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SENATE BILL NO. 171

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services
on February 1, 2008)

(Patron Prior to Substitute—Senator Blevins)

A BILL to amend and reenact §§ 63.2-1201, 63.2-1210, 63.2-1215, 63.2-1225, 63.2-1232, 63.2-1237, 63.2-1241, and 63.2-1243 of the Code of Virginia, relating to adoption by former stepparents.

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-1201, 63.2-1210, 63.2-1215, 63.2-1225, 63.2-1232, 63.2-1237, 63.2-1241, and 63.2-1243 of the Code of Virginia are amended and reenacted as follows:

§ 63.2-1201. Filing of petition for adoption; venue; jurisdiction; and proceedings.

Proceedings for the adoption of a minor child and for a change of name of such child shall be instituted only by petition to a circuit court in the county or city in which the petitioner resides, in the county or city in which the child-placing agency that placed the child is located, or in the county or city in which a birth parent executed a consent pursuant to § 63.2-1233. Such petition may be filed by any natural person who resides in the Commonwealth, or who has custody of a child placed by a child-placing agency of the Commonwealth, or by an adopting parent of a child who was subject to a consent proceeding held pursuant to § 63.2-1233, or by intended parents who are parties to a surrogacy contract. The petition shall ask leave to adopt a minor child not legally the petitioner's by birth and, if it is so desired by the petitioner, also to change the name of such child. In the case of married persons, the petition shall be the joint petition of the husband and wife but, in the event the child to be adopted is legally the child by birth or adoption of one of the petitioners, such petitioner shall unite in the petition for the purpose of indicating consent to the prayer thereof only. *Persons who were previously married to each other may petition to adopt the child where the adoptive parent(s) stood in loco parentis of the child during the petitioner's marriage. Any current spouse of such petitioners may join in the petition for purposes of indicating the spouse's consent to the adoption.* If any procedural provision of this chapter applies to only one adoptive parent, then the court may waive the application of the procedural provision as to the spouse of the adoptive parent. The petition shall contain a full disclosure of the circumstances under which the child came to live, and is living, in the home of the petitioner. Each petition for adoption shall be signed by the petitioner as well as by counsel of record, if any. In any case in which the petition seeks the entry of an adoption order without referral for investigation, the petition shall be under oath.

A single petition for adoption under the provisions of this section shall be sufficient for the concurrent adoption by the same petitioners of two or more children who have the same birth parent or parents, and nothing in this section shall be construed as having heretofore required a separate petition for each of such children.

Nothing in this section shall be construed to permit any child to have more than two living parents, consisting of one father and one mother, by birth or adoption.

The petition for adoption, except those filed pursuant to subdivisions 5 and 6 of § 63.2-1210, shall include an additional \$50 filing fee that shall be used to fund the Putative Father Registry established in Article 7 (§ 63.2-1249 et seq.) of this chapter.

§ 63.2-1210. Probationary period, interlocutory order and order of reference not required under certain circumstances.

The circuit court may omit the probationary period and the interlocutory order and enter a final order of adoption under the following circumstances:

1. If the child is legally the child by birth or adoption of one of the petitioners and the circuit court is of the opinion that the entry of an interlocutory order would otherwise be proper.

2. If one of the petitioners (i) is a ~~step-parent~~ *the current stepparent* of the child, or (ii) *was previously married to a parent of the child by birth or adoption and stood in loco parentis of the child during the marriage* and the circuit court is of the opinion that the entry of an interlocutory order would otherwise be proper. The court may omit the order of reference if the petitioners meet the requirements of § 63.2-1241.

3. After receipt of the report required by § 63.2-1208, if the child has been placed in the physical custody of the petitioner by a child-placing agency and (i) the placing or supervising agency certifies to the circuit court that the child has lived in the physical custody of the petitioner continuously for a period of at least six months immediately preceding the filing of the petition and has been visited by a representative of such agency at least three times within a six-month period, provided there are not less than ninety days between the first visit and the last visit, and (ii) the circuit court is of the opinion that the entry of an interlocutory order would otherwise be proper. The circuit court may, for good cause

60 shown, in cases of placement by a child-placing agency, omit the requirement that the three visits be
61 made within a six-month period.

62 4. After receipt of the report, if the child has been in physical custody of the petitioner continuously
63 for at least three years immediately prior to the filing of the petition for adoption, and the circuit court
64 is of the opinion that the entry of an interlocutory order would otherwise be proper.

65 5. After receipt of the report, if the child has been legally adopted according to the laws of a foreign
66 country with which the United States has diplomatic relations and if the circuit court is of the opinion
67 that the entry of an interlocutory order would otherwise be proper, and the child (i) has been in the
68 physical custody of the petitioners for at least one year immediately prior to the filing of the petition
69 and a representative of a child-placing agency has visited the petitioner and child at least once in the six
70 months immediately preceding the filing of the petition or during its investigation pursuant to
71 § 63.2-1208 or (ii) has been in the physical custody of the petitioners for at least six months
72 immediately prior to the filing of the petition, has been visited by a representative of a child-placing
73 agency or of the local department three times within such six-month period with no fewer than ninety
74 days between the first and last visits, and the last visit has occurred within six months immediately prior
75 to the filing of the petition.

76 6. After receipt of the report, if the child was placed into Virginia from a foreign country in
77 accordance with § 63.2-1104, and the child has been in the physical custody of the petitioner for at least
78 six months immediately prior to the filing of the petition and has been visited by a representative of a
79 licensed child-placing agency or of the local department three times within the six-month period with no
80 fewer than ninety days between the first and last visits. The circuit court may, for good cause shown, in
81 cases of an international placement, omit the requirement that the three visits be made within a
82 six-month period.

83 § 63.2-1215. Legal effects of adoption.

84 The birth parents, and the parents by previous adoption, if any, other than any such parent who is the
85 husband or wife of one of the petitioners *or the former husband or wife who stood in loco parentis of*
86 *the child during the marriage to one of the petitioners*, shall, by final order of adoption, be divested of
87 all legal rights and obligations in respect to the child including the right to petition any court for
88 visitation with the child. Except where a final order of adoption is entered pursuant to § 63.2-1241, any
89 person whose interest in the child derives from or through the birth parent or previous adoptive parent,
90 including but not limited to grandparents, stepparents, former stepparents, blood relatives and family
91 members shall, by final order of adoption, be divested of all legal rights and obligations in respect to the
92 child including the right to petition any court for visitation with the child. In all cases the child shall be
93 free from all legal obligations of obedience and maintenance in respect to such persons divested of legal
94 rights. Any child adopted under the provisions of this chapter shall, from and after the entry of the
95 interlocutory order or from and after the entry of the final order where no such interlocutory order is
96 entered, be, to all intents and purposes, the child of the person or persons so adopting him, and, unless
97 and until such interlocutory order or final order is subsequently revoked, shall be entitled to all the
98 rights and privileges, and subject to all the obligations, of a child of such person or persons born in
99 lawful wedlock. An adopted person is the child of an adopting parent, and as such, the adopting parent
100 shall be entitled to testify in all cases civil and criminal, as if the adopted child was born of the
101 adopting parent in lawful wedlock.

102 *Nothing in this section shall be construed to permit any child to have more than two living parents,*
103 *consisting of one father and one mother, by birth or adoption.*

104 § 63.2-1225. Determination of appropriate home.

105 A. In determining the appropriate home in which to place a child for adoption, a married couple,
106 *individuals previously married to each other who stood in loco parentis of a child during the marriage,*
107 or an unmarried individual shall be eligible to receive placement of a child for purposes of adoption.
108 When a licensed child-placing agency or a local board accepts custody of the child for the purpose of
109 placing the child for adoption, the agency or local board shall consider the recommendations of the birth
110 parent(s), a physician or attorney licensed in the Commonwealth, or a clergyman who is familiar with
111 the situation of the prospective adoptive parent(s) or the child. No birth parent, physician, attorney or
112 clergyman shall advertise that he is available to make recommendations, nor shall he charge any fee for
113 such recommendations to a board or agency, except that an attorney may charge for legal fees and
114 services rendered in connection with such placement.

115 B. The agency or local board may give consideration to placement of the child with the
116 recommended adoptive parent(s) if the agency or local board finds that such placement is in the best
117 interest of the child. When the birth parent(s) has recommended such placement, the agency or local
118 board shall provide the birth parent(s) the opportunity to be represented by independent legal counsel as
119 well as the opportunity for counseling with a social worker. The agency or board also shall advise the
120 prospective adoptive parent(s) of the right to be represented by independent legal counsel. The parties
121 may, but are not required to, exchange identifying information as provided for in subdivision A 3 of

§ 63.2-1232.

C. Nothing in this section shall be construed to permit any child to have more than two living parents, consisting of one father and one mother, by birth or adoption.

§ 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, *individuals previously married to each other who stood in loco parentis of a child during the marriage*, 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.

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.

§ 63.2-1237. Petition for parental placement adoption; jurisdiction; contents.

Proceedings for the parental placement adoption of a minor child and for a change of name of such child shall be instituted only by petition to the circuit court in the county or city in which the petitioner resides or in the county or city where a birth parent has executed a consent pursuant to § 63.2-1233. Such petition may be filed by any natural person who resides in the Commonwealth or is the adopting parent(s) of a child who was subject to a consent proceeding held pursuant to § 63.2-1233. The petition shall ask leave to adopt a minor child not legally the petitioner's by birth and, if it is so desired by the petitioner, also to change the name of such child. In the case of married persons *or individuals previously married to each other who stood in loco parentis of a child during the marriage*, the petition shall be the joint petition of the husband and wife *or former husband and former wife* but, in the event the child to be adopted is legally the child by birth or adoption of one of the petitioners, such petitioner shall unite in the petition for the purpose of indicating his or her consent to the prayer thereof only. The petition shall contain a full disclosure of the circumstances under which the child came to live, and is living, in the home of the petitioner *or homes of the petitioners in the event that the adoption involves individuals previously married to each other who stood in loco parentis of the child during the marriage*. Each petition for adoption shall be signed by the petitioner as well as by counsel of record, if any. In any case in which the petition seeks the entry of an adoption order without referral for investigation, the petition shall be under oath.

The petition shall state that the findings required by § 63.2-1232 have been made and shall be accompanied by appropriate documentation supporting such statement, to include copies of documents executing consent and transferring custody of the child to the prospective adoptive parents, and a copy of the report required by § 63.2-1231. The court shall not waive any of the requirements of this paragraph nor any of the requirements of § 63.2-1232 except as allowed pursuant to subdivision 4 of § 63.2-1233.

A single petition for adoption under the provisions of this section shall be sufficient for the concurrent adoption by the same petitioners of two or more children who have the same birth parent or

183 parents; and nothing in this section shall be construed as having heretofore required a separate petition
184 for each of such children.

185 § 63.2-1241. Adoption of child by new spouse of birth or adoptive parent.

186 A. When the spouse of a birth parent of a child born in wedlock or the spouse of a parent by
187 adoption of the child has died, and the surviving birth parent or parent by adoption marries again and
188 the new spouse *or former spouse who stood in loco parentis of the child during the marriage to the*
189 *surviving parent* desires to adopt the child, on a petition filed by the surviving birth parent or parent by
190 adoption and new spouse *or former spouse who stood in loco parentis of the child during the marriage*
191 *to the surviving parent* for the adoption and change of name of the child, the circuit court may proceed
192 to order the proposed adoption or change of name without referring the matter to the local director.

193 B. When a birth parent of a legitimate infant or a parent by adoption is divorced and marries again
194 and the birth parent or parent by adoption desires the new spouse *or former spouse who stood in loco*
195 *parentis of the child during the marriage to the birth parent or parent by adoption* to adopt the child,
196 on a petition filed by the birth parent or parent by adoption and the new spouse *or former spouse who*
197 *stood in loco parentis of the child during the marriage to the birth parent or parent by adoption* for the
198 adoption and change of name of the child, or if the child is the result of surrogacy, the circuit court may
199 proceed to order the proposed adoption or change of name without referring the matter to the local
200 director if the other birth parent or parent by adoption consents in writing to the adoption or change of
201 name or if the other birth parent or parent by adoption is deceased.

202 C. When the custodial birth parent of a child born to parents who were not married to each other at
203 the time of the child's conception or birth marries and the new spouse *or former spouse who stood in*
204 *loco parentis of the child during the marriage* of such custodial birth parent desires to adopt such child,
205 on a petition filed by the custodial birth parent and spouse *or former spouse who stood in loco parentis*
206 *of the child during the marriage to the custodial birth parent* for the adoption and change of name of
207 the child, the circuit court may proceed to order the proposed adoption and change of name without
208 referring the matter to the local director if (i) the noncustodial birth parent consents, under oath, in
209 writing to the adoption, or (ii) the mother swears, under oath, in writing, that the identity of the father is
210 not reasonably ascertainable, or (iii) the putative father named by the mother denies paternity of the
211 child, or (iv) the child is fourteen years of age or older and has lived in the home of the person desiring
212 to adopt the child for at least five years, or (v) the noncustodial birth parent is deceased, or (vi) the
213 noncustodial birth parent executes a denial of paternity under oath and in writing, or (vii) the
214 noncustodial birth parent:

215 a. Is not an acknowledged father pursuant to § 20-49.1; and

216 b. Is not an adjudicated father pursuant to § 20-49.8; and

217 c. Is not a presumed father; and

218 d. Is a putative father who has not registered with the Putative Father Registry pursuant to Article 7
219 (§ 63.2-1249 et seq.) of this chapter and, if his identity is reasonably ascertainable, he has been provided
220 notice pursuant to § 63.2-1250 and failed to timely register.

221 D. When a single person who has adopted a child thereafter marries and desires his spouse to adopt
222 the child, on a petition filed by the adoptive parent and the spouse *or former spouse who stood in loco*
223 *parentis of the child during the marriage* for the adoption and change of name of the child, the circuit
224 court may proceed to order the proposed adoption or change of name without referring the matter to the
225 local director.

226 E. *Nothing in this section shall be construed to permit any child to have more than two living*
227 *parents, consisting of one father and one mother, by birth or adoption.*

228 § 63.2-1243. Adoption of certain persons eighteen years of age or over.

229 A petition may be filed in circuit court by any natural person who is a resident of this
230 Commonwealth (i) for the adoption of a stepchild *or former stepchild* eighteen years of age or over to
231 whom he has stood in loco parentis for a period of at least three months; (ii) for the adoption of a close
232 relative, as defined in § 63.2-1242.1, eighteen years of age or older; (iii) for the adoption of any person
233 eighteen years of age or older who is the birth child of the petitioner or who had resided in the home of
234 the petitioner for a period of at least three months prior to becoming eighteen years of age; or (iv) for
235 the adoption of any person eighteen years of age or older, for good cause shown, provided that the
236 person to be adopted is at least fifteen years younger than the petitioner and the petitioner and the
237 person to be adopted have known each other for at least one year prior to the filing of the petition for
238 adoption. Proceedings in any such case shall conform as near as may be to proceedings for the adoption
239 of a minor child under this chapter except that:

240 (a) No consent of either parent shall be required; and

241 (b) The consent of the person to be adopted shall be required in all cases.

242 Any interlocutory or final order issued in any case under this section shall have the same effect as
243 other orders issued under this chapter; and in any such case the word "child" in any other section of this
244 chapter shall be construed to refer to the person whose adoption is petitioned for under this section. The

245 entry of a final order of adoption pursuant to this section which incorporates a change of name shall be
246 deemed to meet the requirements of § 8.01-217.
247 The provisions of this section shall apply to any person who would have been eligible for adoption
248 hereunder prior to July 1, 1972.