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HOUSE BILL NO. 1911

Offered January 10, 2007

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A BILL to amend and reenact §§ 63.2-1230, 63.2-1232, and 63.2-1233 of the Code of Virginia, relating to requirements of parental placement adoption.

Patrons—Albo, Cole and Landes

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-1230, 63.2-1232, 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. *Legal counsel may appear in court on behalf of either the birth parent(s) or adoptive parent(s) in lieu of a personal appearance during a consent proceeding.*

§ 63.2-1232. Requirements of a parental placement adoption.

A. The juvenile and domestic relations district court shall not accept consent until it determines that:

1. The birth parent(s) are aware of alternatives to adoption, adoption procedures, and opportunities for placement with other adoptive families, and that the birth parents' consent is informed and uncoerced.

2. A licensed or duly authorized child-placing agency has counseled the prospective adoptive parents with regard to alternatives to adoption, adoption procedures, including the need to address the parental rights of birth parents, the procedures for terminating such rights, and opportunities for adoption of other children; that the prospective adoptive parents' decision is informed and uncoerced; and that they intend to file an adoption petition and proceed toward a final order of adoption.

3. The birth parent(s) and adoptive parents have exchanged identifying information including but not limited to full names, addresses, physical, mental, social and psychological information and any other information necessary to promote the welfare of the child, unless both parties agree in writing to waive the disclosure of full names and addresses.

4. Any financial agreement or exchange of property among the parties and any fees charged or paid for services related to the placement or adoption of the child have been disclosed to the court and that all parties understand that no binding contract regarding placement or adoption of the child exists.

5. There has been no violation of the provisions of § 63.2-1218 in connection with the placement; however, if it appears there has been such violation, the court shall not reject consent of the birth parent to the adoption for that reason alone but shall report the alleged violation as required by § 63.2-1219.

6. A licensed or duly authorized child-placing agency has conducted a home study of the prospective adoptive home in accordance with regulations established by the Board and has provided to the court a report of such home study, which shall contain the agency's recommendation regarding the suitability of the placement. A married couple or an unmarried individual shall be eligible to receive placement of a child for adoption.

7. The birth parent(s) have been informed of their opportunity to be represented by legal counsel. *Legal counsel may appear on behalf of the birth parents for the purposes of the consent hearing required by this article.*

B. The juvenile and domestic relations district court shall not accept the consent if the requirements of subsection A have not been met. In such cases, it shall refer the birth parent to a licensed or duly authorized child-placing agency for investigation and recommendation in accordance with §§ 63.2-1208 and 63.2-1238. If the juvenile and domestic relations district court determines that any of the parties is financially unable to obtain the required services, it shall refer the matter to the local director.

§ 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

INTRODUCED

HB1911

§ 63.2-1232 have been met with respect to at least one birth parent and the adoptive child is at least in the third calendar day of life, 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 *or by legal counsel* 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 the birth father consents under oath and in writing to the adoption.

b. (Effective until July 1, 2007) The consent of a birth father who is not married to the mother of the child at the time of the child's conception or birth shall not be required if the putative father named by the birth mother denies under oath and in writing the paternity of the child. The mother may, but is not required to identify the father who is not acknowledged pursuant to § 20-49.1, adjudicated pursuant to § 20-49.8, or presumed pursuant to § 63.2-1202.

b. (Effective July 1, 2007) The consent of a birth father who is not married to the mother of the child at the time of the child's conception or birth shall not be required if the putative father did not register with the Putative Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.) of this chapter and the identity of the birth father is not reasonably ascertainable or if the putative father named by the birth mother denies under oath and in writing the paternity of the child.

c. When a birth father is required to be given notice, he may be given notice of the adoption by registered or certified mail to his last known address and if he fails to object to the adoption within 15 days of the mailing of such notice, his consent shall not be required. An 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. When no timely objection is filed, no hearing on this issue is required. Failure of the objecting party to appear at any scheduled hearing, either in person or by counsel, shall constitute a waiver of such objection.

d. 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 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.

e. 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.

f. A child born to a married birth mother shall be presumed to be the child of her husband and his consent shall be required, unless the court finds that the father's consent is withheld contrary to the best interests of the child as provided in § 63.2-1205 or if his consent is unobtainable. The consent of such presumed father shall be under oath and in writing and may be executed in or out of court. The presumption that the husband is the father of the child 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. If the court is satisfied that the presumption has been rebutted, notice of the adoption shall not be required to be given to the presumed father.

2. A birth parent whose consent is required as set forth in § 63.2-1202, 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 15 days after personal service of notice on the nonconsenting birth parent, or if personal service is unobtainable, 10 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 § 63.2-1205,

121 or is unobtainable, it may grant the petition without such consent and enter an order waiving the
122 requirement of consent of the nonconsenting birth parent and transferring custody of the child to the
123 prospective adoptive parents. If the juvenile and domestic relations district court denies the petition, the
124 juvenile and domestic relations district court shall order that any consent given for the purpose of such
125 placement shall be void and, if necessary, the court shall determine custody of the child as between the
126 birth parents.

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

130 4. If the child was placed by the birth parent(s) with the prospective adoptive parents and if both
131 birth parents have failed, without good cause, to appear *either in person or by counsel* at a hearing to
132 execute consent under this section for which they were given proper notice pursuant to § 16.1-264, the
133 juvenile and domestic relations district court may grant the petition without the consent of either birth
134 parent and enter an order waiving consent and transferring custody of the child to the prospective
135 adoptive parents, which order shall become effective 15 days thereafter. Prior to the entry of such an
136 order, the juvenile and domestic relations district court may appoint legal counsel for the birth parents
137 and shall find by clear and convincing evidence (i) that the birth parents were given proper notice of the
138 hearing(s) to execute consent and of the hearing to proceed without their consent; (ii) that the birth
139 parents failed to show good cause for their failure to appear at such hearing(s); and (iii) that pursuant to
140 § 63.2-1205, the consent of the birth parents is withheld contrary to the best interests of the child or is
141 unobtainable. Under this subdivision, the court or the parties may waive the requirement of the
142 simultaneous meeting under § 63.2-1231 and the requirements of subdivisions A 1, A 3, and A 7 of
143 § 63.2-1232 where the opportunity for compliance is not reasonably available under the applicable
144 circumstances.

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

147 6. No consent shall be required from the birth father of a child placed pursuant to this section when
148 such father is convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of
149 § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, and
150 the child was conceived as a result of such violation, nor shall the birth father be entitled to notice of
151 any of the proceedings under this section.

152 7. No consent shall be required of a birth father if he denies under oath and in writing the paternity
153 of the child. Such denial of paternity may be withdrawn no more than 10 days after it is executed. Once
154 the child is 10 days old, any executed denial of paternity is final and constitutes a waiver of all rights
155 with the respect to the adoption of the child and cannot be withdrawn.

156 8. A birth father not married to the mother of the child may consent to the termination of all of his
157 parental rights prior to the birth of the child.

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