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**HOUSE BILL NO. 1937**

Offered January 14, 2009

Prefiled January 13, 2009

*A BILL to amend and reenact § 63.2-1247 of the Code of Virginia, relating to adoption records.*

Patron—Ingram

Referred to Committee on Health, Welfare and Institutions

**Be it enacted by the General Assembly of Virginia:****1. That § 63.2-1247 of the Code of Virginia is amended and reenacted as follows:**

§ 63.2-1247. Disclosure to birth family; adoptive parents; medical, etc., information; exchange of information; open records in parental placement adoptions.

A. Where the adoption is finalized on or after July 1, 1994, and the adopted person is twenty-one years of age or over, the adopted person's birth parents and adult birth siblings may apply to the Commissioner for the disclosure of identifying information from the adoption file. The Commissioner shall designate the person or agency that made the investigation to attempt to locate and advise the adopted person of the application. The designated person or agency shall report the results of the attempt to locate and advise the adopted person to the Commissioner, including the relative effects that disclosure of the identifying information may have on the adopted person, the adoptive parents, and the birth family. The adopted person and the birth family may submit to the Commissioner, and the Commissioner shall consider, written comments stating the anticipated effect that the disclosure of identifying information may have upon any party. Upon a showing of good cause, the Commissioner shall disclose the identifying information. If the Commissioner fails to designate a person or agency to attempt to locate the adopted person within thirty days of receipt of the application, or if the Commissioner denies disclosure of the identifying information after receiving the designated person's or agency's report, the birth parents or adult birth siblings, whoever applied, may apply to the circuit court for an order to disclose such information. Such order shall be entered only upon good cause shown after notice to and opportunity for hearing by the applicant for such order and the person or agency that made the investigation. "Good cause" when used in this section shall mean a showing of a compelling and necessitous need for the identifying information.

A birth parent or adult birth sibling who is a resident of Virginia may apply for the court order provided for herein to (i) the circuit court of the county or city where the birth parent or adult birth sibling resides or (ii) the circuit court of the county or city where the central office of the Department is located. A birth parent or adult birth sibling who is not a resident of Virginia shall apply for such a court order to the circuit court of the county or city where the central office of the Department is located.

If the identity and whereabouts of the adopted person and adoptive parents are known to the person or agency, the circuit court may require the person or agency to advise the adopted person and adoptive parents of the pendency of the application for such order. In determining good cause for the disclosure of such information, the circuit court shall consider the relative effects of such action upon the adopted person, the adoptive parents and the birth family. The adopted person and the birth family may submit to the circuit court, and the circuit court shall consider, written comments stating the anticipated effect that the disclosure of identifying information may have upon any party.

When consent of the adopted person is not obtainable, due to the death or mental incapacity of the adopted person, the circuit court may release identifying information to the birth parents or adult birth siblings. In making this decision, the circuit court shall consider the needs and concerns of the birth parents or adult birth siblings and the adoptive family if such information is available, the actions the agency took to locate the adopted person, the information in the agency's report and the recommendation of the agency.

B. Where the adoption is finalized on or after July 1, 1994, and the adopted person is under eighteen years of age, the adoptive parents or other legal custodian of the child may apply to the Commissioner for the disclosure of identifying information about the birth family. The Commissioner shall designate the person or agency that made the investigation to attempt to locate and advise the birth family of the application. The designated person or agency shall report the results of the attempt to locate and advise the birth family to the Commissioner, including the relative effects that disclosure of the identifying information may have on the adopted person, the adoptive parents or other legal custodian, and the birth family. The adoptive parents, legal custodian and birth family may submit to the Commissioner, and the Commissioner shall consider, written comments stating the anticipated effect that the disclosure of

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59 identifying information may have upon any party. Upon a showing of good cause, the Commissioner  
60 shall disclose the identifying information. If the Commissioner fails to designate a person or agency to  
61 attempt to locate the birth family within thirty days of receipt of the application, or if the Commissioner  
62 denies disclosure of the identifying information after receiving the designated person's or agency's report,  
63 the adoptive parents or legal custodian, whoever applied, may apply to the circuit court for an order to  
64 disclose such information. Such order shall be entered only upon good cause shown after notice to and  
65 opportunity for hearing by the applicant for such order and the person or agency that made the  
66 investigation. "Good cause" when used in this section shall mean a showing of a compelling and  
67 necessitous need for the identifying information.

68 An adoptive parent or legal custodian who is a resident of Virginia may apply for the court order  
69 provided for herein to (i) the circuit court of the county or city where the adoptive parent or legal  
70 custodian resides or (ii) the circuit court of the county or city where the central office of the Department  
71 is located. An adoptive parent or legal custodian who is not a resident of Virginia shall apply for such a  
72 court order to the circuit court of the county or city where the central office of the Department is  
73 located.

74 If the identity and whereabouts of the birth parents are known to the person or agency, the circuit  
75 court may require the person or agency to advise the birth parents of the pendency of the application for  
76 such order. In determining good cause for the disclosure of such information, the circuit court shall  
77 consider the relative effects of such action upon the adopted person, the adoptive parents or legal  
78 custodian and the birth parents. The birth family may submit to the circuit court, and the circuit court  
79 shall consider, written comments stating the anticipated effect that the disclosure of identifying  
80 information may have upon any party.

81 When consent of the birth family is not obtainable, due to the death of the birth parents or mental  
82 incapacity of the birth parents, the circuit court may release identifying information to the adoptive  
83 parents or legal custodian. In making this decision, the circuit court shall consider the needs and  
84 concerns of the adoptive parents or legal custodian and the birth family if such information is available,  
85 the actions the agency took to locate the birth family, the information in the agency's report and the  
86 recommendation of the agency.

87 C. In any case where a physician or licensed mental health provider submits a written statement, in  
88 response to a request from the adult adoptee, adoptive parent, birth parent or adult birth siblings,  
89 indicating that it is critical that medical, psychological or genetic information be conveyed, and states  
90 clearly the reasons why this is necessary, the agency that made the investigation shall make an attempt  
91 to inform the adult adoptee, adoptive parents, birth parents or adult birth siblings, whichever is  
92 applicable, of the information. The Commissioner shall provide information from the adoption record to  
93 the searching agency if necessary to facilitate the search. Confidentiality of all parties shall be  
94 maintained by the agency.

95 D. In cases where at least one of the adoptive parents and one of the birth parents agree in writing to  
96 allow the agency involved in the adoption to exchange nonidentifying information and pictures, the  
97 agency may exchange this information with such adoptive parents and birth parents when the  
98 whereabouts of the adoptive parents and birth parents is known or readily accessible. Such agreement  
99 may be entered into or withdrawn by either party at any time or may be withdrawn by the adult  
100 adoptee.

101 E. In parental placement adoptions, ~~where the consent to the adoption was executed on or after July~~  
102 ~~1, 1994,~~ the entire adoption record shall be open to the adoptive parents, the adoptee who is eighteen  
103 years of age or older, and a birth parent who executed a written consent to the adoption.