

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 63.2-1202 of the Code of Virginia, relating to legal custodian; notice of adoption proceeding.

[H 94]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 63.2-1202 of the Code of Virginia is amended and reenacted as follows:

§ 63.2-1202. Parental, or agency, consent required; exceptions.

A. No petition for adoption shall be granted, except as hereinafter provided in this section, unless written consent to the proposed adoption is filed with the petition. Such consent shall be in writing, signed under oath and acknowledged before an officer authorized by law to take acknowledgments. The consent of a birth parent for the adoption of his child placed directly by the birth parent shall be executed as provided in § 63.2-1233, and the circuit court may accept a certified copy of an order entered pursuant to § 63.2-1233 in satisfaction of all requirements of this section, provided the order clearly evidences compliance with the applicable notice and consent requirements of § 63.2-1233.

B. A birth parent who has not reached the age of 18 shall have legal capacity to give consent to adoption and perform all acts related to adoption, and shall be as fully bound thereby as if the birth parent had attained the age of 18 years.

C. Consent shall be executed:

1. By the birth mother and by any man who:

a. Is an acknowledged father under § 20-49.1;

b. Is an adjudicated father under § 20-49.8;

c. Is a presumed father under subsection D; or

d. Has registered with the Virginia Birth Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.).

Verification of compliance with the notice provisions of the Virginia Birth Father Registry shall be provided to the court.

2. By the child-placing agency or the local board having custody of the child, with right to place him for adoption, through court commitment or parental agreement as provided in § 63.2-900, 63.2-903, or 63.2-1221; or an agency outside the Commonwealth that is licensed or otherwise duly authorized to place children for adoption by virtue of the laws under which it operates; and

3. By the child if he is 14 years of age or older, unless the circuit court finds that the best interests of the child will be served by not requiring such consent.

D. A man shall be presumed to be the father of a child if:

1. He and the mother of the child are married to each other and the child is born during the marriage;

2. He and the mother of the child were married to each other and the child is born within 300 days of their date of separation, as evidenced by a written agreement or decree of separation, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce; or

3. Before the birth of the child, he and the mother of the child married each other in apparent compliance with the law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within 300 days of their date of separation, as evidenced by a written agreement or decree of separation, or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce.

Such presumption may be rebutted by sufficient evidence that would establish by a preponderance of the evidence the paternity of another man or the impossibility or improbability of cohabitation with the birth mother for a period of at least 300 days prior to the birth of the child.

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

F. No consent shall be required of the birth father of a child when the birth father is convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, and the child was conceived as a result of such violation.

G. No notice or consent shall be required of any person whose parental rights have been terminated by a court of competent jurisdiction, including foreign courts that have competent jurisdiction. No notice

57 or consent is required of any birth parent of a child for whom a guardianship order was granted when
58 the child was approved by the United States Citizenship and Immigration Services for purposes of
59 adoption.

60 H. No consent shall be required of a birth parent who, without just cause, has neither visited nor
61 contacted the child for a period of six months immediately prior to the filing of the petition for adoption
62 or the filing of a petition to accept consent to an adoption. The prospective adoptive parent(s) shall
63 establish by clear and convincing evidence that the birth parent(s), without just cause, has neither visited
64 nor contacted the child for a period of six months immediately prior to the filing of the petition for
65 adoption or the filing of a petition to accept consent to an adoption. This provision shall not infringe
66 upon the birth parent's right to be noticed and heard on the allegation of abandonment. For purposes of
67 this section, the payment of child support, in the absence of other contact with the child, shall not be
68 considered contact.

69 I. A birth father of the child may consent to the termination of all of his parental rights prior to the
70 birth of the child.

71 J. The failure of the nonconsenting party to appear at any scheduled hearing, either in person or by
72 counsel, after proper notice has been given to said party, shall constitute a waiver of any objection and
73 right to consent to the adoption.

74 K. If a birth parent, legal guardian, or prospective adoptee, executing a consent, entrustment, or other
75 documents related to the adoption, cannot provide the identification required pursuant to § 47.1-14, the
76 birth parent, legal guardian, or prospective adoptee may execute a self-authenticating affidavit as to his
77 identity subject to the penalties contained in § 63.2-1217.

78 L. *A legal custodian of a child being placed for adoption, and any other named parties in pending*
79 *cases in which the custody or visitation of such child is at issue, whether such case is in a circuit or*
80 *district court, shall be entitled to proper notice of any adoption proceeding and an opportunity to be*
81 *heard.*