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HOUSE BILL NO. 2093

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health and Human Services
on January 28, 2025)

(Patron Prior to Substitute—Delegate Walker)

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; contact preference form.

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, 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; or paternity or legitimation shall be sealed and filed and shall not be subject to inspection except 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. Evidence of adoption shall 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. The State Registrar may impose a reasonable fee to cover the costs of providing access to or copies of original birth certificates.~~

C. Upon receipt of a report of an amended decree of adoption, the certificate of birth shall be amended as provided by regulation. *An original certificate of birth sealed and filed with the State Registrar shall not be subject to amendment.*

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

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60 laws of the foreign country as provided in subsection B of § 63.2-1200.1 or (ii) upon receipt of a report or
61 final order of adoption entered in a court of the Commonwealth as provided in § 32.1-262; however, a
62 Virginia certificate of birth shall not be established or registered if so requested by the court decreeing the
63 adoption, the adoptive parents or the adopted person if 18 years of age or older. If a circuit court of the
64 Commonwealth corrects or establishes a date of birth for a person born in a foreign country during the
65 adoption proceedings or upon a petition to amend a certificate of foreign birth, the State Registrar shall issue
66 a certificate showing the date of birth established by the court. After registration of the birth certificate in the
67 new name of the adopted person, the State Registrar shall seal and file the report of adoption which shall not
68 be subject to inspection except upon order of a court of the Commonwealth or in accordance with § 32.1-252.
69 The birth certificate shall (i) show the true or probable foreign country of birth and (ii) state that the
70 certificate is not evidence of United States citizenship for the child for whom it is issued or for the adoptive
71 parents. However, for any adopted person who has attained United States citizenship, the State Registrar
72 shall, upon request and receipt of evidence demonstrating such citizenship, establish and register a new
73 certificate of birth that does not contain the statement required by clause (ii).

74 F. If no certificate of birth is on file for the person for whom a new certificate is to be established under
75 this section, a delayed certificate of birth shall be filed with the State Registrar as provided in § 32.1-259 or
76 32.1-260 before a new certificate of birth is established, except that when the date and place of birth and
77 parentage have been established in the adoption proceedings, a delayed certificate shall not be required.

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

81 H. When a new certificate of birth is established pursuant to subdivision A 1, and (i) at least one adoptive
82 parent is an active duty or retired member of the military or military reserves and (ii) the filer notifies the
83 clerk of court in writing that an adoptive parent has military status as required herein, the clerk of the court
84 decreeing the adoption shall deliver the adoption records and a standardized confirmation of active duty or
85 retired military or military reserves membership of either adoptive parent to the State Registrar no later than
86 five business days after receipt by such clerk of the final decree from the judge who entered such decree. The
87 State Registrar shall expedite the issuance of the new certificate of birth to the adoptive parents upon receipt
88 of (a) adoption records as provided for in § 32.1-261, (b) standardized notice from the court that finalized the
89 adoption that at least one adoptive parent is an active duty or retired member of the military or military
90 reserves, and (c) a completed request to the Virginia Department of Health that a new certificate of birth for
91 the registrant be prepared. Requirements set forth in §§ 32.1-271, 32.1-272, and 32.1-273 shall apply to the
92 disclosure of information or issuance of the adopted registrant's new certificate of birth.

93 *I. A birth parent may at any time request from the State Registrar a contact preference form that shall*
94 *accompany the adopted person's original birth certificate. Such form shall be completed at the option of the*
95 *birth parent who shall indicate the following intentions: (i) the birth parent would like to be contacted; (ii)*
96 *the birth parent would prefer to be contacted only through an intermediary; or (iii) the birth parent would*
97 *prefer not to be contacted at this time and if the birth parent decides later that they would like to be*
98 *contacted, they will submit an updated contact preference form to the State Registrar. Such form shall be*
99 *confidential communication from the birth parent to the person named on the original birth certificate and*
100 *shall be placed with the sealed original birth certificate. If the contact preference form is replaced at any*
101 *time by the birth parent, the State Registrar may destroy the previous form. The contact preference form shall*
102 *be released to an adopted person when he requests his original birth certificate pursuant to subsection B.*

103 **§ 63.2-1246. Disposition of reports; disclosure of information as to identity of birth family.**

104 Upon the entry of a final order of adoption, the clerk of the circuit court in which it was entered shall
105 forthwith transmit to the Commissioner all orders and reports made in connection with the case, and the
106 Commissioner shall preserve such orders and reports in a separate file pursuant to this section and §
107 63.2-1246.1. Except as provided in § 63.2-1246.1 and subsections C, D, and E of § 63.2-1247, nonidentifying
108 information from such adoption file shall not be open to inspection, or be copied, by anyone other than the
109 adopted person, if 18 years of age or over, or licensed or authorized child-placing agencies providing services
110 to the child or the adoptive parents, except upon the order of a circuit court entered upon good cause shown.
111 However, if the adoptive parents, or either of them, is living, the adopted person shall not be permitted to
112 inspect the home study of the adoptive parents unless the Commissioner first obtains written permission to do
113 so from such adoptive parent or parents.

114 No identifying information from such adoption file shall be disclosed, open to inspection, or made
115 available to be copied except as provided in § 63.2-1246.1 and subsections A, B, and E of § 63.2-1247 or
116 upon application of the adopted person, if 18 years of age or over, to the Commissioner, who shall designate
117 the person or agency that made the investigation to attempt to locate and advise the birth family of the
118 application. The designated person or agency shall report the results of the attempt to locate and advise the
119 birth family to the Commissioner, including the relative effects that disclosure of the identifying information
120 may have on the adopted person, the adoptive parents, and the birth family. The adopted person and the birth

121 family may submit to the Commissioner, and the Commissioner shall consider, written comments stating the
 122 anticipated effect that the disclosure of identifying information may have upon any party. Upon a showing of
 123 good cause, the Commissioner shall disclose the identifying information. If the Commissioner fails to
 124 designate a person or agency to attempt to locate the birth family within 30 days of receipt of the application,
 125 or if the Commissioner denies disclosure of the identifying information after receiving the designated
 126 person's or agency's report, the adopted person may apply to the circuit court for an order to disclose such
 127 information. Such order shall be entered only upon good cause shown after notice to and opportunity for
 128 hearing by the applicant for such order and the person or agency that made the investigation. "Good cause"
 129 when used in this section ~~shall mean~~ means a showing of a compelling and necessitous need for the
 130 identifying information.

131 An eligible adoptee who is a resident of Virginia may apply for the court order provided for herein to (i)
 132 the circuit court of the county or city where the adoptee resides or (ii) the circuit court of the county or city
 133 where the central office of the Department is located. An eligible adoptee who is not a resident of Virginia
 134 shall apply for such a court order to the circuit court of the county or city where the central office of the
 135 Department is located.

136 If the identity and whereabouts of the adoptive parents and the birth parents are known to the person or
 137 agency, the circuit court may require the person or agency to advise the adoptive parents and the birth parents
 138 of the pendency of the application for such order. In determining good cause for the disclosure of such
 139 information, the circuit court shall consider the relative effects of such action upon the adopted person, the
 140 adoptive parents, and the birth parents. The adopted person and the birth family may submit to the circuit
 141 court, and the circuit court shall consider, written comments stating the anticipated effect that the disclosure
 142 of identifying information may have upon any party.

143 When consent of the birth parents is not obtainable, due to the death of the birth parents or mental
 144 incapacity of the birth parents, the Commissioner shall, upon application of the adult adopted person and a
 145 showing of good cause, disclose the identifying information to the adult adopted person. If the Commissioner
 146 denies disclosure of the identifying information, the adult adopted person may apply to the circuit court for an
 147 order to disclose such information and the circuit court may release identifying information to the adult
 148 adopted person. In making this decision, the circuit court shall consider the needs and concerns of the adopted
 149 person and the birth family if such information is available, the actions the agency took to locate the birth
 150 family, the information in the agency's report, and the recommendation of the agency.

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

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

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

162 *Notwithstanding the provisions of this section, upon written request to the State Registrar and proof of*
 163 *identification, the State Registrar shall provide an adult adopted person access to his original birth*
 164 *certificate and contact preference form pursuant to subsection I of § 32.1-261. The State Registrar may*
 165 *charge a reasonable fee to cover the costs of providing access to or copies of original birth certificates.*