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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.**