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HOUSE BILL NO. 1868

Offered January 12, 2011

Prefiled January 11, 2011

A *BILL to amend and reenact §§ 32.1-261 and 63.2-1246 of the Code of Virginia, relating to adult adopted persons; access to identifying information.*

Patron—Toscano

Referred to Committee on Health, Welfare and Institutions

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 the~~ 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 the~~ Commonwealth or in accordance with § 32.1-252. *However, upon receipt of notice of a decision or order granting an adult adopted person access to identifying information regarding his birth parents from the Commissioner of Social Services or a circuit court, and proof of identification, the State Registrar shall make an adult adopted person's original certificate of birth available to such adult adopted person for inspection and copying.*

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 the~~ 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 the~~ 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. *If a circuit court of the Commonwealth corrects or establishes a date of birth for a person born in a foreign country during the adoption proceedings or upon a petition to amend a certificate of foreign birth pursuant to subsection C of § 63.2-1220, the State Registrar shall issue a certificate showing the date of birth established by the court.* 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 the~~ 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

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59 the child for whom it is issued or for the adoptive parents.

60 F. If no certificate of birth is on file for the person for whom a new certificate is to be established
61 under this section, a delayed certificate of birth shall be filed with the State Registrar as provided in
62 § 32.1-259 or § 32.1-260 before a new certificate of birth is established, except that when the date and
63 place of birth and parentage have been established in the adoption proceedings, a delayed certificate
64 shall not be required.

65 § 63.2-1246. Disposition of reports; disclosure of information as to identity of birth family.

66 A. Upon the entry of a final order of adoption or other final disposition of the matter, the clerk of
67 the circuit court in which it was entered shall forthwith transmit to the Commissioner all reports made in
68 connection with the case, and the Commissioner shall preserve such reports and all other collateral
69 reports, information and recommendations in a separate file.

70 Except as provided in subsections C, D and E of § 63.2-1247, nonidentifying information from such
71 adoption file shall not be open to inspection, or be copied, by anyone other than the adopted person, if
72 eighteen 18 years of age or over, or licensed or authorized child-placing agencies providing services to
73 the child or the adoptive parents, except upon the order of a circuit court entered upon good cause
74 shown. However, if the adoptive parents, or either of them, is living, the adopted person shall not be
75 permitted to inspect the home study of the adoptive parents unless the Commissioner first obtains
76 written permission to do so from such adoptive parent or parents.

77 ~~No~~ Except as provided in subsections A, B and E of § 63.2-1247, no identifying information from
78 such adoption file shall be disclosed, open to inspection or made available to be copied except as
79 provided in subsections A, B and E of ~~§ 63.2-1247~~ or, upon application of to and an investigation by
80 the Commissioner, (i) the adopted person, if eighteen 18 years of age or over, to the Commissioner, who
81 shall designate the person or agency that made the investigation to attempt to locate and advise the birth
82 family of the application (ii) the adoptive parent of the adult adopted person, or (iii) an adult lineal
83 descendent of the adopted person. The designated person or agency shall report the results of the
84 attempt to locate and advise the birth family to the Commissioner, including the relative effects that
85 disclosure of the identifying information may have on the adopted person, the adoptive parents, and the
86 birth family. The adopted person and the birth family may submit to the Commissioner, and the
87 Commissioner shall consider, written comments stating the anticipated effect that the disclosure of
88 identifying information may have upon any party. Upon a showing of good cause, the Commissioner
89 shall disclose the identifying information. If the Commissioner fails to designate a person or agency to
90 attempt to locate the birth family within thirty days of receipt of the application, or if the Commissioner
91 denies disclosure of the identifying information after receiving the designated person's or agency's report,
92 the adopted person may apply to the circuit court for an order to disclose such information. Such order
93 shall be entered only upon good cause shown after notice to and opportunity for hearing by the
94 applicant for such order and the person or agency that made the investigation. "Good cause" when used
95 in this section shall mean a showing of a compelling and necessitous need for the identifying
96 information.

97 B. Within 30 days of receipt of an application to disclose, inspect or copy identifying information
98 contained in an adoption file, the Commissioner shall designate a person or licensed child-placing
99 agency to attempt to locate the birth parents and advise the birth parents of the application. Birth
100 parents shall have the right to object to the disclosure of identifying information by notarized writing to
101 the Commissioner within 60 days of the date on which a birth parent receives notice of the application.
102 Such writing shall include a statement of the reasons the birth parent objects to the disclosure. If no
103 timely objection is received, the information contained in an adoption file shall be made available to
104 the adult adopted person for inspection and copying. If a birth parent objects in a timely manner to
105 disclosure of information contained in an adoption file, the Commissioner shall determine if, based on
106 information submitted by the birth parent, good cause exists to deny the request for disclosure of
107 identifying information. Absent a showing of good cause by a birth parent, the Commissioner shall
108 disclose identifying information contained in the adoption file.

109 In cases in which a birth parent cannot be located following reasonable efforts by the person or
110 agency designated by the Commissioner, or is deceased, the Commissioner shall immediately disclose
111 identifying information contained in the adoption file.

112 Upon a decision by the Commissioner granting access to information contained in an adoption file,
113 the Commissioner shall notify the State Registrar of Vital Records of his decision and the State
114 Registrar of Vital Records shall cause the original certificate of birth of the adult adopted person to be
115 made available to the adult adopted person for inspection and copying.

116 C. An eligible adult adoptee or other person identified in subsection A who may be eligible to
117 inspect or copy identifying information contained in an adoption file who is a resident of Virginia may
118 apply for the a court order provided for herein requiring disclosure of information contained in an
119 adoption file to (i) the circuit court of the county or city where the adoptee resides or (ii) the circuit
120 court of the county or city where the central office of the Department is located. An eligible adoptee

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 adoptive parents and the birth parents are known to the person or agency, the circuit court may require the person or agency to advise the adoptive parents and the birth parents of the pendency of the application for such order. In determining good cause for denying 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 parents. 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 *and the reasons they believe good cause exists to deny the application.*

~~When consent of the birth parents is not obtainable, due to the death of the birth parents or mental incapacity of the birth parents, In cases in which a birth parent cannot be located following reasonable efforts, or is deceased, such birth parent shall be deemed to have no objection to the disclosure of information contained in an adoption file and the circuit court may release identifying information to the adult adopted person. In making this decision, the circuit court shall consider the needs and concerns of the adopted person and the birth family if such information is available; the actions the agency took to locate the birth family, the information in the agency's report and the recommendation of the agency.~~

Upon entry of an order of a circuit court granting access to information contained in an adoption file, the court shall notify the State Registrar of Vital Records and the State Registrar of Vital Records shall cause the original certificate of birth of the adult adopted person to be made available to the adult adopted person for inspection and copying.

D. As used in this section, "good cause" shall include a showing that disclosure of information contained in an adoption file will result in severe mental or physical harm to a member of the birth family.

E. The Commissioner, person or agency may charge a reasonable fee to cover the costs of processing requests for disclosure of identifying or nonidentifying information contained in an adoption file. In cases involving an application for disclosure of identifying information, such costs shall include reasonable costs incurred by the person or licensed child-placing agency designated by the Commissioner in locating or attempting to locate the birth parents and advise them of an application.

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