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HOUSE BILL NO. 291

House Amendments in [] — January 23, 2018

A BILL 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.

Patron Prior to Engrossment—Delegate Collins

Referred to Committee on Health, Welfare and Institutions

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

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59 information to the adult adopted person. In making this decision, the circuit court shall consider the
60 needs and concerns of the adopted person and the birth family if such information is available, the
61 actions the agency took to locate the birth family, the information in the agency's report and the
62 recommendation of the agency.

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

65 Upon entry of a final order of adoption ~~or other final disposition of a matter involving the placement~~
66 ~~of a child by a licensed child-placing agency or a local board or an investigation by the local director of~~
67 ~~a placement for adoption of a child,~~ the *child-placing* agency or local board shall transmit to the
68 Commissioner ~~all reports and collateral information~~ *the adoption file* in connection with the case, which
69 shall be preserved by the Commissioner in accordance with this section and § 63.2-1246.1.

70 *For purposes of this chapter, "adoption file" means records, orders, and other documents kept or*
71 *created [pursuant to the Virginia Public Records Act (§ 42.1-77 et seq.)] by the Commissioner,*
72 *child-placing agency, or local board, beginning with the earliest of (i) an order terminating residual*
73 *parental rights, (ii) an entrustment agreement, (iii) a home study or investigation conducted in*
74 *preparation for adoption, or (iv) the filing of a petition for adoption, and ending with the final order of*
75 *adoption. "Adoption file" also includes all records regarding applications for disclosure and*
76 *post-adoption searches pursuant to this section and § 63.2-1247.*

77 **§ 63.2-1246.1. Commissioner authority to store, preserve, and certify adoption files.**

78 *Upon receipt of all [~~adoption files orders~~] from [~~both~~] the clerk of the circuit court and [*
79 *adoption files from] the child-placing agency or local board [kept or created pursuant to the Virginia*
80 *Public Records Act (§ 42.1-77 et seq.)] , the Commissioner shall have the authority to direct the*
81 *storage, preservation, and certification of such records. The Commissioner shall have custody of and*
82 *retain all adoption files, whether in paper or electronic form, including reports, orders, and other*
83 *documents with identifying information of birth parents and adoptees, in his office or at another*
84 *location designated by the Commissioner.*

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

97 **§ 63.2-1247. Disclosure to birth family; adoptive parents; medical, etc., information; exchange of**
98 **information; open records in parental placement adoptions.**

99 A. Where the adoption is finalized on or after July 1, 1994, and the adopted person is ~~twenty-one~~ 21
100 years of age or over, the adopted person's birth parents and adult birth siblings may apply to the
101 Commissioner for the disclosure of identifying information from the adoption file. The Commissioner
102 shall designate the person or agency that made the investigation to attempt to locate and advise the
103 adopted person of the application. The designated person or agency shall report the results of the attempt
104 to locate and advise the adopted person to the Commissioner, including the relative effects that
105 disclosure of the identifying information may have on the adopted person, the adoptive parents, and the
106 birth family. The adopted person and the birth family may submit to the Commissioner, and the
107 Commissioner shall consider, written comments stating the anticipated effect that the disclosure of
108 identifying information may have upon any party. Upon a showing of good cause, the Commissioner
109 shall disclose the identifying information. If the Commissioner fails to designate a person or agency to
110 attempt to locate the adopted person within ~~thirty~~ 30 days of receipt of the application, or if the
111 Commissioner denies disclosure of the identifying information after receiving the designated person's or
112 agency's report, the birth parents or adult birth siblings, whoever applied, may apply to the circuit court
113 for an order to disclose such information. Such order shall be entered only upon good cause shown after
114 notice to and opportunity for hearing by the applicant for such order and the person or agency that made
115 the investigation. "Good cause" when used in this section shall mean a showing of a compelling and
116 necessitous need for the identifying information.

117 A birth parent or adult birth sibling who is a resident of Virginia may apply for the court order
118 provided for herein to (i) the circuit court of the county or city where the birth parent or adult birth
119 sibling resides or (ii) the circuit court of the county or city where the central office of the Department is
120 located. A birth parent or adult birth sibling who is not a resident of Virginia shall apply for such a

121 court order to the circuit court of the county or city where the central office of the Department is
122 located.

123 If the identity and whereabouts of the adopted person and adoptive parents are known to the person
124 or agency, the circuit court may require the person or agency to advise the adopted person and adoptive
125 parents of the pendency of the application for such order. In determining good cause for the disclosure
126 of such information, the circuit court shall consider the relative effects of such action upon the adopted
127 person, the adoptive parents and the birth family. The adopted person and the birth family may submit
128 to the circuit court, and the circuit court shall consider, written comments stating the anticipated effect
129 that the disclosure of identifying information may have upon any party.

130 When consent of the adopted person is not obtainable, due to the death or mental incapacity of the
131 adopted person, the circuit court may release identifying information to the birth parents or adult birth
132 siblings. In making this decision, the circuit court shall consider the needs and concerns of the birth
133 parents or adult birth siblings and the adoptive family if such information is available, the actions the
134 agency took to locate the adopted person, the information in the agency's report and the recommendation
135 of the agency.

136 B. Where the adoption is finalized on or after July 1, 1994, and the adopted person is under ~~eighteen~~
137 18 years of age, the adoptive parents or other legal custodian of the child may apply to the
138 Commissioner for the disclosure of identifying information about the birth family. The Commissioner
139 shall designate the person or agency that made the investigation to attempt to locate and advise the birth
140 family of the application. The designated person or agency shall report the results of the attempt to
141 locate and advise the birth family to the Commissioner, including the relative effects that disclosure of
142 the identifying information may have on the adopted person, the adoptive parents or other legal
143 custodian, and the birth family. The adoptive parents, legal custodian and birth family may submit to the
144 Commissioner, and the Commissioner shall consider, written comments stating the anticipated effect that
145 the disclosure of identifying information may have upon any party. Upon a showing of good cause, the
146 Commissioner shall disclose the identifying information. If the Commissioner fails to designate a person
147 or agency to attempt to locate the birth family within ~~thirty~~ 30 days of receipt of the application, or if
148 the Commissioner denies disclosure of the identifying information after receiving the designated person's
149 or agency's report, the adoptive parents or legal custodian, whoever applied, may apply to the circuit
150 court for an order to disclose such information. Such order shall be entered only upon good cause
151 shown after notice to and opportunity for hearing by the applicant for such order and the person or
152 agency that made the investigation. "Good cause" when used in this section shall mean a showing of a
153 compelling and necessitous need for the identifying information.

154 An adoptive parent or legal custodian who is a resident of Virginia may apply for the court order
155 provided for herein to (i) the circuit court of the county or city where the adoptive parent or legal
156 custodian resides or (ii) the circuit court of the county or city where the central office of the Department
157 is located. An adoptive parent or legal custodian who is not a resident of Virginia shall apply for such a
158 court order to the circuit court of the county or city where the central office of the Department is
159 located.

160 If the identity and whereabouts of the birth parents are known to the person or agency, the circuit
161 court may require the person or agency to advise the birth parents of the pendency of the application for
162 such order. In determining good cause for the disclosure of such information, the circuit court shall
163 consider the relative effects of such action upon the adopted person, the adoptive parents or legal
164 custodian and the birth parents. The birth family may submit to the circuit court, and the circuit court
165 shall consider, written comments stating the anticipated effect that the disclosure of identifying
166 information may have upon any party.

167 When consent of the birth family is not obtainable, due to the death of the birth parents or mental
168 incapacity of the birth parents, the circuit court may release identifying information to the adoptive
169 parents or legal custodian. In making this decision, the circuit court shall consider the needs and
170 concerns of the adoptive parents or legal custodian and the birth family if such information is available,
171 the actions the agency took to locate the birth family, the information in the agency's report and the
172 recommendation of the agency.

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

181 D. In cases where at least one of the adoptive parents and one of the birth parents agree in writing,

182 *at the time of the adoption*, to allow the agency involved in the adoption to exchange nonidentifying
183 information and pictures, the agency may exchange this information with such adoptive parents and birth
184 parents when the whereabouts of the adoptive parents and birth parents is known or readily accessible.
185 Such agreement may be ~~entered into~~ or withdrawn by either party at any time or may be withdrawn by
186 the adult adoptee.

187 E. In parental placement adoptions, where the consent to the adoption was executed on or after July
188 1, 1994, the entire adoption record shall be open to the adoptive parents, the adoptee who is ~~eighteen~~ 18
189 years of age or older, and a birth parent who executed a written consent to the adoption.

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