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HOUSE BILL NO. 2159

Offered January 14, 2009

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A BILL to amend and reenact §§ 63.2-1201, 63.2-1202, 63.2-1203, 63.2-1204, 63.2-1208, 63.2-1209, 63.2-1212, 63.2-1221, 63.2-1222, 63.2-1225, 63.2-1230, 63.2-1233, and 63.2-1250 of the Code of Virginia, relating to adoption of a child.

Patron—Toscano

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-1201, 63.2-1202, 63.2-1203, 63.2-1204, 63.2-1208, 63.2-1209, 63.2-1212, 63.2-1221, 63.2-1222, 63.2-1225, 63.2-1230, 63.2-1233, and 63.2-1250 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, or persons who were previously married who are permitted to adopt a child under § 63.2-1201.1, the petition shall be the joint petition of the husband and wife or former spouses 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. If any procedural provision of this chapter applies to only one of the adoptive parents, then the court may waive the application of the procedural provision as to the spouse of the adoptive parent to whom the provision applies. 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.

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.

A petition filed while the child is under 18 years of age shall not become invalid because the child reaches 18 years of age prior to the entry of a final order of adoption. Any final order of adoption entered pursuant to § 63.2-1213 after a child reaches 18 years of age, where the petition was filed prior to the child turning 18 years of age, shall have the same effect as if the child was under 18 years of age at the time the order was entered by the circuit court provided the court has obtained the consent of the adoptee.

§ 63.2-1202. Parental, or agency, consent required; exceptions.

A. No petition for adoption shall be granted, except as hereinafter provided in this section, unless written consent to the proposed adoption is filed with the petition. Such consent shall be in writing, signed under oath and acknowledged before an officer authorized by law to take acknowledgments. The consent of a birth parent for the adoption of his child placed directly by the birth parent shall be executed as provided in § 63.2-1233, and the circuit court may accept a certified copy of an order entered pursuant to § 63.2-1233 in satisfaction of all requirements of this section, provided the order clearly evidences compliance with the applicable notice and consent requirements of § 63.2-1233.

B. A birth parent who has not reached the age of 18 shall have legal capacity to give consent to adoption and perform all acts related to adoption, and shall be as fully bound thereby as if the birth parent had attained the age of 18 years.

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C. Consent shall be executed:

1. By the birth mother and by any man who:

a. Is an acknowledged father under § 20-49.1;

b. Is an adjudicated father under § 20-49.8;

c. Is a presumed father under subsection D; or

d. Has registered with the Putative Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.) of this chapter.

Verification of compliance with the notice provisions of the Putative Father Registry shall be provided to the court.

2. By the child-placing agency or the local board having custody of the child, with right to place him for adoption, through court commitment or parental agreement as provided in § 63.2-900, 63.2-903 or 63.2-1221; or an 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; and

3. By the child if he is 14 years of age or older, unless the circuit court finds that the best interests of the child will be served by not requiring such consent.

D. A man shall be presumed to be the father of a child if:

1. He and the mother of the child are married to each other and the child is born during the marriage;

2. He and the mother of the child were married to each other and the child is born within 300 days of their date of separation, as evidenced by a written agreement or decree of separation, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce; or

3. Before the birth of the child, he and the mother of the child married each other in apparent compliance with the law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within 300 days of their date of separation, as evidenced by a written agreement or decree of separation, or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce.

Such presumption may be rebutted by sufficient evidence that would establish by a preponderance of the evidence the paternity of another man or the impossibility or improbability of cohabitation with the birth mother for a period of at least 300 days prior to the birth of the child.

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

F. No consent shall be required of the birth father of a child when the birth father is convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, and the child was conceived as a result of such violation.

G. No notice or consent shall be required of any person whose parental rights have been terminated by a court of competent jurisdiction, including foreign courts that have competent jurisdiction. No notice or consent is required of any birth parent of a child whose adoption was finalized in a foreign country or for whom a guardianship order was granted when the child was approved by the United States Citizenship and Immigration Services for purposes of adoption.

H. No consent shall be required of a birth parent who, without just cause, has neither visited nor contacted the child for a period of six months prior to the filing of the petition for adoption. The prospective adoptive parent(s) shall establish by clear and convincing evidence that the birth parent(s), without just cause, has neither visited nor contacted the child for a period of six months prior to the filing of the petition for adoption. This provision shall not infringe upon the birth parent's right to be noticed and heard on the allegation of abandonment. *The payment of child support shall not be considered contact.*

I. A birth father of the child may consent to ~~the termination of all of his parental rights~~ *an adoption* prior to the birth of the child.

J. The failure of the nonconsenting party to appear at any scheduled hearing, either in person or by counsel, after proper notice has been given to said party, shall constitute a waiver of any objection and right to consent to the adoption.

K. If a birth parent or legal guardian, executing a consent, entrustment, or other documents related to the adoption, cannot provide the identification required pursuant to § 47.1-14, the birth parent may execute a self-authenticating affidavit as to his identity subject to the penalties contained in § 63.2-1217. § 63.2-1203. When consent is withheld or unobtainable.

A. If, after consideration of the evidence, the circuit court finds that the valid consent of any person or agency whose consent is required is withheld contrary to the best interests of the child as set forth in § 63.2-1205, or is unobtainable, the circuit court may grant the petition without such consent:

1. ~~Twenty-one~~ Fifteen days after personal service of notice of petition on the party or parties whose

consent is required by this section; or

2. If personal service is unobtainable, ten days after the completion of the execution of an order of publication against the party or parties whose consent is required by this section concerning the petition; or

3. *If a birth parent is deceased, upon the filing of a death certificate for a deceased birth parent with the court; or*

4. If the judge certifies on the record that the identity of any person whose consent is hereinabove required is not reasonably ascertainable.

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 circuit 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. If the child is not in the custody of a child-placing agency and both parents are deceased, the circuit court, after hearing evidence to that effect, may grant the petition without the filing of any consent.

§ 63.2-1204. When consent is revocable; fraud or duress; mutual consent.

Parental consent to an adoption *or an entrustment agreement* shall be revocable prior to the final order of adoption (i) upon proof of fraud or duress or (ii) after placement of the child in an adoptive home, upon written, mutual consent of the birth parents and prospective adoptive parents *or child-placing agency*.

§ 63.2-1208. Investigations; report to circuit court.

A. Upon consideration of the petition *for adoption other than an adoption under § 63.2-1230*, the circuit court shall, upon being satisfied as to proper jurisdiction and venue, immediately enter an order referring the case to a child-placing agency to conduct an investigation and prepare a report unless no investigation is required pursuant to this chapter. The court shall enter the order of reference prior to or concurrently with the entering of an order of publication, if such is necessary. Upon entry of the order of reference, the clerk shall forward a copy of the order of reference, the petition, and all exhibits thereto to the Commissioner and the child-placing agency retained to provide investigative, reporting, and supervisory services. If no Virginia agency was retained to provide such services, the order of reference, petition, and all exhibits shall be forwarded to the local director of social services of the locality where the petitioners reside or resided at the time of filing the petition or had legal residence at the time the petition was filed.

B. Upon receiving a petition and order of reference from the circuit court, the applicable agency shall make a thorough investigation of the matter and report thereon in writing, in such form as the Commissioner may prescribe, to the circuit court within 60 days after the copy of the petition and all exhibits thereto are forwarded. A copy of the report to the circuit court shall be served on the Commissioner by delivering or mailing a copy to him on or before the day of filing the report with the circuit court. On the report to the circuit court there shall be appended either acceptance of service or certificate of the local director, or the representative of the child-placing agency, that copies were served as this section requires, showing the date of delivery or mailing. The circuit court shall expeditiously consider the merits of the petition upon receipt of the report.

C. If the report is not made to the circuit court within the periods specified, the circuit court may proceed to hear and determine the merits of the petition and enter such order or orders as the circuit court may deem appropriate.

D. The investigation requested by the circuit court shall include, in addition to other inquiries that the circuit court may require the child-placing agency or local director to make, inquiries as to (i) whether the petitioner is financially able, except as provided in Chapter 13 (§ 63.2-1300 et seq.) of this title, morally suitable, in satisfactory physical and mental health and a proper person to care for and to train the child; (ii) what the physical and mental condition of the child is; (iii) why the parents, if living, desire to be relieved of the responsibility for the custody, care, and maintenance of the child, and what their attitude is toward the proposed adoption; (iv) whether the parents have abandoned the child or are morally unfit to have custody over him; (v) the circumstances under which the child came to live, and is living, in the physical custody of the petitioner; (vi) whether the child is a suitable child for adoption by the petitioner; (vii) what fees have been paid by the petitioners or on their behalf to persons or agencies that have assisted them in obtaining the child; and (viii) whether the requirements of subsections E and F have been met. Any report made to the circuit court shall include a recommendation as to the action to be taken by the circuit court on the petition. A copy of any report made to the circuit court shall be furnished to counsel of record representing the adopting parent or parents. When the investigation reveals that there may have been a violation of § 63.2-1200 or § 63.2-1218, the local director or

182 child-placing agency shall so inform the circuit court and the Commissioner.

183 E. The report shall include the relevant physical and mental history of the birth parents if known to
184 the person making the report. The child-placing agency or local director shall document in the report all
185 efforts they made to encourage birth parents to share information related to their physical and mental
186 history. However, nothing in this subsection shall require that an investigation of the physical and
187 mental history of the birth parents be made.

188 F. The report shall include a statement by the child-placing agency or local director that all
189 reasonably ascertainable background, medical, and psychological records of the child have been provided
190 to the prospective adoptive parent(s). The report also shall include a list of such records provided.

191 G. If the specific provisions set out in §§ 63.2-1228, 63.2-1238, 63.2-1242 and 63.2-1244 do not
192 apply, the petition and all exhibits shall be forwarded to the local director where the petitioners reside or
193 to a licensed child-placing agency.

194 § 63.2-1209. Entry of interlocutory order.

195 If, *in the case of a direct parental placement adoption pursuant to § 63.2-1230 or in circumstances*
196 *in which an interlocutory order is necessary in an agency adoption*, after considering the home study or
197 any required report, the circuit court is satisfied that all of the applicable requirements have been
198 complied with, that the petitioner is financially able to maintain adequately, except as provided in
199 Chapter 13 (§ 63.2-1300 et seq.) of this title, and is morally suitable and a proper person to care for and
200 train the child, that the child is suitable for adoption by the petitioner, and that the best interests of the
201 child will be promoted by the adoption, it shall enter an interlocutory order of adoption declaring that
202 henceforth, subject to the probationary period hereinafter provided for and to the provisions of the final
203 order of adoption, the child will be, to all intents and purposes, the child of the petitioner. If the petition
204 includes a prayer for a change of the child's name and the circuit court is satisfied that such change is in
205 the best interests of the child, upon entry of final order, the name of the child shall be changed. An
206 attested copy of every interlocutory order of adoption shall be forwarded forthwith by the clerk of the
207 circuit court in which it was entered to the Commissioner and to the licensed or duly authorized
208 child-placing agency or the local director that prepared the required home study or report. *The agency or*
209 *director shall, after receipt of the attested copy of the interlocutory order of adoption, prepare a report*
210 *of visitation pursuant to § 63.2-1212.*

211 If the circuit court denies the petition for adoption and if it appears to the circuit court that the child
212 is without proper care, custody or guardianship, the circuit court may, in its discretion, appoint a
213 guardian for the child or commit the child to a custodial agency as provided for in §§ 16.1-278.2,
214 16.1-278.3 and 31-5, respectively.

215 § 63.2-1212. Visitations during probationary period and report.

216 A. Except as hereinafter provided, after the entry of an interlocutory order of adoption, (i) the
217 licensed or duly authorized child-placing agency; (ii) if the child was not placed by an agency and the
218 placement is not a parental placement, the local director; (iii) if the placement is a parental placement,
219 the child-placing agency that submitted the home study; or, (iv) if the child was placed by an agency in
220 another state or by an agency, court, or other entity in another country, the local director or licensed
221 child-placing agency, whichever agency completed the home study or provided supervision, shall cause
222 *or have caused* the child to be visited at least three times within a period of six months by an agent of
223 such local board or local department or by an agent of such licensed or duly authorized child-placing
224 agency. Whenever practicable, such visits shall be made within the six-month period immediately
225 following the date *upon which the child was placed in the physical care of the adoptive parents or of*
226 *entry of the interlocutory order*; however, no less than ninety days shall elapse between the first visit
227 and the last visit. The agency that placed the child, the child-placing agency that submitted the home
228 study, the local director or the licensed child-placing agency, as applicable, shall make a written report
229 to the circuit court, in such form as the Commissioner may prescribe, of the findings made pursuant to
230 such visitations. A copy of the report to the circuit court shall be furnished to the counsel of record for
231 the parties, which copy shall be returned by such counsel as is required by § 63.2-1246 for the return of
232 the original report. A copy of the report to the circuit court shall be served on the Commissioner by
233 delivering or mailing a copy to him on or before the day of filing the report with the circuit court. On
234 the report to the circuit court there shall be appended either acceptance of service or certification of the
235 local director or the representative of the child-placing agency, that copies were served as this section
236 requires, showing the date of delivery or mailing.

237 B. The three supervisory visits required in subsection A shall be conducted in the presence of the
238 child. At least one such visit shall be conducted in the home of the petitioners in the presence of the
239 child and both petitioners, unless the petition was filed by a single parent or one of the petitioners is no
240 longer residing in the home.

241 C. When it is determined for purposes of subsection B that the petitioner no longer resides in the
242 adoptive home, the child-placing agency or local director shall contact the petitioner to determine
243 whether or not the petitioner wishes to remain a party to the proceedings and shall include in its report

to the circuit court the results of its findings.

§ 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, *and shall be revocable prior to the final order of adoption (i) upon proof of fraud or duress, or (ii) after the placement of the child in an adoptive home, upon written, mutual consent of the birth parents and prospective adoptive parents.*

§ 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.

A. For the purposes of this section, a birth parent who is less than 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 perform all acts related to adoption and shall be as fully bound thereby as if such birth parent had attained the age of 18 years.

B. 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 *or whereabouts* of the birth father is not reasonably ascertainable or such birth father did not register with the Putative Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.) of this chapter or the birth father named by the birth mother denies under oath and in writing the paternity of the child. *An affidavit signed by the birth mother stating that the identity of the birth father is unknown and not reasonably ascertainable shall be sufficient to establish that the identity of the birth father is not known or reasonably ascertainable.* A birth father shall be given notice of the entrustment if he is an acknowledged father pursuant to § 20-49.1, an adjudicated father pursuant to § 20-49.8, a presumed father pursuant to § 63.2-1202, or a putative father who has registered with Putative Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.) of this chapter. If the putative father's identity is reasonably ascertainable, he shall be given notice pursuant to the requirements of § 63.2-1250.

C. When a birth father is required to be given notice, he may be given notice of the entrustment by registered or certified mail to his last known address. If he fails to object to the entrustment within 15 days of the mailing of such notice, his entrustment shall not be required. 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.

D. The execution of an entrustment agreement shall be required of a presumed father except under the following circumstances: (i) if he denies paternity under oath and in writing in accordance with § 63.2-1202; (ii) if the presumption is rebutted by sufficient evidence, satisfactory to the circuit 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; (iii) if another man admits, in writing and under oath, that he is the biological father; or (iv) if an adoptive placement has been determined to be in the best interests of the child pursuant to § 63.2-1205.

E. When none of the provisions of subsections C and D apply, notice of the entrustment shall be given to the presumed father pursuant to the requirements of § 16.1-277.01.

F. 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, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, and the child was conceived as a result of such violation.

G. A birth father may execute an entrustment agreement for the termination of all of his parental rights prior to the birth of the child. Such entrustment shall be subject to the revocation provisions of § 63.2-1223.

H. No entrustment shall be required of a birth father if he denies under oath and in writing the paternity of the child. Such denial of paternity may be withdrawn no more than 10 days after it is executed. Once the child is 10 days old, any executed denial of paternity is final and constitutes a

305 waiver of all rights with respect to the adoption of the child and cannot be withdrawn.

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

307 J. When any agency outside the Commonwealth, or its agent, that is licensed or otherwise duly
308 authorized to place children for adoption by virtue of the laws under which it operates executes an
309 entrustment agreement in the Commonwealth with a birth parent for the termination of all parental rights
310 and responsibilities with respect to the child, the requirements of §§ 63.2-1221 through 63.2-1224 shall
311 apply. The birth parent may expressly waive, under oath and in writing, the execution of the entrustment
312 under the requirements of §§ 63.2-1221 through 63.2-1224 in favor of the execution of an entrustment
313 or relinquishment under the laws of another state if the birth parent is represented by independent legal
314 counsel. Such written waiver shall expressly state that the birth parent has received independent legal
315 counsel advising of the laws of Virginia and of the other state and that Virginia law is expressly being
316 waived. The waiver also shall include the name, address, and telephone number of such legal counsel.
317 Any entrustment agreement that fails to comply with such requirements shall be void.

318 § 63.2-1225. Determination of appropriate home.

319 A. In determining the appropriate home in which to place a child for adoption, a married couple or
320 an unmarried individual shall be eligible to receive placement of a child for purposes of adoption.
321 ~~When Prior to or after the acceptance of custody of a child placed for adoption,~~ a licensed child-placing
322 agency or a local board ~~accepts custody of the child for the purpose of placing the child for adoption,~~
323 ~~the agency or local board shall~~ may consider the recommendations of the birth parent(s), a physician or
324 attorney licensed in the Commonwealth, or a clergyman who is familiar with the situation of the
325 prospective adoptive parent(s) or the child. No birth parent, physician, attorney or clergyman shall
326 advertise that he is available to make recommendations, nor shall he charge any fee for such
327 recommendations to a board or agency, except that an attorney may charge for legal fees and services
328 rendered in connection with such placement.

329 B. The agency or local board may give consideration to placement of the child with the
330 recommended adoptive parent(s) if the agency or local board finds that such placement is in the best
331 interest of the child. When the birth parent(s) has recommended such placement, the agency or local
332 board shall provide the birth parent(s) the opportunity to be represented by independent legal counsel as
333 well as the opportunity for counseling with a social worker. The agency or board also shall advise the
334 prospective adoptive parent(s) of the right to be represented by independent legal counsel. The parties
335 may, but are not required to, exchange identifying information as provided for in subdivision A 3 of
336 § 63.2-1232.

337 § 63.2-1230. Placement of children by parent or guardian.

338 The birth parent ~~or~~, legal guardian, *or adoptive parent* of a child may place his child for adoption
339 directly with the adoptive parents of his choice. Consent to the proposed adoption shall be executed
340 upon compliance with the provisions of this chapter before a juvenile and domestic relations district
341 court or, if the birth parent or legal guardian does not reside in Virginia, before a court having
342 jurisdiction over child custody matters in the jurisdiction where the birth parent or legal guardian resides
343 when requested by a juvenile and domestic relations district court of this Commonwealth, pursuant to
344 §§ 20-146.11 and 16.1-242. Consent proceedings shall be advanced on the juvenile and domestic
345 relations district court docket so as to be heard by the court within ten days of filing of the petition, or
346 as soon thereafter as practicable so as to provide the earliest possible disposition.

347 § 63.2-1233. Consent to be executed in juvenile and domestic relations district court; exceptions.

348 When the juvenile and domestic relations district court is satisfied that all requirements of
349 § 63.2-1232 have been met with respect to at least one birth parent and the adoptive child is at least in
350 the third calendar day of life, that birth parent or both birth parents, as the case may be, shall execute
351 consent to the proposed adoption in compliance with the provisions of § 63.2-1202 while before the
352 juvenile and domestic relations district court in person and in the presence of the prospective adoptive
353 parents. The juvenile and domestic relations district court shall accept the consent of the birth parent(s)
354 and transfer custody of the child to the prospective adoptive parents, pending notification to any
355 nonconsenting birth parent, as described hereinafter.

356 1. a. The execution of consent before the juvenile and domestic relations district court shall not be
357 required of a birth father if the birth father consents under oath and in writing to the adoption.

358 b. The consent of a birth father who is not married to the mother of the child at the time of the
359 child's conception or birth shall not be required if the putative father named by the birth mother denies
360 under oath and in writing the paternity of the child or if the putative father did not register with the
361 Putative Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.) of this chapter. If the identity of the
362 birth father is reasonably ascertainable *but the whereabouts of the birth father are not reasonably*
363 *ascertainable*, verification of compliance with the Putative Father Registry shall be provided to the
364 court.

365 c. When a birth father is required to be given notice, he may be given notice of the adoption by
366 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 at the time of the child's conception or birth, provided that his 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, shall identify the court in which the case was or is intended to be filed, 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. For good cause shown, the court may dispense with the requirements regarding the filing of the birth father's identifying information pursuant to this subdivision 1. d.

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 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. The executed denial of paternity by the putative father shall be sufficient to rebut the presumption that he is the father of the child. 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. After the application of the provisions of subdivision 1, if a birth parent is entitled to a hearing, the birth parent shall be given notice of the date and location of the hearing 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, or is unobtainable, it may grant the petition without such consent and enter an order waiving the requirement of consent of the nonconsenting birth parent and transferring custody of the child to the prospective adoptive parents. No further consent or notice shall be required of a birth parent who fails to appear at any scheduled hearing, either in person or by counsel. If the juvenile and domestic relations district court denies the petition, the juvenile and domestic relations district court shall order that any consent given for the purpose of such placement shall be void and, if necessary, the court shall determine custody of the child as between the birth parents.

3. Except as provided in subdivisions 4 and 5, if consent cannot be obtained from at least one birth parent, the juvenile and domestic relations district court shall deny the petition and determine custody of the child pursuant to § 16.1-278.2.

4. If ~~thea~~ child was placed by the birth parent(s) ~~with~~has been under the physical care and custody of the prospective adoptive parents and if both birth parents have failed, ~~without good cause~~, to appear at a hearing to execute consent under this section for which they were given proper notice pursuant to § 16.1-264, the juvenile and domestic relations district court may grant the petition without the consent of either birth parent and enter an order waiving consent and transferring custody of the child to the prospective adoptive parents. Prior to the entry of such an order, the juvenile and domestic relations district court may appoint legal counsel for the birth parents and shall find by clear and convincing evidence (i) that the birth parents were given proper notice of the hearing(s) to execute consent and of the hearing to proceed without their consent; (ii) that the birth parents failed to show good cause for their failure to appear at such hearing(s); and (iii) that pursuant to § 63.2-1205, the consent of the birth parents is withheld contrary to the best interests of the child or is unobtainable. Under this subdivision,

the court or the parties may waive the requirement of the simultaneous meeting under § 63.2-1231 and the requirements of subdivisions A 1, A 3, and A 7 of § 63.2-1232 where the opportunity for compliance is not reasonably available under the applicable circumstances.

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

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

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

8. A birth father may consent to the adoption prior to the birth of the child.

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

10. When there has been an interstate transfer of the child in a parental placement adoption in compliance with Chapter 10 (§ 63.2-1000 et seq.) of this title, all matters relating to the adoption of the child including, but not limited to, custody and parentage shall be determined in the court of appropriate jurisdiction in the state that was approved for finalization of the adoption by the interstate compact authorities.

§ 63.2-1250. Registration; notice; form.

A. Except as otherwise provided in subsection C, a man who desires to be notified of a proceeding for adoption of, or termination of parental rights regarding, a child that he may have fathered shall register with the Putative Father Registry before the birth of the child or within 10 days after the birth. A registrant shall promptly notify the registry of any change in the information registered including but not limited to change of address. The Department shall incorporate all new information received into its records but is not required to obtain current information for incorporation in the registry.

B. A man will not prejudice any rights by failing to register if:

1. A father-child relationship between the man and the child has been established pursuant to § 20-49.1, 20-49.8, or if the man is a presumed father as defined in § 63.2-1202; or

2. The man commences a proceeding to adjudicate his paternity before a petition to accept consent or waive adoption consent is filed in the juvenile and domestic relations district court, or a petition for adoption or a petition for the termination of his parental rights is filed with the court.

C. Failure to register pursuant to subsection A shall waive all rights of a man who is not an acknowledged, presumed, or adjudicated father to withhold consent to an adoption proceeding unless the man was led to believe through the birth mother's fraud that (i) the pregnancy was terminated or the mother miscarried when in fact the baby was born, or (ii) that the child died when in fact the child is alive. Upon the discovery of the fraud the man shall register with the Putative Father Registry within 10 days. *If an order of reference, interlocutory order, or final order of adoption is entered prior to the running of the 10 days, no registration shall be permitted after the entry of the order.*

D. The child-placing agency or adoptive parent(s) shall give notice of a proceeding for the adoption of, or termination of parental rights regarding, a child to a registrant who has timely registered pursuant to subsection A. Notice shall be given pursuant to the requirements of this chapter or § 16.1-277.01 for the appropriate adoption proceeding.

E. Any man who has engaged in sexual intercourse with a woman is deemed to be on legal notice that a child may be conceived and the man is entitled to all legal rights and obligations resulting therefrom. Lack of knowledge of the pregnancy does not excuse failure to timely register ~~except when the identity of such man is reasonably ascertainable~~. *In such the event that the identity and whereabouts of the birth father are reasonably ascertainable*, written notice of the existence of an adoption plan and the availability of registration with the Putative Father Registry shall be provided *by certified mailing* to the man's last known address. The man shall have no more than 10 days from the date of such mailing to register. The mailing may be done either prior to or after the birth of the child, *but is not required once a court has transferred custody of a child to the prospective adoptive parents or entered an order of reference, interlocutory order, or final order of adoption, whichever occurs sooner.*

F. The Department shall prepare a form for registering with the agency that shall require (i) the registrant's name, date of birth and social security number; (ii) the registrant's driver's license number and state of issuance; (iii) the registrant's home address, telephone number and employer; (iv) name, date of birth, ethnicity, address and telephone number of the putative mother, if known; (v) state of conception; (vi) place and date of birth of the child, if known; and (vii) name and gender of the child, if known.

490 G. The form shall also state that (i) timely registration entitles the registrant to notice of a proceeding
491 for adoption of the child or termination of the registrant's parental rights, (ii) registration does not
492 commence a proceeding to establish paternity, (iii) the information disclosed on the form may be used
493 against the registrant to establish paternity, (iv) services to assist in establishing paternity are available to
494 the registrant through the Department, (v) the registrant should also register in another state if
495 conception or birth of the child occurred in another state, (vi) information on registries of other states
496 may be available from the Department, (vii) that the form is signed under penalty of perjury, and (viii)
497 procedures exist to rescind the registration of a claim of paternity.

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