

VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

CHAPTER 486

An Act to amend and reenact §§ 32.1-261, 63.2-1202, 63.2-1210, and 63.2-1220 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 63.2-1200.1, relating to recognition of foreign adoptions.

[H 2157]

Approved March 24, 2011

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-261, 63.2-1202, 63.2-1210, and 63.2-1220 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 63.2-1200.1 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 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, *upon request*, establish and register a Virginia certificate of birth for a person born in a foreign country ~~and for whom~~ (i) *upon receipt of a report of adoption for an adoption finalized pursuant to the laws of the foreign country as provided in subsection B of § 63.2-1200.1, or* (ii) *upon receipt of 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.

§ 63.2-1200.1. Recognition of foreign adoption; issuance of birth certificates.

A. Any adoption of a child who was born in a foreign country and who was not a citizen of the United States at the time of birth shall, subject to the provisions of subsection D of § 63.2-1201.1, be recognized by the Commonwealth and the rights and obligations of the parties shall be determined as though the order of adoption was entered by a court of the Commonwealth if the adoption was finalized pursuant to the laws of the country from which the child was adopted, and the child was admitted to the United States with an IR-3 or IH-3 visa issued by the United States Citizenship and Immigration Services. In such cases, the adoptive parents shall not be required to readopt the child in Virginia.

B. In cases in which an adoption of a child was finalized pursuant to the laws of a foreign country and the child was admitted to the United States with an IR-3 or IH-3 visa, the adoptive parents may submit a report of adoption to the State Registrar of Vital Records on a form furnished by the State Registrar, which shall (i) include evidence as to the date, place of birth, and parentage of the adopted person; (ii) provide information necessary to establish a new certificate of birth for the adopted person; (iii) include a certified copy of the final order of adoption entered by the foreign court, together with a certified translation of the final order of adoption in cases in which the original order is not in English; and (iv) include an affidavit from the adoptive parents indicating that they are receiving supervision from a licensed or approved child-placing agency in the United States. Upon receipt of a report pursuant to this subsection, the State Registrar shall establish a new certificate of birth for the adopted person, and such certificate of birth shall be registered in accordance with the provisions of § 32.1-261.

§ 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.

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. For purposes of this section, the payment of child support, in the absence of other contact with the child, shall not be considered contact.

I. A birth father of the child may consent to the termination of all of his parental rights 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.

§ 63.2-1210. 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 is a step-parent of the child 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~~ 90 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 shown, in cases of placement by a child-placing agency, omit the requirement that the three visits be made within a six-month period.

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

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

6. After receipt of the report, if the child was placed into Virginia from a foreign country in accordance with § 63.2-1104, *the adoption was not finalized pursuant to the laws of that foreign country*, and the child has been in the physical custody of the petitioner for at least six months immediately prior to the filing of the petition and has been visited by a representative of a licensed child-placing agency or of the local department three times within the six-month period with no fewer than ~~ninety~~ 90 days between the first and last visits. The circuit court may, for good cause shown, in cases of an international placement, omit the requirement that the three visits be made within a six-month period.

§ 63.2-1220. Issuance of birth certificates for children adopted in the Commonwealth.

A. For the purpose of securing a new birth certificate for an adopted *a child adopted pursuant to the laws of the Commonwealth*, the procedures set forth in § 32.1-262 shall be followed.

B. Adoptive parents who are residents of the Commonwealth may petition the circuit court in the city or county where they reside for a report of adoption when the adoptive parents are seeking a Virginia certificate of birth for a child adopted in a foreign country that has post-adoption reporting requirements and with whom the United States has diplomatic relations. The adoptive parents shall provide the circuit court with evidence, such as an admission stamp in the child's passport, that the child was admitted to the United States with an immediate relative immigrant visa (IR-3); a report of adoption on a form furnished by the State Registrar of Vital Records; completed post-adoption reports; and a signed affidavit stating that any outstanding post-adoption requirements shall be met as required by the foreign country. The affidavit shall also include the name by which the child is to be known. The circuit court shall review all documents provided by the adoptive parents. If the circuit court finds that all requirements of this subsection have been met, the circuit court may issue the report of adoption to the State Registrar for issuance of a Virginia certificate of birth in accordance with § 32.1-262.

C. Except as provided in subsection B, adoptive parents seeking to have a child from a foreign country adopted or who choose to readopt a child from a foreign country in Virginia shall comply with all adoption requirements of this chapter in order to get a Virginia certificate of birth.