father of a child placed pursuant to this section when
115 such father is convicted of a violation of subsection A of § 18.2-61, § 18.2-63 or subsection B of
116 § 18.2-366, and the child was conceived as a result of such violation, nor shall the birth father be
117 entitled to notice of any of the proceedings under this section.

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