

10101176D

SENATE BILL NO. 567

Offered January 13, 2010

Prefiled January 13, 2010

A BILL to amend and reenact §§ 32.1-261 and 63.2-1246 of the Code of Virginia, relating to adult adoptee access to original birth certificate.

Patrons—Ticer and Whipple

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:**1. That §§ 32.1-261 and 63.2-1246 of the Code of Virginia are amended and reenacted as follows:**

§ 32.1-261. New birth certificate established on proof of adoption, legitimation or determination of paternity.

A. The State Registrar shall establish a new certificate of birth for a person born in this Commonwealth upon receipt of the following:

1. An adoption report as provided in § 32.1-262, a report of adoption prepared and filed in accordance with the laws of another state or foreign country, or a certified copy of the decree of adoption together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth; except that a new certificate of birth shall not be established if so requested by the court decreeing the adoption, the adoptive parents, or the adopted person if 18 years of age or older.

2. A request that a new certificate be established and such evidence as may be required by regulation of the Board proving that such person has been legitimated or that a court of the Commonwealth has, by final order, determined the paternity of such person. The request shall state that no appeal has been taken from the final order and that the time allowed to perfect an appeal has expired.

3. An order entered pursuant to subsection D of § 20-160. The order shall contain sufficient information to identify the original certificate of birth and to establish a new certificate of birth in the names of the intended parents.

4. A surrogate consent and report form as authorized by § 20-162. The report shall contain sufficient information to identify the original certificate of birth and to establish a new certificate of birth in the names of the intended parents.

B. When a new certificate of birth is established pursuant to subsection A of this section, the actual place and date of birth shall be shown. It shall be substituted for the original certificate of birth. Thereafter, the original certificate and the evidence of adoption, paternity or legitimation shall be sealed and filed and not be subject to inspection except upon request by the adopted person pursuant to § 63.2-1246, order of a court of this Commonwealth, or in accordance with § 32.1-252.

C. Upon receipt of a report of an amended decree of adoption, the certificate of birth shall be amended as provided by regulation.

D. Upon receipt of notice or decree of annulment of adoption, the original certificate of birth shall be restored to its place in the files and the new certificate and evidence shall not be subject to inspection except upon order of a court of this Commonwealth or in accordance with § 32.1-252.

E. The State Registrar shall establish and register a Virginia certificate of birth for a person born in a foreign country and for whom a report or final order of adoption has been entered in a court of this Commonwealth when the State Registrar receives an adoption report as provided in § 32.1-262 and a request that such a certificate be established and registered; however, a Virginia certificate of birth shall not be established or registered if so requested by the court decreeing the adoption, the adoptive parents or the adopted person if 18 years of age or older. After registration of the birth certificate in the new name of the adopted person, the State Registrar shall seal and file the report of adoption which shall not be subject to inspection except upon order of a court of this Commonwealth or in accordance with § 32.1-252. The birth certificate shall show the true or probable foreign country of birth and shall state that the certificate is not evidence of United States citizenship for the child for whom it is issued or for the adoptive parents.

F. If no certificate of birth is on file for the person for whom a new certificate is to be established under this section, a delayed certificate of birth shall be filed with the State Registrar as provided in § 32.1-259 or § 32.1-260 before a new certificate of birth is established, except that when the date and place of birth and parentage have been established in the adoption proceedings, a delayed certificate shall not be required.

§ 63.2-1246. Disposition of reports; disclosure of information as to identity of birth family.

INTRODUCED

SB567

59 Upon the entry of a final order of adoption or other final disposition of the matter, the clerk of the
60 circuit court in which it was entered shall forthwith transmit to the Commissioner all reports made in
61 connection with the case, and the Commissioner shall preserve such reports and all other collateral
62 reports, information and recommendations in a separate file. Except as provided in subsections C, D and
63 E of § 63.2-1247, nonidentifying information from such adoption file shall not be open to inspection, or
64 be copied, by anyone other than the adopted person, if eighteen years of age or over, or licensed or
65 authorized child-placing agencies providing services to the child or the adoptive parents, except upon the
66 order of a circuit court entered upon good cause shown. However, if the adoptive parents, or either of
67 them, is living, the adopted person shall not be permitted to inspect the home study of the adoptive
68 parents unless the Commissioner first obtains written permission to do so from such adoptive parent or
69 parents.

70 No identifying information from such adoption file shall be disclosed, open to inspection or made
71 available to be copied except as provided in subsections A, B and E of § 63.2-1247 or upon application
72 of the adopted person, if eighteen years of age or over, to the Commissioner, who shall designate the
73 person or agency that made the investigation to attempt to locate and advise the birth family of the
74 application. The designated person or agency shall report the results of the attempt to locate and advise
75 the birth family to the Commissioner, including the relative effects that disclosure of the identifying
76 information may have on the adopted person, the adoptive parents, and the birth family. The adopted
77 person and the birth family may submit to the Commissioner, and the Commissioner shall consider,
78 written comments stating the anticipated effect that the disclosure of identifying information may have
79 upon any party. Upon a showing of good cause, the Commissioner shall disclose the identifying
80 information. If the Commissioner fails to designate a person or agency to attempt to locate the birth
81 family within thirty days of receipt of the application, or if the Commissioner denies disclosure of the
82 identifying information after receiving the designated person's or agency's report, the adopted person
83 may apply to the circuit court for an order to disclose such information. Such order shall be entered
84 only upon good cause shown after notice to and opportunity for hearing by the applicant for such order
85 and the person or agency that made the investigation. "Good cause" when used in this section shall
86 mean a showing of a compelling and necessitous need for the identifying information.

87 An eligible adoptee who is a resident of Virginia may apply for the court order provided for herein
88 to (i) the circuit court of the county or city where the adoptee resides or (ii) the circuit court of the
89 county or city where the central office of the Department is located. An eligible adoptee who is not a
90 resident of Virginia shall apply for such a court order to the circuit court of the county or city where the
91 central office of the Department is located.

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

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

104 The Commissioner, person or agency may charge a reasonable fee to cover the costs of processing
105 requests for nonidentifying information.

106 Upon entry of a final order of adoption or other final disposition of a matter involving the placement
107 of a child by a licensed child-placing agency or a local board or an investigation by the local director of
108 a placement for adoption of a child, the agency or local board shall transmit to the Commissioner all
109 reports and collateral information in connection with the case, which shall be preserved by the
110 Commissioner in accordance with this section.

111 *Notwithstanding the provisions of this section, at the written request and upon proof of identification,*
112 *the Commissioner shall provide an adult adoptee 18 years of age or older access to his original birth*
113 *certificate and make such certificate available for copy. The Commissioner may charge a reasonable fee*
114 *to cover the costs of providing access or copies of original birth certificates and may impose a*
115 *reasonable waiting period, not to exceed 30 days.*