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HOUSE BILL NO. 869

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend and reenact §§ 17.1-275, 63.2-1201, 63.2-1208, 63.2-1210, 63.2-1228, 63.2-1233, 63.2-1241, and 63.2-1250 of the Code of Virginia, relating to adoption.

Patron—Brewer

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 17.1-275, 63.2-1201, 63.2-1208, 63.2-1210, 63.2-1228, 63.2-1233, 63.2-1241, and 63.2-1250 of the Code of Virginia are amended and reenacted as follows:

§ 17.1-275. Fees collected by clerks of circuit courts; generally.

A. A clerk of a circuit court shall, for services performed by virtue of his office, charge the following fees:

1. [Repealed.]

2. For recording and indexing in the proper book any writing and all matters therewith, or for recording and indexing anything not otherwise provided for, \$18 for an instrument or document consisting of 10 or fewer pages or sheets; \$32 for an instrument or document consisting of 11 to 30 pages or sheets; and \$52 for an instrument or document consisting of 31 or more pages or sheets. Whenever any writing to be recorded includes plat or map sheets no larger than eight and one-half inches by 14 inches, such plat or map sheets shall be counted as ordinary pages for the purpose of computing the recording fee due pursuant to this section. A fee of \$17 per page or sheet shall be charged with respect to plat or map sheets larger than eight and one-half inches by 14 inches. Only a single fee as authorized by this subdivision shall be charged for recording a certificate of satisfaction that releases the original deed of trust and any corrected or revised deeds of trust. Three dollars and fifty cents of the fee collected for recording and indexing shall be designated for use in preserving the permanent records of the circuit courts. The sum collected for this purpose shall be administered by The Library of Virginia in cooperation with the circuit court clerks.

3. For appointing and qualifying any personal representative, committee, trustee, guardian, or other fiduciary, in addition to any fees for recording allowed by this section, \$20 for estates not exceeding \$50,000, \$25 for estates not exceeding \$100,000 and \$30 for estates exceeding \$100,000. No fee shall be charged for estates of \$5,000 or less.

4. For entering and granting and for issuing any license, other than a marriage license or a hunting and fishing license, and administering an oath when necessary, \$10.

5. For issuing a marriage license, attaching certificate, administering or receiving all necessary oaths or affidavits, indexing and recording, \$10. For recording an order to celebrate the rites of marriage pursuant to § 20-25, \$25 to be paid by the petitioner.

6. For making out any bond, other than those under § 17.1-267 or subdivision A 4, administering all necessary oaths and writing proper affidavits, \$3.

7. For all services rendered by the clerk in any garnishment or attachment proceeding, the clerk's fee shall be \$15 in cases not exceeding \$500 and \$25 in all other cases.

8. For making out a copy of any paper, record, or electronic record to go out of the office, which is not otherwise specifically provided for herein, a fee of \$0.50 for each page or, if an electronic record, each image. From such fees, the clerk shall reimburse the locality the costs of making out the copies and pay the remaining fees directly to the Commonwealth. The funds to recoup the cost of making out the copies shall be deposited with the county or city treasurer or Director of Finance, and the governing body shall budget and appropriate such funds to be used to support the cost of copies pursuant to this subdivision. For purposes of this section, the costs of making out the copies authorized under this section shall include costs included in the lease and maintenance agreements for the equipment and the technology needed to operate electronic systems in the clerk's office used to make out the copies, but shall not include salaries or related benefits. The costs of copies shall otherwise be determined in accordance with § 2.2-3704. However, there shall be no charge to the recipient of a final order or decree to send an attested copy to such party.

9. For annexing the seal of the court to any paper, writing the certificate of the clerk accompanying it, the clerk shall charge \$2 and for attaching the certificate of the judge, if the clerk is requested to do so, the clerk shall charge an additional \$0.50.

10. In any case in which a person is convicted of a violation of any provision of Article 1

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59 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or is subject to a disposition under § 18.2-251, the clerk
60 shall assess a fee of \$150 for each felony conviction and each felony disposition under § 18.2-251 which
61 shall be taxed as costs to the defendant and shall be paid into the Drug Offender Assessment and
62 Treatment Fund.

63 11. In any case in which a person is convicted of a violation of any provision of Article 1
64 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or is subject to a disposition under § 18.2-251, the clerk
65 shall assess a fee for each misdemeanor conviction and each misdemeanor disposition under § 18.2-251,
66 which shall be taxed as costs to the defendant and shall be paid into the Drug Offender Assessment and
67 Treatment Fund as provided in § 17.1-275.8.

68 12. Upon the defendant's being required to successfully complete traffic school, a mature driver
69 motor vehicle crash prevention course, or a driver improvement clinic in lieu of a finding of guilty, the
70 court shall charge the defendant fees and costs as if he had been convicted.

71 13. In all civil actions that include one or more claims for the award of monetary damages the clerk's
72 fee chargeable to the plaintiff shall be \$100 in cases seeking recovery not exceeding \$49,999; \$200 in
73 cases seeking recovery exceeding \$49,999, but not exceeding \$100,000; \$250 in cases seeking recovery
74 exceeding \$100,000, but not exceeding \$500,000; and \$300 in cases seeking recovery exceeding
75 \$500,000. Ten dollars of each such fee shall be apportioned to the Courts Technology Fund established
76 under § 17.1-132. A fee of \$25 shall be paid by the plaintiff at the time of instituting a condemnation
77 case, in lieu of any other fees. There shall be no fee charged for the filing of a cross-claim or setoff in
78 any pending action. However, the fees prescribed by this subdivision shall be charged upon the filing of
79 a counterclaim or a claim impleading a third-party defendant. The fees prescribed above shall be
80 collected upon the filing of papers for the commencement of civil actions. This subdivision shall not be
81 applicable to cases filed in the Supreme Court of Virginia.

82 13a. For the filing of any petition seeking court approval of a settlement where no action has yet
83 been filed, the clerk's fee, chargeable to the petitioner, shall be \$50, to be paid by the petitioner at the
84 time of filing the petition.

85 14. In addition to the fees chargeable for civil actions, for the costs of proceedings for judgments by
86 confession under §§ 8.01-432 through 8.01-440, the clerk shall tax as costs (i) the cost of registered or
87 certified mail; (ii) the statutory writ tax, in the amount required by law to be paid on a suit for the
88 amount of the confessed judgment; (iii) for the sheriff for serving each copy of the order entering
89 judgment, \$12; and (iv) for docketing the judgment and issuing executions thereon, the same fees as
90 prescribed in subdivision A 17.

91 15. For qualifying notaries public, including the making out of the bond and any copies thereof,
92 administering the necessary oaths, and entering the order, \$10.

93 16. For each habeas corpus proceeding, the clerk shall receive \$10 for all services required
94 thereunder. This subdivision shall not be applicable to such suits filed in the Supreme Court of Virginia.

95 17. For docketing and indexing a judgment from any other court of the Commonwealth, for
96 docketing and indexing a judgment in the new name of a judgment debtor pursuant to the provisions of
97 § 8.01-451, but not when incident to a divorce, for noting and filing the assignment of a judgment
98 pursuant to § 8.01-452, a fee of \$5; and for issuing an abstract of any recorded judgment, when proper
99 to do so, a fee of \$5; and for filing, docketing, indexing and mailing notice of a foreign judgment, a fee
100 of \$20.

101 18. For all services rendered by the clerk in any court proceeding for which no specific fee is
102 provided by law, the clerk shall charge \$10, to be paid by the party filing said papers at the time of
103 filing; however, this subdivision shall not be applicable in a divorce cause prior to and including the
104 entry of a decree of divorce from the bond of matrimony.

105 19, 20. [Repealed.]

106 21. For making the endorsements on a forthcoming bond and recording the matters relating to such
107 bond pursuant to the provisions of § 8.01-529, \$1.

108 22. For all services rendered by the clerk in any proceeding pursuant to § 57-8 or 57-15, \$10.

109 23. For preparation and issuance of a subpoena duces tecum, \$5.

110 24. For all services rendered by the clerk in matters under § 8.01-217 relating to change of name,
111 \$20; however, this subdivision shall not be applicable in cases where the change of name is incident to
112 a divorce.

113 25. For providing court records or documents on microfilm, per frame, \$0.50.

114 26. In all divorce and separate maintenance proceedings, and all civil actions that do not include one
115 or more claims for the award of monetary damages, the clerk's fee chargeable to the plaintiff shall be
116 \$60, \$10 of which shall be apportioned to the Courts Technology Fund established under § 17.1-132 to
117 be paid by the plaintiff at the time of instituting the suit, which shall include the furnishing of a duly
118 certified copy of the final decree. The fees prescribed by this subdivision shall be charged upon the
119 filing of a counterclaim or a claim impleading a third-party defendant. However, no fee shall be charged
120 for (i) the filing of a cross-claim or setoff in any pending suit or (ii) the filing of a counterclaim or any

other responsive pleading in any annulment, divorce, or separate maintenance proceeding. In divorce cases, when there is a merger of a divorce of separation a mensa et thoro into a decree of divorce a vinculo, the above mentioned fee shall include the furnishing of a duly certified copy of both such decrees.

27. For the acceptance of credit or debit cards in lieu of money to collect and secure all fees, including filing fees, fines, restitution, forfeiture, penalties and costs, the clerk shall collect from the person presenting such credit or debit card a reasonable convenience fee for the processing of such credit or debit card. Such convenience fee shall not exceed four percent of the amount paid for the transaction or a flat fee of \$2 per transaction. The clerk may set a lower convenience fee for electronic filing of civil or criminal proceedings pursuant to § 17.1-258.3. Nothing herein shall be construed to prohibit the clerk from outsourcing the processing of credit and debit card transactions to a third-party private vendor engaged by the clerk. Convenience fees shall be used to cover operational expenses as defined in § 17.1-295.

28. For the return of any check unpaid by the financial institution on which it was drawn or notice is received from the credit or debit card issuer that payment will not be made for any reason, the clerk may collect a fee of \$50 or 10 percent of the amount of the payment, whichever is greater.

29. For all services rendered, except in cases in which costs are assessed pursuant to § 17.1-275.1, 17.1-275.2, 17.1-275.3, or 17.1-275.4, in an adoption proceeding, a fee of \$20, in addition to the fee imposed under § 63.2-1246, to be paid by the petitioner or petitioners. For each petition for adoption filed pursuant to § 63.2-1201, except those filed pursuant to subdivisions 5 4 and 6 5 of § 63.2-1210, an additional \$50 filing fee as required under § 63.2-1201 shall be deposited in the Virginia Birth Father Registry Fund pursuant to § 63.2-1249.

30. For issuing a duplicate license for one lost or destroyed as provided in § 29.1-334, a fee in the same amount as the fee for the original license.

31. For the filing of any petition as provided in §§ 33.2-1023, 33.2-1024, and 33.2-1027, a fee of \$5 to be paid by the petitioner; and for the recordation of a certificate or copy thereof, as provided for in § 33.2-1021, as well as for any order of the court relating thereto, the clerk shall charge the same fee as for recording a deed as provided for in this section, to be paid by the party upon whose request such certificate is recorded or order is entered.

32. For making up, certifying and transmitting original record pursuant to the Rules of the Supreme Court, including all papers necessary to be copied and other services rendered, except in cases in which costs are assessed pursuant to § 17.1-275.1, 17.1-275.2, 17.1-275.3, 17.1-275.4, 17.1-275.7, 17.1-275.8, or 17.1-275.9, a fee of \$20.

33. [Repealed.]

34. For filings, etc., under the Uniform Federal Lien Registration Act (§ 55.1-653 et seq.), the fees shall be as prescribed in that Act.

35. [Repealed.]

36. For recordation of certificate and registration of names of nonresident owners in accordance with § 59.1-74, a fee of \$10.

37. For maintaining the information required under the Overhead High Voltage Line Safety Act (§ 59.1-406 et seq.), the fee as prescribed in § 59.1-411.

38. For lodging, indexing, and preserving a will in accordance with § 64.2-409, a fee of \$5.

39. For filing a financing statement in accordance with § 8.9A-505, the fee shall be as prescribed under § 8.9A-525.

40. For filing a termination statement in accordance with § 8.9A-513, the fee shall be as prescribed under § 8.9A-525.

41. For filing assignment of security interest in accordance with § 8.9A-514, the fee shall be as prescribed under § 8.9A-525.

42. For filing a petition as provided in §§ 64.2-2001 and 64.2-2013, the fee shall be \$10.

43. For issuing any execution, and recording the return thereof, a fee of \$1.50.

44. For the preparation and issuance of a summons for interrogation by an execution creditor, a fee of \$5. If there is no outstanding execution, and one is requested herewith, the clerk shall be allowed an additional fee of \$1.50, in accordance with subdivision A 44.

B. In accordance with § 17.1-281, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A 18 if applicable, A 20, A 22, A 24, A 26, A 29, and A 31 to be designated for courthouse construction, renovation or maintenance.

C. In accordance with § 17.1-278, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A 18 if applicable, A 20, A 22, A 24, A 26, A 29, and A 31 to be designated for services provided for the poor, without charge, by a nonprofit legal aid program.

D. In accordance with § 42.1-70, the clerk shall collect fees under subdivisions A 7, A 13, A 16, A 18 if applicable, A 20, A 22, A 24, A 26, A 29, and A 31 to be designated for public law libraries.

E. All fees collected pursuant to subdivision A 27 and § 17.1-276 shall be deposited by the clerk into a special revenue fund held by the clerk, which will restrict the funds to their statutory purpose.

F. The provisions of this section shall control the fees charged by clerks of circuit courts for the services above described.

§ 63.2-1201. Filing of petition for adoption; venue; jurisdiction; and proceedings.

Proceedings for the adoption of a minor child and for a change of name of such child shall be instituted only by petition to a circuit court in the county or city in which the petitioner resides, in the county or city in which the child-placing agency that placed the child is located, or in the county or city in which a birth parent executed a consent pursuant to § 63.2-1233. Such petition may be filed by any natural person who resides in the Commonwealth, or who has custody of a child placed by a child-placing agency of the Commonwealth, or by an adopting parent of a child who was subject to a consent proceeding held pursuant to § 63.2-1233, or by intended parents who are parties to a surrogacy contract. The petition shall ask leave to adopt a minor child not legally the petitioner's by birth and, if it is so desired by the petitioner, also to change the name of such child. In the case of married persons, or persons who were previously married who are permitted to adopt a child under § 63.2-1201.1, the petition shall be the joint petition of the husband and wife or former spouses but, in the event the child to be adopted is legally the child by birth or adoption of one of the petitioners, such petitioner shall unite in the petition for the purpose of indicating consent to the prayer thereof only. If any procedural provision of this chapter applies to only one of the adoptive parents, then the court may waive the application of the procedural provision for the spouse of the adoptive parent to whom the provision applies. The petition shall contain a full disclosure of the circumstances under which the child came to live, and is living, in the home of the petitioner. Each petition for adoption shall be signed by the petitioner as well as by counsel of record, if any. In any case in which the petition seeks the entry of an adoption order without referral for investigation, the petition shall be under oath.

A single petition for adoption under the provisions of this section shall be sufficient for the concurrent adoption by the same petitioners of two or more children who have the same birth parent or parents, and nothing in this section shall be construed as having heretofore required a separate petition for each of such children.

The petition for adoption, except those filed pursuant to subdivisions 5 4 and 6 5 of § 63.2-1210, shall include an additional \$50 filing fee that shall be used to fund the Virginia Birth Father Registry established in Article 7 (§ 63.2-1249 et seq.) of this chapter.

A petition filed while the child is under 18 years of age shall not become invalid because the child reaches 18 years of age prior to the entry of a final order of adoption. Any final order of adoption entered pursuant to § 63.2-1213 after a child reaches 18 years of age, where the petition was filed prior to the child turning 18 years of age, shall have the same effect as if the child was under 18 years of age at the time the order was entered by the circuit court provided the court has obtained the consent of the adoptee.

§ 63.2-1208. Investigations; report to circuit court.

A. Upon consideration of the petition, the circuit court shall, upon being satisfied as to proper jurisdiction and venue, immediately enter *either an interlocutory order referring the case to a child-placing agency to conduct a visitation and prepare a report of visitation or an order of reference referring the case to a child-placing agency to conduct an investigation and prepare a report of investigation*, unless no investigation is required pursuant to this chapter. *In agency adoption cases for which an interlocutory order is required, the petition shall contain the provisional consent of the child-placing agency.* The court shall enter the *interlocutory order or order of reference* ~~prior to or~~ concurrently with the entering of an order of publication, if such is necessary. Upon entry of the *interlocutory order or order of reference*, the clerk shall forward a copy of the *interlocutory order or order of reference*, the petition, and all exhibits thereto to the Commissioner and the child-placing agency retained to provide investigative, reporting, and supervisory services. If no Virginia agency was retained to provide such services, the *interlocutory order or order of reference*, petition, and all exhibits shall be forwarded to the local director of social services of the locality where the petitioners reside or resided at the time of filing the petition or had legal residence at the time the petition was filed.

B. Upon receiving a petition and *interlocutory order or order of reference* from the circuit court, the applicable agency shall make a thorough investigation of the matter and report thereon in writing, in such form as the Commissioner may prescribe, to the circuit court. *In cases in which an order of reference was received, the agency shall file a report of investigation with the circuit court within 60 days after the copy of the petition and all exhibits thereto are forwarded. In cases in which an interlocutory order was received, the agency shall file a report of visitation within 30 days after the completion of all placement visits required pursuant to § 63.2-1212. In agency adoption cases, the agency shall file its final agency consent with the report.* A copy of the applicable report to the circuit court shall be served on the Commissioner by delivering or mailing a copy to him on or before the day of filing ~~the~~ such report with the circuit court. On the *applicable* report to the circuit court there shall be

appended either acceptance of service or certificate of the local director, or the representative of the child-placing agency, that copies were served as this section requires, showing the date of delivery or mailing. The circuit court shall expeditiously consider the merits of the petition upon receipt of the applicable report and enter a final order of adoption.

C. If the applicable report is not made to the circuit court within the periods specified, the circuit court may proceed to hear and determine the merits of the petition and enter such order or orders as the circuit court may deem appropriate.

D. The visitation or investigation requested by the circuit court in an interlocutory order or order of reference shall include, in addition to other inquiries that the circuit court may require the child-placing agency or local director to make, inquiries as to (i) whether the petitioner is financially able, except as provided in Chapter 13 (§ 63.2-1300 et seq.) of this title, morally suitable, in satisfactory physical and mental health and a proper person to care for and to train the child; (ii) what the physical and mental condition of the child is; (iii) why the parents, if living, desire to be relieved of the responsibility for the custody, care, and maintenance of the child, and what their attitude is toward the proposed adoption; (iv) whether the parents have abandoned the child or are morally unfit to have custody over him; (v) the circumstances under which the child came to live, and is living, in the physical custody of the petitioner; (vi) whether the child is a suitable child for adoption by the petitioner; (vii) what fees have been paid by the petitioners or on their behalf to persons or agencies that have assisted them in obtaining the child; and (viii) whether the requirements of subsections E and F have been met. Any report made to the circuit court shall include a recommendation as to the action to be taken by the circuit court on the petition. A copy of any report made to the circuit court shall be furnished to counsel of record representing the adopting parent or parents. When the investigation reveals that there may have been a violation of § 63.2-1200 or § 63.2-1218, the local director or child-placing agency shall so inform the circuit court and the Commissioner.

E. The applicable report shall include the relevant physical and mental history of the birth parents if known to the person making the report. The child-placing agency or local director shall document in the report all efforts they made to encourage birth parents to share information related to their physical and mental history. However, nothing in this subsection shall require that an investigation of the physical and mental history of the birth parents be made.

F. The applicable report shall include a statement by the child-placing agency or local director that all reasonably ascertainable background, medical, and psychological records of the child, including whether the child has been the subject of an investigation as the perpetrator of sexual abuse, have been provided to the prospective adoptive parent(s). The report also shall include a list of such records provided.

G. The court may omit the probationary period and enter a final order of adoption under the following circumstances:

1. In cases in which an order of reference was entered and the report of investigation has been received, if (i) the child has been placed in the physical custody of the petitioner by a child-placing agency; (ii) 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 90 days between the first and last visit; and (iii) the court is of the opinion that entry of a final order of adoption would otherwise be proper.

2. In cases in which an interlocutory order was entered and both the report of visitation and final agency consent have been received, if (i) the child has been placed in the physical custody of the petitioner by a child-placing agency; (ii) the placing or supervising agency certifies to the circuit court that the child has been visited by a representative of such agency at least three times within a six-month period, provided there are not less than 90 days between the first and last visit; and (iii) the court is of the opinion that entry of a final order of adoption would otherwise be proper.

In cases in which the court entered either an interlocutory order or order of reference and the child was placed by a child-placing agency, the circuit court may, for good cause shown, omit the requirement that the three visits be made within a six-month period.

H. If the specific provisions set out in §§ 63.2-1228, 63.2-1238, 63.2-1242 and 63.2-1244 do not apply, the petition and all exhibits shall be forwarded to the local director where the petitioners reside or to a licensed child-placing agency.

§ 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. In such cases, the

305 court may also omit the order of reference if the petitioners meet the requirements set forth in
306 § 63.2-1241.

307 2. If one of the petitioners is a ~~step-parent~~ *stepparent* of the child and the circuit court is of the
308 opinion that the entry of an interlocutory order would otherwise be proper. The court may omit the
309 order of reference if the petitioners meet the requirements of § 63.2-1241.

310 3. After receipt of the report required by ~~§ 63.2-1208~~, if the child has been placed in the physical
311 custody of the petitioner by a child-placing agency and (i) the placing or supervising agency certifies to
312 the circuit court that the child has lived in the physical custody of the petitioner continuously for a
313 period of at least six months immediately preceding the filing of the petition and has been visited by a
314 representative of such agency at least three times within a six-month period; provided there are not less
315 than 90 days between the first visit and the last visit; and (ii) the circuit court is of the opinion that the
316 entry of an interlocutory order would otherwise be proper. The circuit court may, for good cause shown,
317 in cases of placement by a child-placing agency, omit the requirement that the three visits be made
318 within a six-month period.

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

323 5. 4. After receipt of the report of investigation, if the child has been legally adopted according to
324 the laws of a foreign country with which the United States has diplomatic relations and if the circuit
325 court is of the opinion that the entry of an interlocutory order would otherwise be proper, and the child
326 (i) has been in the physical custody of the petitioners for at least one year immediately prior to the
327 filing of the petition and a representative of a child-placing agency has visited the petitioner and child at
328 least once in the six months immediately preceding the filing of the petition or during its investigation
329 pursuant to § 63.2-1208 or (ii) has been in the physical custody of the petitioners for at least six months
330 immediately prior to the filing of the petition, has been visited by a representative of a child-placing
331 agency or of the local department three times within such six-month period with no fewer than ninety
332 days between the first and last visits, and the last visit has occurred within six months immediately prior
333 to the filing of the petition.

334 6. 5. After receipt of the report of investigation, if the child was placed into Virginia from a foreign
335 country in accordance with § 63.2-1104, the adoption was not finalized pursuant to the laws of that
336 foreign country, and the child has been in the physical custody of the petitioner for at least six months
337 immediately prior to the filing of the petition and has been visited by a representative of a licensed
338 child-placing agency or of the local department three times within the six-month period with no fewer
339 than 90 days between the first and last visits. The circuit court may, for good cause shown, in cases of
340 an international placement, omit the requirement that the three visits be made within a six-month period.

341 **§ 63.2-1228. Forwarding of petition.**

342 Upon the filing of the petition, the circuit court shall, upon being satisfied as to proper jurisdiction
343 and venue, immediately enter an *interlocutory order* or an order referring the case to a child-placing
344 agency to conduct an investigation and prepare a report pursuant to § 63.2-1208. Upon entry of the
345 *interlocutory order* or the order of reference, the court shall forward a copy of the petition and all
346 exhibits thereto to the Commissioner and to the agency that placed the child. In cases where the child
347 was placed by an agency in another state, or by an agency, court, or other entity in another country, the
348 petition and all exhibits shall be forwarded to the local director or licensed child-placing agency,
349 whichever agency completed the home study or provided supervision. If no Virginia agency provided
350 such services, or such agency is no longer licensed or has gone out of business, the petition and all
351 exhibits shall be forwarded to the local director of the locality where the petitioners reside or resided at
352 the time of filing the petition; or had legal residence at the time of the filing of the petition.

353 **§ 63.2-1233. Consent to be executed in juvenile and domestic relations district court; exceptions.**

354 When the juvenile and domestic relations district court is satisfied that all requirements of
355 § 63.2-1232 have been met with respect to at least one birth parent and the adoptive child is at least in
356 the third calendar day of life, that birth parent or both birth parents, as the case may be, shall execute
357 consent to the proposed adoption in compliance with the provisions of § 63.2-1202 while before the
358 juvenile and domestic relations district court in person and in the presence of the prospective adoptive
359 parents. The juvenile and domestic relations district court shall accept the consent of the birth parent(s)
360 and transfer custody of the child to the prospective adoptive parents, pending notification to any
361 nonconsenting birth parent, as described hereinafter.

362 1. a. The execution of consent before the juvenile and domestic relations district court shall not be
363 required of a birth father if the birth father consents under oath and in writing to the adoption.

364 b. The consent of a birth father who is not married to the mother of the child at the time of the
365 child's conception or birth shall not be required if the putative father named by the birth mother denies
366 under oath and in writing the paternity of the child or if the putative father did not register with the

Virginia Birth Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.) of this chapter. If the identity of the birth father is reasonably ascertainable, but the whereabouts of the birth father are not reasonably ascertainable, verification of compliance with the Virginia Birth Father Registry shall be provided to the court.

c. When a birth father is required to be given notice, he may be given notice of the adoption by registered or certified mail to his last known address and if he fails to object to the adoption within 15 days of the mailing of such notice, his consent shall not be required. An objection shall be in writing, signed by the objecting party or counsel of record for the objecting party and shall be filed with the clerk of the juvenile and domestic relations district court in which the petition was filed during the business day of the court, within the time period specified in this section. When no timely objection is filed, no hearing on this issue is required. Failure of the objecting party to appear at any scheduled hearing, either in person or by counsel, shall constitute a waiver of such objection.

d. The juvenile and domestic relations district court may accept the written consent of the birth father at the time of the child's conception or birth, provided that his identifying information required in § 63.2-1232 is filed in writing with the juvenile and domestic relations district court of jurisdiction. Such consent shall advise the birth father of his opportunity for legal representation, shall identify the court in which the case was or is intended to be filed, and shall be presented to the juvenile and domestic relations district court for acceptance. The consent may waive further notice of the adoption proceedings and shall contain the name, address and telephone number of the birth father's legal counsel or an acknowledgment that he was informed of his opportunity to be represented by legal counsel and declined such representation. For good cause shown, the court may dispense with the requirements regarding the filing of the birth father's identifying information pursuant to this subdivision 4. d.

e. In the event that the birth mother's consent is not executed in the juvenile and domestic relations district court, the consent of the birth father shall be executed in the juvenile and domestic relations district court.

f. A child born to a married birth mother shall be presumed to be the child of her husband and his consent shall be required, unless the court finds that the father's consent is withheld contrary to the best interests of the child as provided in § 63.2-1205 or if his consent is unobtainable. The consent of such presumed father shall be under oath and in writing and may be executed in or out of court. The presumption that the husband is the father of the child may be rebutted by sufficient evidence, satisfactory to the juvenile and domestic relations district court, which would establish by a preponderance of the evidence the paternity of another man or the impossibility or improbability of cohabitation of the birth mother and her husband for a period of at least 300 days preceding the birth of the child, in which case the husband's consent shall not be required. The executed denial of paternity by the putative father shall be sufficient to rebut the presumption that he is the father of the child. If the court is satisfied that the presumption has been rebutted, notice of the adoption shall not be required to be given to the presumed father.

2. After the application of the provisions of subdivision 1, if a birth parent is entitled to a hearing, the birth parent shall be given notice of the date and location of the hearing and be given the opportunity to appear before the juvenile and domestic relations district court. Such hearing may occur subsequent to the proceeding wherein the consenting birth parent appeared but may not be held until 15 days after personal service of notice on the nonconsenting birth parent, or if personal service is unobtainable, 10 days after the completion of the execution of an order of publication against such birth parent. The juvenile and domestic relations district court may appoint counsel for the birth parent(s). If the juvenile and domestic relations district court finds that consent is withheld contrary to the best interests of the child, as set forth in § 63.2-1205, or is unobtainable, it may grant the petition without such consent and enter an order waiving the requirement of consent of the nonconsenting birth parent and transferring custody of the child to the prospective adoptive parents. No further consent or notice shall be required of a birth parent who fails to appear at any scheduled hearing, either in person or by counsel. If the juvenile and domestic relations district court denies the petition, the juvenile and domestic relations district court shall order that any consent given for the purpose of such placement shall be void and, if necessary, the court shall determine custody of the child as between the birth parents.

3. Except as provided in subdivisions 4 and 5, if consent cannot be obtained from at least one birth parent, the juvenile and domestic relations district court shall deny the petition and determine custody of the child pursuant to § 16.1-278.2.

4. *If a In cases in which the child was not placed for adoption by the child's birth parent or neither of the child's birth parents have consented to the adoption, the juvenile and domestic relations district court may grant the petition to proceed in the circuit court on a petition for adoption and enter an order waiving the requirement for written consent of one or both birth parents and transferring custody of the child to the prospective adoptive parents if (i) the child has been under the physical care and*

428 custody of the prospective adoptive parents and if (ii) both birth parents have failed, without good cause,
429 to appear at a hearing to execute consent under this section for which they were given proper notice
430 pursuant to § 16.1-264, ~~the juvenile and domestic relations district court may grant the petition without~~
431 ~~the consent of either birth parent and enter an order waiving consent and transferring custody of the~~
432 ~~child to the prospective adoptive parents or the court determines in accordance with § 63.2-1205 that~~
433 ~~the parents have withheld consent contrary to the best interests of the child.~~ Prior to the entry of such
434 an order, the juvenile and domestic relations district court may appoint legal counsel for the birth
435 parents and shall find by clear and convincing evidence ~~(i)~~ (a) that the birth parents were given proper
436 notice of the hearing(s) to execute consent and of the hearing to proceed without their consent; ~~(ii)~~, (b)
437 that the birth parents failed to show good cause for their failure to appear at such hearing(s); and ~~(iii)~~ (c)
438 that pursuant to § 63.2-1205, the consent of the birth parents is withheld contrary to the best interests
439 of the child or is unobtainable. Under this subdivision, the court or the parties may waive the
440 requirement of the simultaneous meeting under § 63.2-1231 and the requirements of subdivisions A 1,
441 A 3, and A 7 of § 63.2-1232 where the opportunity for compliance is not reasonably available under the
442 applicable circumstances.

443 5. If both birth parents are deceased, the juvenile and domestic relations district court, after hearing
444 evidence to that effect, may grant the petition without the filing of any consent.

445 6. No consent shall be required from the birth father of a child placed pursuant to this section when
446 such father is convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of
447 § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, and
448 the child was conceived as a result of such violation, nor shall the birth father be entitled to notice of
449 any of the proceedings under this section.

450 7. No consent shall be required of a birth father if he denies under oath and in writing the paternity
451 of the child. Such denial of paternity may be withdrawn no more than 10 days after it is executed. Once
452 the child is 10 days old, any executed denial of paternity is final and constitutes a waiver of all rights
453 with the respect to the adoption of the child and cannot be withdrawn.

454 8. A birth father may consent to the adoption prior to the birth of the child.

455 9. The juvenile and domestic relations district court shall review each order entered under this section
456 at least annually until such time as the final order of adoption is entered.

457 10. When there has been an interstate transfer of the child in a parental placement adoption in
458 compliance with Chapter 10 (§ 63.2-1000 et seq.) ~~of this title~~, all matters relating to the adoption of the
459 child including, but not limited to, custody and parentage shall be determined in the court of appropriate
460 jurisdiction in the state that was approved for finalization of the adoption by the interstate compact
461 authorities.

462 **§ 63.2-1241. Adoption of child by spouse of birth or adoptive parent or other person with**
463 **legitimate interest.**

464 A. In cases in which the spouse of a birth parent or parent by adoption or a person with a legitimate
465 interest who is not the birth parent of a child wishes to adopt the child, the birth parent or parent by
466 adoption and such parent's spouse or other person with a legitimate interest may file a petition for
467 adoption in the circuit court of the county or city where the birth parent or parent by adoption and such
468 parent's spouse or other person with a legitimate interest reside or the county or city where the child
469 resides. The petition shall be the joint petition of the birth parent or parent by adoption and such
470 parent's spouse or other person with a legitimate interest, but the birth parent or parent by adoption shall
471 unite in the petition for the purpose of indicating consent to the prayer thereof only. The petition shall
472 also state whether the petitioners seek to change the name of the child.

473 B. The court may order the proposed adoption and change of name without referring the matter to
474 the local director if (i) the birth parent or parent by adoption, other than the birth parent or parent by
475 adoption joining in the petition for adoption, is deceased; (ii) the birth parent or parent by adoption,
476 other than the birth parent or parent by adoption joining in the petition for adoption, consents to the
477 adoption in writing and under oath; (iii) the acknowledged, adjudicated, presumed, or putative father
478 denies paternity of the child; (iv) the birth mother swears under oath and in writing that the identity of
479 the father is not reasonably ascertainable; (v) the child is the result of surrogacy and the birth parent,
480 other than the birth parent joining in the petition, consents to the adoption in writing; (vi) the parent by
481 adoption joining in the petition was not married at the time the child was adopted; or (vii) the child is
482 14 years of age or older and has lived in the home of the person desiring to adopt the child for at least
483 five years. However, if the court in its discretion determines that there should be an investigation before
484 a final order of adoption is entered, the court shall refer the matter to the local director for an
485 investigation and report to be completed within such time as the circuit court designates. If an
486 investigation is ordered, the circuit court shall forward a copy of the petition and all exhibits thereto to
487 the local director and the provisions of § 63.2-1208 shall apply.

488 C. If an acknowledged, adjudicated, presumed, or putative birth parent or parent by adoption of a
489 child refuses to consent to the adoption of a child by the spouse of the other birth parent or parent by

adoption of the child or other person with a legitimate interest, the court shall determine whether consent to the adoption is withheld contrary to the best interests of the child. If the court determines that consent to the adoption is withheld contrary to the best interests of the child, the court may order the adoption and change of name without referring the matter to the local director. However, if the court in its discretion determines that there should be an investigation before a final order of adoption is entered, the circuit court shall refer the matter to the local director for an investigation and report to be completed within such time as the circuit court designates. The order of reference may include a requirement that the local director investigate factors relevant to determining whether consent of a birth parent is withheld contrary to the best interests of the child, including factors set forth in § 63.2-1205. If an investigation is ordered, the circuit court shall forward a copy of the petition and all exhibits thereto to the local director and the provisions of § 63.2-1208 shall apply.

D. In any case involving adoption of a child by a stepparent or other person with a legitimate interest pursuant to this section, the court may waive appointment of a guardian ad litem for the child.

E. *In cases in which both petitioners are listed as the child's parents on the child's birth certificate, the court shall permit the petitioners to obtain an adoption order under this section in order to secure the child's legal parentage.*

F. For the purposes of this section, "person with a legitimate interest" means the same as that term is defined in § 20-124.1.

§ 63.2-1250. Registration; notice; form.

A. Any man who has engaged in sexual intercourse with a woman is deemed to be on legal notice that a child may be conceived and that the man is entitled to all legal rights and obligations resulting therefrom. Lack of knowledge of the pregnancy does not excuse failure to timely register with the Virginia Birth Father Registry.

B. A man who desires to be notified of a placement of a child by a local board pursuant to § 63.2-900, a proceeding for adoption, or a proceeding for termination of parental rights regarding a child that he may have fathered shall register with the Virginia Birth Father Registry.

C. Failure to timely register with the Virginia Birth Father Registry shall waive all rights of a man who is not acknowledged to be, presumed to be, or adjudicated the father to withhold consent to an adoption proceeding unless the man was led to believe through the birth mother's misrepresentation that (i) the pregnancy was terminated or the mother miscarried when in fact the baby was born or (ii) the child died when in fact the child is alive. Upon discovery of the misrepresentation, the man shall register with the Virginia Birth Father Registry within 10 days; *however, a man shall not be permitted to register with the Virginia Birth Father Registry after the child's adoption has been finalized or as otherwise prohibited pursuant to subsection F.*

D. A man will not prejudice any rights by failing to register if:

1. A father-child relationship between the man and the child has been established pursuant to § 20-49.1, 20-49.8, or if the man is a presumed father as defined in § 63.2-1202; or

2. The man commences a proceeding to adjudicate his paternity before a petition to accept consent or waive adoption consent is filed in the juvenile and domestic relations district court, or before a petition for adoption or a petition for the termination of his parental rights is filed with the court.

E. Registration is timely if it is received by the Department within ~~(+)~~ 10 days of the child's birth ~~or~~ ~~(+)~~ *unless* the time specified in subsection C or F *applies*. Registration is complete when the signed registration form is first received by the Department. The signed registration form shall be submitted in the manner prescribed by the Department.

F. In the event that the identity and whereabouts of the birth father are reasonably ascertainable, the child-placing agency or adoptive parents shall give written notice to the birth father of the existence of an adoption plan and the availability of registration with the Virginia Birth Father Registry. Such written notice shall be provided by personal service ~~or by~~, certified mailing, *or express mailing with proof of delivery* to the birth father's last known address. Registration is timely if the signed registration form is received by the Department within 10 days of personal service of the written notice or within 13 days of the certified *or express* mailing date of the written notice. The personal service or certified *or express* mailing may be completed either prior to or after the birth of the child. *When written notice is provided to a putative father before the birth of the child, the putative father may not register with the Virginia Birth Father Registry more than 10 days after personal service of the written notice or more than 13 days after the certified or express mailing date of the written notice.*

G. The child-placing agency or adoptive parent(s) shall give notice to a registrant who has timely registered of a placement of a child by a local board pursuant to § 63.2-900, a proceeding for adoption, or a proceeding for termination of parental rights regarding a child. Notice shall be given pursuant to the requirements of this chapter or § 16.1-277.01 for the appropriate adoption proceeding.

H. 1. The Department shall prepare a form for registering with the agency that shall require (i) the registrant's name, date of birth and social security number; (ii) the registrant's driver's license number

551 and state of issuance; (iii) the registrant's home address, telephone number, and employer; (iv) the name,
552 date of birth, ethnicity, address, and telephone number of the putative mother, if known; (v) the state of
553 conception; (vi) the place and date of birth of the child, if known; (vii) the name and gender of the
554 child, if known; and (viii) the signature of the registrant. No form for registering with the Virginia Birth
555 Father Registry shall be complete unless signed by the registrant and the signed registration form is
556 received by the Department in the manner prescribed by the Department.

557 2. The form shall also state that (i) timely registration entitles the registrant to notice of a proceeding
558 for adoption of the child or termination of the registrant's parental rights, (ii) registration does not
559 commence a proceeding to establish paternity, (iii) the information disclosed on the form may be used
560 against the registrant to establish paternity, (iv) services to assist in establishing paternity are available to
561 the registrant through the Department, (v) the registrant should also register in another state if
562 conception or birth of the child occurred in another state, (vi) information on registries of other states
563 may be available from the Department, (vii) the form is signed under penalty of perjury, and (viii)
564 procedures exist to rescind the registration of a claim of paternity.

565 3. A registrant shall promptly notify the Virginia Birth Father Registry of any change in information,
566 including change of address. The Department shall incorporate all updated information received into its
567 records but is not required to request or otherwise pursue current or updated information for
568 incorporation in the registry.