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HOUSE BILL NO. 550

Offered January 10, 2024

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A BILL to amend and reenact §§ 32.1-261 and 63.2-1246 of the Code of Virginia, relating to adult adoptee access to original birth certificate.

Patrons—Walker, Ennis, Lovejoy, Orrock and Zehr

Referred to Committee on Health and Human Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-261 and 63.2-1246 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-261. New certificate of birth established on proof of adoption, legitimation or determination of paternity, or change of sex.

A. The State Registrar shall establish a new certificate of birth for a person born in the Commonwealth upon receipt of the following:

1. An adoption report as provided in § 32.1-262, a report of adoption prepared and filed in accordance with the laws of another state or foreign country, or a certified copy of the decree of adoption together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth; except that a new certificate of birth shall not be established if so requested by the court decreeing the adoption, the adoptive parents, or the adopted person if 18 years of age or older.

2. A request that a new certificate be established and such evidence as may be required by regulation of the Board proving that such person has been legitimated or that a court of the Commonwealth has, by final order, determined the paternity of such person. The request shall state that no appeal has been taken from the final order and that the time allowed to perfect an appeal has expired.

3. An order entered pursuant to subsection D of § 20-160. The order shall contain sufficient information to identify the original certificate of birth and to establish a new certificate of birth in the names of the intended parents.

4. A surrogate consent and report form as authorized by § 20-162. The report shall contain sufficient information to identify the original certificate of birth and to establish a new certificate of birth in the names of the intended parents.

5. Upon request of a person and in accordance with requirements of the Board, the State Registrar shall issue a new certificate of birth to show a change of sex of the person and, if a certified copy of a court order changing the person's name is submitted, to show a new name. Requirements related to obtaining a new certificate of birth to show a change of sex shall include a requirement that the person requesting the new certificate of birth submit a form furnished by the State Registrar and completed by a health care provider from whom the person has received treatment stating that the person has undergone clinically appropriate treatment for gender transition. Requirements related to obtaining a new certificate of birth to show a change of sex shall not include any requirement for evidence or documentation of any medical procedure.

6. Nothing in this section shall deprive the circuit court of equitable jurisdiction to adjudicate, upon application of a person, that the sex of such person residing within the territorial jurisdiction of the circuit court has been changed. In such an action, the person may petition for the application of the standard of the person's jurisdiction of birth; otherwise, the requirements of this section shall apply.

B. When a new certificate of birth is established pursuant to subsection A, the actual place and date of birth shall be shown. It shall be substituted for the original certificate of birth. Thereafter, the original certificate and the evidence of adoption, paternity or legitimation shall be sealed and filed and not be subject to inspection except upon request by the adult adopted person pursuant to § 63.2-1246, upon order of a court of the Commonwealth, or in accordance with § 32.1-252. However, upon receipt of notice of a decision or order granting an adult adopted person access to identifying information regarding his birth parents from the Commissioner of Social Services or a circuit court, and proof of identification and payment, the State Registrar shall mail an adult adopted person a copy of the original certificate of birth.

C. Upon receipt of a report of an amended decree of adoption, the certificate of birth shall be amended as provided by regulation.

D. Upon receipt of notice or decree of annulment of adoption, the original certificate of birth shall be restored to its place in the files and the new certificate and evidence shall not be subject to inspection except upon order of a court of the Commonwealth or in accordance with § 32.1-252.

E. The State Registrar shall, upon request, establish and register a Virginia certificate of birth for a person born in a foreign country (i) upon receipt of a report of adoption for an adoption finalized pursuant to the laws of the foreign country as provided in subsection B of § 63.2-1200.1, or (ii) upon receipt of a report or

59 final order of adoption entered in a court of the Commonwealth as provided in § 32.1-262; however, a  
60 Virginia certificate of birth shall not be established or registered if so requested by the court decreeing the  
61 adoption, the adoptive parents or the adopted person if 18 years of age or older. If a circuit court of the  
62 Commonwealth corrects or establishes a date of birth for a person born in a foreign country during the  
63 adoption proceedings or upon a petition to amend a certificate of foreign birth, the State Registrar shall issue  
64 a certificate showing the date of birth established by the court. After registration of the birth certificate in the  
65 new name of the adopted person, the State Registrar shall seal and file the report of adoption which shall not  
66 be subject to inspection except upon order of a court of the Commonwealth or in accordance with § 32.1-252.  
67 The birth certificate shall (i) show the true or probable foreign country of birth and (ii) state that the  
68 certificate is not evidence of United States citizenship for the child for whom it is issued or for the adoptive  
69 parents. However, for any adopted person who has attained United States citizenship, the State Registrar  
70 shall, upon request and receipt of evidence demonstrating such citizenship, establish and register a new  
71 certificate of birth that does not contain the statement required by clause (ii).

72 F. If no certificate of birth is on file for the person for whom a new certificate is to be established under  
73 this section, a delayed certificate of birth shall be filed with the State Registrar as provided in § 32.1-259 or  
74 32.1-260 before a new certificate of birth is established, except that when the date and place of birth and  
75 parentage have been established in the adoption proceedings, a delayed certificate shall not be required.

76 G. When a new certificate of birth is established pursuant to subdivision A 1, the State Registrar shall  
77 issue along with the new certificate of birth a document, furnished by the Department of Social Services  
78 pursuant to § 63.2-1220, listing all post-adoption services available to adoptive families.

79 **§ 63.2-1246. Disposition of reports; disclosure of information as to identity of birth family.**

80 Upon the entry of a final order of adoption, the clerk of the circuit court in which it was entered shall  
81 forthwith transmit to the Commissioner all orders and reports made in connection with the case, and the  
82 Commissioner shall preserve such orders and reports in a separate file pursuant to this section and § 63.2-  
83 1246.1. Except as provided in § 63.2-1246.1 and subsections C, D, and E of § 63.2-1247, nonidentifying  
84 information from such adoption file shall not be open to inspection, or be copied, by anyone other than the  
85 adopted person, if 18 years of age or over, or licensed or authorized child-placing agencies providing services  
86 to the child or the adoptive parents, except upon the order of a circuit court entered upon good cause shown.  
87 However, if the adoptive parents, or either of them, is living, the adopted person shall not be permitted to  
88 inspect the home study of the adoptive parents unless the Commissioner first obtains written permission to do  
89 so from such adoptive parent or parents.

90 No identifying information from such adoption file shall be disclosed, open to inspection, or made  
91 available to be copied except as provided in § 63.2-1246.1 and subsections A, B, and E of § 63.2-1247 or  
92 upon application of the adopted person, if 18 years of age or over, to the Commissioner, who shall designate  
93 the person or agency that made the investigation to attempt to locate and advise the birth family of the  
94 application. The designated person or agency shall report the results of the attempt to locate and advise the  
95 birth family to the Commissioner, including the relative effects that disclosure of the identifying information  
96 may have on the adopted person, the adoptive parents, and the birth family. The adopted person and the birth  
97 family may submit to the Commissioner, and the Commissioner shall consider, written comments stating the  
98 anticipated effect that the disclosure of identifying information may have upon any party. Upon a showing of  
99 good cause, the Commissioner shall disclose the identifying information. If the Commissioner fails to  
100 designate a person or agency to attempt to locate the birth family within 30 days of receipt of the application,  
101 or if the Commissioner denies disclosure of the identifying information after receiving the designated  
102 person's or agency's report, the adopted person may apply to the circuit court for an order to disclose such  
103 information. Such order shall be entered only upon good cause shown after notice to and opportunity for  
104 hearing by the applicant for such order and the person or agency that made the investigation. "Good cause"  
105 when used in this section shall mean a showing of a compelling and necessitous need for the identifying  
106 information.

107 An eligible adoptee who is a resident of Virginia may apply for the court order provided for herein to (i)  
108 the circuit court of the county or city where the adoptee resides or (ii) the circuit court of the county or city  
109 where the central office of the Department is located. An eligible adoptee who is not a resident of Virginia  
110 shall apply for such a court order to the circuit court of the county or city where the central office of the  
111 Department is located.

112 If the identity and whereabouts of the adoptive parents and the birth parents are known to the person or  
113 agency, the circuit court may require the person or agency to advise the adoptive parents and the birth parents  
114 of the pendency of the application for such order. In determining good cause for the disclosure of such  
115 information, the circuit court shall consider the relative effects of such action upon the adopted person, the  
116 adoptive parents and the birth parents. The adopted person and the birth family may submit to the circuit  
117 court, and the circuit court shall consider, written comments stating the anticipated effect that the disclosure  
118 of identifying information may have upon any party.

119 When consent of the birth parents is not obtainable, due to the death of the birth parents or mental

120 incapacity of the birth parents, the Commissioner shall, upon application of the adult adopted person and a  
121 showing of good cause, disclose the identifying information to the adult adopted person. If the Commissioner  
122 denies disclosure of the identifying information, the adult adopted person may apply to the circuit court for an  
123 order to disclose such information and the circuit court may release identifying information to the adult  
124 adopted person. In making this decision, the circuit court shall consider the needs and concerns of the adopted  
125 person and the birth family if such information is available, the actions the agency took to locate the birth  
126 family, the information in the agency's report and the recommendation of the agency.

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

129 Upon entry of a final order of adoption, the child-placing agency or local board shall transmit to the  
130 Commissioner the adoption file in connection with the case, which shall be preserved by the Commissioner in  
131 accordance with this section and § 63.2-1246.1.

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

138 *Notwithstanding the provisions of this section, at the written request and upon proof of identification, the*  
139 *State Health Commissioner shall provide an adult adopted person access to his original birth certificate and*  
140 *make such certificate available for copy. The State Health Commissioner may charge a reasonable fee to*  
141 *cover the costs of providing access to or copies of original birth certificates and may impose a reasonable*  
142 *waiting period, not to exceed 30 days.*