

VIRGINIA ACTS OF ASSEMBLY -- 2018 SESSION

CHAPTER 10

An Act to amend and reenact §§ 63.2-1246 and 63.2-1247 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 63.2-1246.1, relating to Commissioner of Social Services; storage and preservation of adoption files.

[H 291]

Approved February 22, 2018

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-1246 and 63.2-1247 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 63.2-1246.1 as follows:

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

Upon the entry of a final order of adoption ~~or other final disposition of the matter~~, the clerk of the circuit court in which it was entered shall forthwith transmit to the Commissioner all *orders and reports* made in connection with the case, and the Commissioner shall preserve such *orders and reports* ~~and all other collateral reports, information and recommendations~~ in a separate file *pursuant to this section and § 63.2-1246.1*. Except as provided in § 63.2-1246.1 and subsections C, D, and E of § 63.2-1247, nonidentifying information from such adoption file shall not be open to inspection, or be copied, by anyone other than the adopted person, if ~~eighteen~~ 18 years of age or over, or licensed or authorized child-placing agencies providing services to the child or the adoptive parents, except upon the order of a circuit court entered upon good cause shown. However, if the adoptive parents, or either of them, is living, the adopted person shall not be permitted to inspect the home study of the adoptive parents unless the Commissioner first obtains written permission to do so from such adoptive parent or parents.

No identifying information from such adoption file shall be disclosed, open to inspection, or made available to be copied except as provided in § 63.2-1246.1 and subsections A, B, and E of § 63.2-1247 or upon application of the adopted person, if ~~eighteen~~ 18 years of age or over, to the Commissioner, who 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, 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 birth family within ~~thirty~~ 30 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 adopted person 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.

An eligible adoptee 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 adoptee resides or (ii) the circuit 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 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.

When consent of the birth parents is not obtainable, due to the death of the birth parents or mental incapacity of the birth parents, the Commissioner shall, upon application of the adult adopted person and a showing of good cause, disclose the identifying information to the adult adopted person. If the Commissioner denies disclosure of the identifying information, the adult adopted person may apply to the circuit court for an order to disclose such information 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.

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

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 *child-placing agency or local board* shall transmit to the Commissioner ~~all reports and collateral information~~ *the adoption file* in connection with the case, which shall be preserved by the Commissioner in accordance with this section and § 63.2-1246.1.

For purposes of this chapter, "adoption file" means records, orders, and other documents kept or created by the Commissioner, child-placing agency, or local board, beginning with the earliest of (i) an order terminating residual parental rights, (ii) an entrustment agreement, (iii) a home study or investigation conducted in preparation for adoption, or (iv) the filing of a petition for adoption, and ending with the final order of adoption. "Adoption file" also includes all records regarding applications for disclosure and post-adoption searches pursuant to this section and § 63.2-1247.

§ 63.2-1246.1. Commissioner authority to store, preserve, and certify adoption files.

Upon receipt of all orders from the clerk of the circuit court and adoption files from the child-placing agency or local board, the Commissioner shall have the authority to direct the storage and preservation of such records. The Commissioner shall have custody of and retain all adoption files, whether in paper or electronic form, including reports, orders, and other documents with identifying information of birth parents and adoptees, in his office or at another location designated by the Commissioner.

The Commissioner or his designee may direct adoption files, in whole or in part, to be microfilmed, digitally reproduced, copied, photographed, or otherwise duplicated for the purpose of preserving and retaining such files. The Commissioner may allow adoption files to be taken from his office or other designated location for the purpose of being microfilmed, digitally reproduced, copied, photographed, or otherwise duplicated, but shall take all necessary and proper precautions, by requiring bonds or otherwise, to ensure the preservation and return and to prevent the mutilation thereof. The Commissioner or his designee shall examine and compare the reproductions from the microfilm, digitally reproduced, copied, photographed, or otherwise duplicated records with the originals and, if satisfied that the copies are exact, certify them as true copies of the records retained by the Commissioner. The same faith and credit shall be given to such reproductions from the microfilm, digitally reproduced, copied, photographed, or otherwise duplicated record as the record reproduced would have been entitled to.

§ 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~~ 21 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~~ 30 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~~ 18 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 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 birth family within ~~thirty~~ 30 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 adoptive parents or legal custodian, 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.

An adoptive parent or legal custodian 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 adoptive parent or legal custodian resides or (ii) the circuit court of the county or city where the central office of the Department is located. An adoptive parent or legal custodian 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 birth parents are known to the person or agency, the circuit court may require the person or agency to advise the birth 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 or legal custodian and the birth parents. 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 birth family is not obtainable, due to the death of the birth parents or mental incapacity of the birth parents, the circuit court may release identifying information to the adoptive parents or legal custodian. In making this decision, the circuit court shall consider the needs and concerns of the adoptive parents or legal custodian 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.

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

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

E. In parental placement adoptions, where the consent to the adoption was executed on or after July 1, 1994, the entire adoption record shall be open to the adoptive parents, the adoptee who is ~~eighteen~~ 18 years of age or older, and a birth parent who executed a written consent to the adoption.

2. That an emergency exists and this act is in force from its passage.